

Commissioners,
Productivity Commission, Australia

Submission for the Philanthropy Inquiry

Introduction

Stronger Charities Alliance (the Alliance) welcomes the opportunity to make a submission to the Commission's Philanthropy Inquiry. We have reviewed the Commission's discussion paper and are pleased to make this submission on some of the information requests in the paper.

The Alliance has over 120 members, and the submission does not override any policy positions outlined in these organisations' individual submissions/documents.

Summary of Our Recommendations

Advocacy by Australian charities helps create more fair and inclusive policies and lasting change, contributing to a healthy democracy in the country. But due to confusion in the legal and regulatory environment, many charities shy away from their advocacy role. The philanthropic sector also feels reluctant to fund advocacy projects. Therefore, our recommendations are seeking a clear, unambiguous legal and regulatory environment that minimises administrative burdens and legal uncertainty so that charities can do their important advocacy work and philanthropy can confidently fund it:

- 1. Amend the Charities Act to clarify that advocacy in furtherance of a charitable purpose is itself a charitable purpose and that no weighing of benefit or detriment is therefore required in relation to the outcome of that advocacy.** While the Charities Act 2013 recognises advocacy as a charitable purpose, some ambiguities in the law and regulatory environment cause confusion about advocacy by charities. Such confusion has implications for philanthropic funding to advocacy projects and organisations. In the Voices for Change survey, 66 per cent of respondents reported that the philanthropic sector was reluctant to fund advocacy. Addressing the legal ambiguities will likely boost the philanthropic sector's support of advocacy organisations. It will also reassure charity leaders that legitimate advocacy is not a compliance risk, ensuring that our charities make full use of this important tool for positive change rather than engaging in self-silencing.
- 2. Simplify deductible gift recipient (DGR) and extend it to all the charities registered with the Australia Charities and Not-for-Profit Commission (ACNC).** DGR is complex legislation and operates under outdated categories that do not capture the diversity of

modern Australian charities. As a result, charities struggle to understand it and benefit from it.

- 3. Repeal ACNC Governance Standard 3 as per the 2018 ACNC Legislative Review recommendations.** Charities spend massive amounts towards servicing administrative and regulatory requirements, drawing resources away from fulfilling their charitable purposes. The philanthropic sector will likely give more money if a large chunk of that money goes towards charitable purposes. Hence, reducing administrative red tape is likely to encourage more philanthropy. Governance Standard 3 is not only a barrier to advocacy, but the 2018 ACNC Legislative Review found that it "is not appropriate" given that registered entities already have to comply with all applicable laws.

About Stronger Charities Alliance

Stronger Charities Alliance, previously known as Hands Off our Charities Alliance, consists of over 120 charities and was formed in 2017 in response to several bills that would have silenced charities' voices on issues of national and public importance. For a list of current member charities, please see our website <https://www.strongercharities.org.au/about-us/>.

The Alliance envisions a thriving not-for-profit sector where charities are empowered to advocate for lasting change in pursuit of their charitable purposes.

Together, the members of SCA represent millions of Australians concerned with a wide range of issues, including education, social welfare, human rights, international development, animal welfare, the environment, health, climate change, disability rights and philanthropy. Our organisations, the issues we work on, and the communities we represent are diverse, but we all share a fundamental commitment to serving the public interest.

Our Recommendations in Detail

- 1. Strengthening legal protections for charities' right to advocacy will likely contribute to increasing philanthropy.**

Stronger Charities Alliance partnered with the University of Melbourne and ProBono to conduct a survey on the status of charity sector advocacy in Australia. We received 401 responses from Australian charities covering the sector's diversity – from peaks to smaller organisations, advocacy organisations, faith-based charities, indigenous groups, and environmental bodies.¹

¹ The Survey is available via our website and we will put it as an Annex to this submission: <https://www.strongercharities.org.au/our-work/voices-for-change-survey/>

The survey builds on the previous two surveys undertaken in 2004 and 2017. The last two surveys highlighted several problems that hampered the sector's advocacy role. Such issues included gag clauses in government funding agreements preventing advocacy by charities, funding cuts and regulatory contestation that charities should not do advocacy. As a result, charities went into self-silencing, fearing legal and funding challenges.

But the present survey paints an optimistic picture with more charities conducting advocacy, reporting advocacy capacities and success. Seventy-seven per cent of survey respondents indicated that advocacy was important for their charitable purpose as it helps address systemic issues which could achieve lasting change in society. Seventy-nine per cent of respondents also reported that they had seen great success due to their advocacy efforts in the last five years. The survey notes that Australian charities have contributed to building a more robust democracy by, among other things:

"the role that civil society organisations have played in assisting refugees seeking asylum in Australia to connect with one another, access resources, and represent themselves in political debate. Civil society advocacy was also critical in bringing the harms of the failed 'robodebt' scheme to public attention, mobilising test cases, and eventually ensuring that the scheme was subject to enquiry through a royal commission. They also give voice to the otherwise voiceless – elevating concerns about the environment, climate change and animal welfare to generate greater public awareness about issues that impact the whole of our society."

Despite these and many other contributions and successes, the survey indicates that charities feel that key stakeholders such as policymakers, regulators, and the public do not fully understand and appreciate their advocacy role. Only 26 per cent of respondents believed state and federal policymakers have a good understanding of their advocacy role, and only 5 per cent said that state and federal government fully understood their advocacy role. While 86 per cent of respondents considered the sector's regulation important, only 19 per cent believed that regulators, like ACNC, understood their advocacy role. Forty-seven per cent of respondents did not think that ACNC has always been free of government influence.

