

7 February 2024

## Commissioners

Productivity Commission, Australia

### ***Response to the draft report on Philanthropy Inquiry***

The Stronger Charities Alliance congratulates the Productivity Commission on completing and issuing the draft report on the Philanthropy inquiry. We also appreciate the Commission's webinar on December 4, 2023, to explain the recommendations and the opportunity to submit this response to the draft report. We submitted our recommendations on 3 May 2023 as part of the Commission's call for initial submissions. We are pleased to present our response after reviewing the Commission's draft report on the Philanthropy inquiry.

The Alliance consists of around 140 Australian charities, and this response reflects our collective feedback on the draft report. However, it does not override any individual response or policy positions by the Alliance members.

## Summary of our response

- We welcome the Commission's recommendation to simplify the deductible gift recipient (DGR) system and make it more consistent, transparent, and fair. We also appreciate your recommendation to extend DGR to charities doing advocacy work.
- We understand and support the overarching objective of further increasing trust and transparency in the sector. This forms the rationale behind the Commission's recommendations to empower the *Australian Charities and Not for Profits Commission (ACNC)* with further regulatory powers. However, we note that ACNC's regulatory powers should be balanced with adequate transparency and accountability measures within its operations. Among other things, **this should include amendments to the *Australian Charities and Not for Profits Commission (ACNC) Act 2012 (Cth)* to establish a merit-based and transparent appointment process for the ACNC Commissioner.**
- Legislative gaps and past unfavourable regulatory approaches have caused uncertainty about charitable advocacy. This has negatively impacted philanthropic giving to charities undertaking policy advocacy. **Giving the philanthropic community and the**

**sector more certainty about charitable advocacy by establishing the presumption of public benefit in the case of charitable advocacy in the *Charities Act 2013 (Cth)* will contribute to doubling up philanthropy.**

## About Stronger Charities Alliance

The Stronger Charities Alliance was formed in 2017 in response to some proposed bills that would have silenced charities on issues of national importance.

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

Around 140 members of the Stronger Charities Alliance 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 on which we work, and the communities we represent are diverse, but we all share a fundamental commitment to serving the public interest.

The Alliance was formerly called Hands Off Our Charities. However, it has changed its name to Stronger Charities Alliance to reflect a renewed focus on bringing civil society organisations back into the heart of government policymaking. The alliance is managed by a steering committee of members and is coordinated by the Australian Democracy Network.

## Explanation of our response

***ACNC's regulatory powers should be balanced with adequate transparency and accountability measures.***

The Commission has made a number of recommendations for empowering the ACNC with more regulatory powers. We welcome, in particular, recommendation 7.3 to give ACNC test case funding, which could, as the draft report also suggests, help further develop the charity legal framework.

The Commission has also taken the view that broader ACNC powers are needed to increase trust and transparency in the sector. The Alliance values and supports any efforts to increase trust and transparency in the sector. We also note that trust and transparency in the sector are intertwined with trust and transparency within the operations of the regulator and the government. The current government and ACNC leadership are supportive of the charity sector's advocacy role. However, some previous regulatory approaches have been unfavourable towards the sector, particularly with regard to the charity sector's advocacy role. Such an

approach carries a lingering effect on the charity sector. This lingering effect was reflected in the SCA's Voices for Change survey, whereby only 19% of respondents thought ACNC understood and appreciated their advocacy role. This is partly the result of a past appointment of an ACNC Commissioner who did not support the charity sector's advocacy role. The problem, however, lies in ACNC legislation, which does not require a merit-based and transparent appointment procedure for the ACNC Commissioner and leaves it to ministerial discretion. The current government has followed a merit-based process for the appointment of the current ACNC Commissioner, and the sector has warmly welcomed the process and the appointment of the current Commissioner. However, it is vital to prescribe a legally binding, merit-based, and transparent process in the law.

The Government has recently amended Australian Human Rights Commission legislation to require a merit-based and transparent process for the appointment of its commissioners.<sup>1</sup> The Attorney General's office also published guidelines on how these appointments will be made following the amended legislation.<sup>2</sup> The process sets a precedent that can be emulated for the ACNC Commissioner's appointment in consultation with the sector.

**Recommendation:** Amend the *ACNC Act 2012 (Cth)* to include a transparent, merit-based process for the appointment of the ACNC commissioner.

***Give the philanthropic community more certainty about charitable advocacy by establishing the presumption of public benefit in the case of charitable advocacy in the Charities Act.***

The Commission has rightly pointed out in the draft report that 'the rationale for government regulation is to overcome the principal-agent problem to protect donors, beneficiaries and taxpayers, an outcome of this is increased donor and public confidence in the charitable sector, which can influence giving' (page 211). The Alliance supports regulations of the sector to build such trust and transparency and agrees that it will influence the giving. In this regard, we also wish to point out that the past regulatory approach and some gaps in the charity legislation have created uncertainty around charities' advocacy role, which has impacted philanthropic funding of charitable advocacy. For example, in the Voices for Change survey, 66 percent of respondents reported that the philanthropic sector was reluctant to fund advocacy. Compared to this, 77 percent of the respondents considered advocacy important for achieving their charitable purpose and creating a lasting change, especially on complex societal problems.

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<sup>1</sup> See the legislation here:

[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6884](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6884), accessed on 11 December 2023

<sup>2</sup> See Guidelines here:

[https://humanrights.gov.au/about/news/new-guidelines-commission-appointments?mc\\_cid=6f61b096ca&mc\\_eid=95463030db](https://humanrights.gov.au/about/news/new-guidelines-commission-appointments?mc_cid=6f61b096ca&mc_eid=95463030db), accessed on 11 December 2023

However, the lack of funding means that a lot of important advocacy often remains challenging with limited resources.

While uncertainty was partly created by the anti-advocacy regulatory approach, it also emanates from the legal ambiguities within the charity legislation. Addressing the legal ambiguities will create more certainty around charitable advocacy and 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.

**Recommendation:** Amend the *Charities Act 2013 (Cth)* to stipulate that charitable advocacy is presumed to be for public benefit.

### ***Support to making DGR simpler, fairer, and consistent***

We welcome the Commission's recommendation 6.1 to make the DGR system simpler, fairer, and more consistent. As we highlighted in our initial submission, the DGR system is outdated, complex, inconsistent, and does not support important policy advocacy work. We support the Commission's recommendation of making it simpler, fairer, and consistent. It is also encouraging to see that the draft report recommends extending DGR to advocacy and prevention activities in line with initial submissions by the Alliance and several other organisations.

## **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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