



Philanthropy Australia Ltd.

ACN 070 104 255

ABN 79 579 875 531

philanthropy.org.au

1300 511 500

25 October 2019

Senate Inquiry into Nationhood, National Identity and Democracy
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Chair

Senate Inquiry into Nationhood, National Identity and Democracy

Philanthropy Australia thanks the Senate Legal and Constitutional Affairs Reference Committee for the opportunity to make a submission to the Inquiry into Nationhood, National identity and Democracy.

About Philanthropy Australia

Philanthropy Australia is the peak body for philanthropy in Australia and our 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: using private resources for public good.

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 comprises over 650 trusts, foundations, organisations, families, individual donors, professional advisers, intermediaries and not-for-profit organisations.

Philanthropy and Its Role in our Democracy

Philanthropy, being the use of private wealth for public benefit, plays an important role in Australia's democracy.

Reflecting this, Philanthropy Australia most recent 'Philanthropy Meets Parliament Summit', held in Canberra on 18-19 September this year, had the theme of 'Philanthropy: in the service of democracy'¹. Over the two days, delegates debated the role of philanthropy in our democracy, and how it can make an effective contribution to the challenges we face during this time of upheaval.

Delegates examined the roles and the relationships of and between, government and philanthropy: their respective characteristics; their power and influence; as well as questions around legitimacy and trust.

We started to identify and explore some of the stresses and strains on the current operating model within our democracy, and interrogated the causes and effects of the declining trust in government and political institutions, and asked ourselves, if 'trust is the glue that enables collective action for mutual benefit', what then are the consequences when trust is gone?

Following on from this, we explored what philanthropy's role is in such a situation, and whether philanthropy in Australia needs to be more proactive in seeking to address the decline in trust in government and political institutions, and if so, how.

The premise was made and generally accepted, that the mechanics and patterns of government and politics are 'ripe for disruption and ready for renewal and reinvention'.

The exact shape and nature of philanthropy's role in relation to this will be explored within the sector further, however Philanthropy Australia does want to provide some high level comments on philanthropy's role within our democracy.

Philanthropy as an Exercise of Democracy

As pointed out by one of our international guest speakers at the Philanthropy Meets Parliament Summit, Mr Karl Zinsmeister, Vice-President of the 'Philanthropy Roundtable' in the United States, philanthropy and the 'associational life' of civil society is in itself an exercise of democracy.

This has two elements to it.

Firstly, in Australia, although it is difficult to estimate an exact figure, there are in the order of 5,000 to 7,000 philanthropic entities that engage in some form of structured grantmaking. These take on a number of different legal forms. Then there are the many millions of Australians who donate to charities, not-for-profit organisations and community groups.

By engaging in philanthropy, many diverse entities and individuals promote pluralism in our democracy by supporting a broad range of causes and organisations. By doing this, they

¹ See: <https://www.philanthropy.org.au/PMPS2019/>

support different ways of addressing social and environmental challenges, and encourage debate about diverse ideas and directions for our nation. Such pluralism is essential in a democracy, and it is a key consideration that justifies support for philanthropy through properly designed tax incentives and regulatory frameworks.

Promoting pluralism is important because within our majoritarian system of government, government and those aspiring to it will pursue policies that will enable them to win elections. Whilst they will appeal to specific groups and constituencies as part of this, it is impossible for all the preferences of our diverse populace to be reflected in the policies of government. Philanthropy and the associational life of civil society helps to address this, by allowing individuals to support causes and organisations that are important to them and to act together to address social and environmental challenges and enrich our culture and sense of community. Such activity is sometimes referred to as 'building social capital'.

Secondly, through philanthropy and associational life, individuals and groups foster many of the values and practices that are essential to the proper functioning of democracy. These include collaboration and consensus building. By working together to address social and environmental challenges and enrich our culture and sense of community, we undertake active citizenship. If such values and practices permeate more broadly through our society, then they can help foster more constructive engagement at the highest political levels.

The Inquiry's discussion paper notes that the membership of political parties has reduced significantly over recent decades. This decline is mirrored in other aspects of associational life, with data showing fewer people joining organisations and fewer organisations in general within our civil society². Data also indicates that the proportion of the population engaging in the giving of money has declined, although the average amount given has increased³. In terms of larger scale philanthropy, there has been strong growth in such giving through structures such as Private Ancillary Funds, with grants made through these plus other structured giving are set to grow to around 17% of all giving by 2036, up from 7% in 1996⁴. The picture in relation to volunteering is less clear, with some sources indicating that it is declining⁵, and some showing the opposite⁶.

Given that overall, the picture in relation to philanthropy and associational life is at best mixed, it is important to recognise the impact that may have on our democracy. Indeed, given the benefits of philanthropy and associational life to our democracy, Philanthropy

² See: <https://probonoaustralia.com.au/news/2015/08/connected-communities-how-australias-social-capital-has-declined/>

³ See: https://www.communitybusinesspartnership.gov.au/wp-content/uploads/2017/04/giving_australia_2016_fact_sheet_-_individual_giving_accessible.pdf and <https://eprints.qut.edu.au/131926/1/Tax%20stats%20Working%20Paper%202016-17.pdf>

⁴ See: https://www.ibwere.com.au/blog/2018/04/support_report_2018

⁵ See: <https://www.abc.net.au/life/benefits-of-volunteering-to-community-and-society/11075998>

⁶ See: https://www.communitybusinesspartnership.gov.au/wp-content/uploads/2017/04/giving_australia_2016_fact_sheet_-_individual_volunteering_accessible.pdf

Australia believes that there is a strong argument for government to more proactively pursue policies that support such activities.