Many of these issues stem from an ambiguous legal and regulatory framework around charity sector advocacy. Although the purpose of 'promoting or opposing a change to any matter established by law, policy or practice' is one of the charitable purposes in the Charities Act 2013, there is ambiguity around when the advocacy could be construed as a political purpose.

These ambiguities, coupled with regulatory approaches and policymakers' underappreciation of advocacy by not-for-profit organisations, impact philanthropic giving to charities. In the survey, 66 per cent of respondents reported that the philanthropic sector was reluctant to fund advocacy. Resolving these ambiguities and developing a more appreciative regulatory and political approach towards advocacy will likely boost philanthropic donations.

Recommendation: Amend the Charities Act to clarify that advocacy in furtherance of a charitable purpose is itself a charitable purpose and that no weighing of benefit or detriment is therefore required in relation to the outcome of that advocacy.

2. Simplifying and extending DGR to all registered charities would strengthen the sector and amplify philanthropic giving.

Adequate funding is essential for charities to pursue their purpose and serve their communities. Without access to DGR status, it is extremely difficult to access funds from major donors and philanthropic trusts and foundations, making it nearly impossible to sustainably fund a charity of any size. Sixty-seven per cent of respondents in the Voices for Change survey indicated that DGR status was 'extremely important' or 'very important'. But many charities cannot access DGR status because of the complexities within the system.

As the past Commonwealth-sponsored independent reviews and charity sector submissions have highlighted, DGR is a cumbersome regime often written in vague and bureaucratic language that many charities find challenging to understand². DGR's categories are outdated as they do not capture the diversity and current realities of the Australian charity sector. While charities have to demonstrate partial or complete compliance with a DGR category, many charities do not always neatly fit into one of the fifty-plus categories. Some important purposes, such as democracy, are not represented in the existing categories at all.

Within the Voices for Change Survey, organisations that did not have DGR status reported the primary reason for this as ineligibility (38 per cent), followed by resource constraints (30 per cent). Eighteen per cent of respondents said that they are or have been in the process of applying for DGR status and are either waiting for approval or have been denied.

² Productivity Commission, *Contribution of the Not-For-Profit Sector*, Research Report, 2010, *Not-for-Profit Sector Tax Concession Working Group – Final Report*, May 2013

Even for those charities that do fit an existing category, wait times to be granted DGR status are extremely long, leaving new and small charities with the problem of fundraising without DGR for unreasonable lengths of time.

Besides the issues with categories, the administration of the DGR follows a patchwork approach. While Australian Tax Office (ATO) is responsible for assessing eligibility and granting DGR status for a bulk of categories, organisations that do not fit in any of the categories have to be listed by name within tax law. Such organisations have to apply to the Treasury in this regard. Then there are four registers dealt with by their respective line ministries/department. Such arrangements have provided scope for some Ministers to exercise undue political influence by granting, revoking or delaying DGR status, which could be used to silence some charities. This approach also increased the administrative burden on charities in those categories with additional reporting requirements; and meant that charities wanting to be endorsed as a DGR had to wait longer. For these four categories, the government is in the process of bringing them under ATO's domain, which is likely to address part of the issue and reduce red tape for these four registers³.

With such complexities within the DGR system, past reviews and charities have consistently highlighted the DGR system needs an overhaul to make it fit for modern Australian charities. In 2010, the Productivity Commission recommended the Commonwealth Government to progressively widen the scope of DGR status to include all endorsed charitable institutions and funds⁴ - the 2013 Not-For-Profit Sector Tax Concession Working Group supported the recommendation.⁵

We understand that many small organisations may not prefer to have DGR status due to associated administrative and compliance costs for reporting on their DGR status. Therefore, DGR status should not be automatically applied to all registered charities, and instead, organisations should be given the option to get the status if they want.

Recommendation: Simplify DGR and extend it to all the charities registered with the ACNC.

3. Reducing red tape and compliance requirements can help charities direct more resources towards achieving their charitable purpose, which can also increase philanthropy.

³ See *Treasury Laws Amendment (Refining and Improving Our Tax System) Bill 2023*, available here https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6996

⁴ Productivity Commission, *Contribution of the Not-For-Profit Sector*, Research Report, 2010, Recommendation 7.3.

⁵ *Not-for-Profit Sector Tax Concession Working Group – Final Report*, May 2013, 6–7.

Australian charities have to comply with several legislative and regulatory instruments, which often overlap with each other. This means charities must redirect resources from charitable purposes towards meeting administrative and regulatory requirements. While the charity and philanthropic sectors understand the importance of regulations and hence the need for administrative costs involved in different projects. Philanthropists often prefer that maximum resources from their funding go directly to the causes they care about. Therefore, reducing administrative costs for charities is likely to boost the philanthropic sector's confidence that more and more resources will go towards attaining charitable purposes rather than servicing red tape. This, in turn, can also amplify charitable giving by the philanthropic community.

Under ANCC Regulation, charities have been concerned about Governance Standard 3, which has been seen as a barrier to charitable advocacy. For this reason, the 2018 ACNC Legislative Review found that Governance Standard 3 "is not appropriate" given that registered entities already have to comply with all applicable laws.⁶

Recommendation: Repeal ACNC Governance Standard 3 in line with the 2018 ACNC Legislative Review recommendations.

Contact

Once again, we thank the Productivity Commission for presenting us with the opportunity to make this submission. We will be available to answer any questions on our submission or provide oral evidence if helpful.

Please direct your inquiries or requests to:

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Coordinator, Stronger Charities Alliance,

Annex

1. Voices for Change Survey report.

⁶ Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review 2018, available at: <https://treasury.gov.au/publication/p2018-t318031>