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28 September 2017

Committee Secretary  
Joint Standing Committee on Electoral Matters  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Secretary,

***Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto***

Please find attached Philanthropy Australia's submission in response to the Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto'.

Philanthropy Australia thanks the Committee for the opportunity to make a submission to the Inquiry.

Philanthropy Australia would welcome the opportunity to discuss the matters raised in this submission further. In this regard, please do not hesitate to contact Krystian Seibert, Advocacy & Insight Manager, on (03) 9662 9299.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Sarah Davies".

Sarah Davies  
**Chief Executive Officer**

# Submission – Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto

## 1. About Philanthropy Australia

As the peak body, Philanthropy Australia's purpose is to serve the philanthropic community to achieve more and better philanthropy.

The community we serve consists of funders, grant-makers, social investors and social change agents working to achieve positive social, cultural and environmental change by leveraging their financial assets and influence.

Informed, independent and with reach and credibility, Philanthropy Australia gives its Members a collective voice and ability to influence and shape the future of the sector and advance philanthropy.

We also serve the community to achieve more and better philanthropy through advocacy and leadership; networks and collaboration; professional learning and resources; and, information and data-sharing.

Our membership consists of approximately 800 trusts, foundations, organisations, families, individual donors, professional advisers, intermediaries and not-for-profit organisations.

Philanthropy Australia shares the Committee's view that a robust and transparent framework for political donations is important to promote public confidence in our democratic processes, and we believe that the Inquiry is an important opportunity to examine this framework in its entirety to determine whether and what reforms to the framework may be necessary.

In our submission, we wish to provide comments in relation to the following parts of the Inquiry's terms of reference:

*1 c) The options available to Parliament to ensure consistent application of disclosure rules to and the regulation of all entities undertaking campaign activities.*

*2. The extent of donations and contributions from foreign sources, persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.*

Comments are also provided regarding the importance of advocacy by charities and the consequent need to maintain existing tax deductibility arrangements for donations to charities, including for advocacy activities. This is relevant to part 4 of the Inquiry's terms of reference.

## 2. The Importance of Advocacy by Charities

Australian charities can undertake advocacy to further their charitable purposes, for example through supporting or opposing matters established by law, policy or practice. The importance and legitimacy of this was recognised by the High Court in the decision in *Aid/Watch Incorporated v Commissioner of Taxation* of 2010, where the Court held that charities undertaking advocacy was essential to Australia's constitutional system of parliamentary democracy<sup>1</sup>. This decision was subsequently legislated in the *Charities Act 2013* (Cth)<sup>2</sup>.

It is important to note that advocacy is distinct from partisan political activity. In this regard, pursuant to the Charities Act, charities are specifically prohibited from having a purpose of promoting or opposing a political party or a candidate for political office<sup>3</sup>. This is a necessary limitation which Philanthropy Australia supports.

Advocacy is an important approach that charities can use to address the causes of social and environmental challenges, rather than just the symptoms – this often requires policy change.

For example, if a factory is polluting a river because of poor regulation, environmental remediation work to treat affected wildlife downstream will largely be futile and have little impact if the factory can continue to pollute the river. In order to preserve the river's ecosystem and stop the pollution, advocacy may be necessary to ensure the factory complies with regulations or that government introduces adequate regulations.

Tangible examples of the outcomes of advocacy by charities, funded at least in part by philanthropy, include the introduction of major reforms such as the National Disability Insurance Scheme as well as the introduction of a national affordable housing policy.

Advocacy by charities serves the public interest, including by balancing out advocacy by other interest groups. In doing so, it empowers and amplifies the voice of communities around Australia, to ensure their views on important social and environmental challenges are given prominence. As amongst the most trusted institutions in Australia, charities are well placed to undertake such advocacy in the public interest<sup>4</sup>. Available polling also shows that the public values the advocacy role of charities<sup>5</sup>.

The effectiveness and efficiency of advocacy as an approach to achieving charitable purposes is a key reason that our Members may choose to fund

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<sup>1</sup> See: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2010/42.html> at 44 and 45

<sup>2</sup> See: [http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/num\\_act/ca2013104/](http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/num_act/ca2013104/) at s12(l)

<sup>3</sup> See previous footnote, at s11

<sup>4</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 – see:

<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 – see: [www.vista.org.au/documents/item/2766](http://www.vista.org.au/documents/item/2766)

<sup>5</sup> The Essential Report, 15 November 2016, p.9, available here: [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)

advocacy activities by charities. It is for this reason Philanthropy Australia is making a submission to this Inquiry, as its recommendations may have implications for advocacy activities by charities during election campaigns.

Charities in Australia are well regulated, with an independent regulator, the Australian Charities and Not-for-profits Commission (ACNC), ensuring that organisations are entitled to be registered as charities and that they operate within the boundaries of the law. The ACNC framework includes annual reporting and requires compliance with governance standards and other requirements.

The ACNC has various enforcement tools it can use to ensure compliance with the law. As noted above, this regulation extends to advocacy activities by charities. In this regard, the ACNC has issued specific guidance regarding the advocacy activities of charities during election campaigns<sup>6</sup>. This guidance is very helpful to ensure compliance with the Charities Act and its provisions prohibiting partisan political purposes.

Given the existence of the ACNC regulatory framework, as well as existing disclosure rules discussed in the next section of this submission, it is not apparent that any additional regulation of charities' activities during election campaigns is necessary.