Such policies can take diverse forms. It is vital to have a supportive taxation and regulatory framework for philanthropy and the broader not-for-profit sector. However, taxation and regulatory settings alone are not enough, and cultivating our culture of giving through a 'national giving campaign' is another proposal that deserves consideration.

Philanthropy Australia discusses these and other policy proposals to support giving in Australia in our 'Policy Priorities for a More Giving Australia' document, which was launched prior to the Federal Election this year, and is included as an attachment to this submission⁷.

We would welcome the opportunity to discuss these policy proposals with the Committee.

Recommendation One: That the Australian Government more proactively pursue policies that support philanthropy and the broader not-for-profit sector.

Philanthropy and Advocacy – Critical to Our Democracy

Philanthropy Australia notes the comment on page two of the discussion paper that:

A cohesive democracy and nation may rest, in part, on clear and meaningful communication between the public and elected representatives. In some respects, Australia has a vibrant civil society that seeks to engage in this dialogue.

The first part of this comment aligns with the view expressed by the majority in the High Court decision in *Aid/Watch Incorporated v Commissioner of Taxation* [2010]⁸. In this decision, the Court held that advocacy in furtherance of a charitable purpose was itself a charitable purpose. The Court was of the view that the proper functioning of Australia's constitutional system of representative and responsible government necessitates 'agitation' for legislative and political changes, including by charities⁹. In deciding so, the Court was not just saying that advocacy by charities was merely acceptable, but that it was actually *essential* to our democracy.

This decision has since been legislated by s12(l) of the *Charities Act 2013 (Cth)*.

Advocacy is a key element of the work of many charities in Australia, and for good reason. By seeking to change government policies and practices, it targets the root causes of social and environmental challenges, rather than just addressing the symptoms. It is an important way that charities can use their expertise and experience working on the frontline in communities right across Australia to give voice to those on the margins of society and whose interests may otherwise be drowned out by more powerful groups. In this way, it makes an important contribution to our democracy.

⁷ See: <https://www.philanthropy.org.au/tools-resources/2019-federal-election/>

⁸ See: <http://eresources.hcourt.gov.au/showCase/2010/HCA/42>

⁹ See: *Aid/Watch Incorporated v Commissioner of Taxation* [2010], paragraphs 44-45

It is for this reason that Philanthropy Australia has been educating our Members about the benefits of funding advocacy¹⁰.

In 2017, Pro Bono Australia's Civil Voices report found that not-for-profit organisations are feeling pressured to take a more cautious approach to advocacy because they fear it may impact upon the funding they receive and the services they provide¹¹.

In recent years, there have been some challenges to the advocacy work of charities. Threats have been made to the deductible gift recipient status of particular charities, for example during the House Standing Committee on the Environment's Inquiry into the Register of Environmental Organisations conducted in 2015-16. In 2018, proposed amendments to the *Commonwealth Electoral Act 1918 (Cth)* were cause for concern given the impact of the proposals on advocacy activities by not-for-profit organisations.

These are highly problematic developments.

Given the essential role that advocacy by charities and not-for-profit organisations play in our democracy, Philanthropy Australia believes that government should pursue policies that support rather than hinder advocacy. We specifically addressed this in our 'Policy Priorities for a More Giving Australia' document (referred to earlier in this submission).

One recommendation contained in that document was that the *Not-for-profit Sector Freedom to Advocate Act 2013 (Cth)* should be amended to include a set of principles outlining the Australian Government's support for advocacy by not-for-profit organisations, against which departments and relevant portfolio agencies would report annually.

We would welcome the opportunity to discuss this and other policy proposals with the Committee.

Recommendation Two: That the Australian Government pursue policies that support advocacy by charities and not-for-profit organisations.

Examples of Philanthropy Supporting Democracy in Australia

Philanthropy Australia wishes to draw to the Committee's attention the wide range of ways in which funding from philanthropy is supporting democracy in Australia. Philanthropy in Australia funds in a diverse range of areas, and this is reflected in its funding for organisations and initiatives which support our democracy, broadly defined.

Some specific examples include:

- Funding public interest journalism¹²

¹⁰ See: <https://www.philanthropy.org.au/power-of-advocacy/>

¹¹ See: <https://civilvoices.com.au/>

¹² See: <https://balnavesfoundation.com/philanthropy-supports-journalism/>, <https://jinstitute.org/news/judith-neilson-institute-announces-first-journalism-grants-02082019-165553>, and http://www.susanmckinnon.org.au/?post_type=grants&p=1380

- Supporting effective government and political leadership¹³
- Supporting community-led initiatives to address complex social problems¹⁴
- Funding diverse forms of advocacy¹⁵

This is not intended to be an exhaustive list of the many different ways philanthropy is supporting democracy in Australia through its funding, but rather just a small selection of particular examples that may be of interest to the Committee.

Conclusion

Philanthropy Australia once again thanks the Committee for the opportunity to provide this submission.

We would welcome the opportunity to discuss the matters raised in this submission with the Committee further.

In this regard, please do not hesitate to contact Sarah Wickham, Policy and Research Manager, on

Yours Sincerely

Sarah Davies
Chief Executive Officer

¹³ See: <http://www.susanmckinnon.org.au/our-focus/effective-government/>

¹⁴ See: <https://www.philanthropy.org.au/stories-Best-Large-Grant-2019>

¹⁵ See: <https://www.philanthropy.org.au/power-of-advocacy/>