In this regard, Philanthropy Australia would be very concerned by any recommendations which seek to limit advocacy activities by charities during election campaigns which are currently allowed under relevant laws, either by directly restricting or by indirectly restricting these activities (for example by limiting tax deductibility arrangements for donations to charities).

More broadly, Philanthropy Australia is opposed to any new restrictions which would limit the ability to deductible gift recipients or other charities to undertake advocacy to further their charitable purpose<sup>7</sup>.

### **3. Consistent Application of Disclosure Rules for Campaign Activities During Elections**

In relation to part 1 c) of the Inquiry's terms of reference, Philanthropy Australia notes that the current disclosure rules in the *Commonwealth Electoral Act 1918* (Cth) provide that where 'political expenditure' reaches the disclosure threshold of \$13,500, third parties are required to lodge an annual 'Third Party Return of Political Expenditure'<sup>8</sup>.

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<sup>6</sup> See: [https://www.acnc.gov.au/ACNC/Reg/Charities\\_elections\\_and\\_advocacy.aspx](https://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx)

<sup>7</sup> This is discussed further in Philanthropy Australia submission to the Treasury's recent 'Tax Deductible Gift Recipient Reform Opportunities' discussion paper, available here: [http://www.philanthropy.org.au/images/site/publications/Philanthropy\\_Australia\\_Submission\\_-\\_DGR\\_Framework\\_Reform\\_Discussion\\_Paper.pdf](http://www.philanthropy.org.au/images/site/publications/Philanthropy_Australia_Submission_-_DGR_Framework_Reform_Discussion_Paper.pdf)

<sup>8</sup> See: [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/third-parties/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/third-parties/index.htm) and [http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol\\_act/cea1918233/at\\_s314AEB](http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/cea1918233/at_s314AEB).

This requirement would cover charities undertaking advocacy activities during election campaigns where they meet the relevant criteria, including where they involve a 'public expression of views on an issue in an election by any means'.

Disclosure of the identity of donors of gifts above \$13,500, received in order to fund political expenditure, is also required.

It would therefore appear that robust and transparent reporting requirements already apply to charities and other third parties undertaking advocacy activities during election campaigns.

However, Philanthropy Australia would welcome an examination of whether reporting thresholds more broadly are suitable, and whether more timely reporting is required. Philanthropy Australia understands that these matters are being considered by the Inquiry in terms of how they apply to all types of entities which are subject to disclosure rules.

Although Philanthropy Australia is not in a position to comment on whether disclosure rules are consistently applied, it may be the case that awareness of the existing disclosure rules for third parties is low, including amongst charities. In this regard, the development of enhanced guidance for all types of entities may be beneficial.

#### **4. International Philanthropy Funding Activities by Charities**

Philanthropy Australia understands that part 2 of the Inquiry's terms of reference includes examining the role of international philanthropy funding advocacy activities by charities during election campaigns.

As the peak body for philanthropy, Philanthropy Australia seeks to grow philanthropy and its impact – and this includes international philanthropy.

International philanthropy makes an important contribution to funding the activities of Australian charities in diverse fields such as health and medical research, Indigenous advancement, marine conservation, poverty alleviation, and education. For example, Australian hospitals, health research organisations and universities are among the top recipients of grants from foundations from the United States<sup>9</sup>.

Many social and environmental challenges are global in nature, and therefore foundations need to adopt approaches which cross international boundaries in order to respond to these challenges. This may include funding advocacy activities by charities.

Philanthropy Australia would be very concerned by any recommendations which seek to limit the ability of international philanthropy to support advocacy activities by charities during election campaigns which are currently allowed under relevant laws.

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<sup>9</sup> See:

[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)

Charities exist for the public benefit and must work to further their charitable purposes. As outlined in parts 2 and 3 of this submission:

- Charities are already well regulated by the ACNC and their advocacy activities are already constrained by the *Charities Act 2013* (Cth) – they cannot have a purpose of promoting or opposing a political party or a candidate for political office
- Activities by charities which involve ‘political expenditure’ fall within the remit of the Australian Electoral Commission (AEC) and disclosure rules under the *Commonwealth Electoral Act 1918* (Cth)

Although Philanthropy Australia understands concerns about foreign donations to political parties and associated entities, there is a category difference between political parties and charities.

Charities have completely different access to and influence over the political process compared with political parties. Given the very different circumstances within which charities operate, any restrictions on foreign donations to political parties and associated entities should not be applied to charities.

Philanthropy Australia recognises the importance of transparency regarding support from international philanthropy for advocacy activities by charities during election campaigns. However, where such support is in excess of \$13,500, it already has to be disclosed to the AEC under existing disclosure rules. As noted in part 3 of this submission, we would support an examination of whether reporting thresholds and timelines more broadly are suitable.

Philanthropy Australia welcomes the statement by the Committee Chair, Senator Linda Reynolds, earlier this year, in relation to a recommendation by the Committee to ban donations from foreign citizens and foreign entities to Australian registered political parties, associated entities and third parties:

*It is . . . not the intent of the recommendation to ban foreign donations for charities or institutions that use foreign funds to undertake issue and policy advocacy in accordance with their Deductible Gift Recipient Status<sup>10</sup>.*

On the basis of the points outlined above, and consistent with the statement by Senator Reynolds, Philanthropy Australia proposes that charities registered with the Australian Charities and Not-for-profits Commission be specifically exempted from any legislative amendments which ban receiving donations from foreign entities, which would include international philanthropy.

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<sup>10</sup> See: <http://www.aph.gov.au/DocumentStore.ashx?id=f231ee91-ba58-4f50-bbd8-c6157deec1d4>