



**Submission to:**

**Parliamentary Joint Committee on Intelligence and Security**

**Review of the Foreign Influence Transparency  
Scheme Bill 2017**

**February 2018**

## Introduction

This brief submission should be read in conjunction with the verbal evidence given by the Community Council for Australia (CCA) in relation to the negative impact of the proposed Foreign Influence Transparency Scheme Bill 2017 (the Bill) on many Australian charities.

CCA is particularly concerned about the breadth of key terms like; 'foreign principal', 'on behalf of', and 'political and governmental influence'. These terms are written as catch all terms in the Bill. As a consequence, the Bill ensnares many charities that are going about their normal activities in support of their charitable purpose.

CCA has consulted with members (see listing in appendix 1) in framing this submission, however, it is important to note that this submission does not override the policy positions outlined in any individual submissions from CCA members.

The content of this submission includes: a brief background to CCA; an overview of the current context for the NFP sector; a broad discussion about charities and advocacy; a listing of key issues associated with transparency and foreign influence over public policy, a summary of impact on charities, and a conclusion.

CCA welcomes this opportunity to provide further input into this review following on from the appearance before the Committee and is keen to engage in detailed discussion about any proposals arising from the Inquiry.

## The Community Council for Australia

The Community Council for Australia is an independent non-political member-based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

## **Background context: the not-for-profit sector**

The NFP sector encompasses over 600,000 organisations - from large to very small - and employs well over one million staff (around 10% of all employees in Australia). Australia's 54,000 charities collectively turn over more than \$130 billion each year and hold over \$260 billion in assets. In the last decade, sector growth has continued at more than 7% a year, a figure that is higher than any other industry group.

These facts tell only a small part of the story. The real value of the NFP sector is often in the unmeasured contribution to Australian quality of life. NFPs are at the heart of our communities; building connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians. Collectively, they make us a more resilient society.

The importance of the NFP sector is now being internationally recognised with many governments putting in place measures to increase NFP investment and productivity. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement, social entrepreneurship and productivity within the NFP sector.

The establishment of the Australian Charities and Not-for-profit Commission (ACNC) is the first time the NFP sector has had an independent regulator dedicated to serving their needs and enhancing their capacity. It has proved to be a positive step towards red tape reductions, increased transparency, and trust in the community by prospective volunteers and donors. The national charities register has also provided invaluable information.

While the recent history of the NFP sector is framed by growth and reform, new issues are emerging. The level of volunteering and individual philanthropic giving as a percentage of income has still not recovered to the highs of 2009. At the same time, revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations. Competition for fundraising and services has increased.

Given the size of the sector and its critical role in our community, the Federal Government can achieve real economic and social benefits if it chooses to strategically invest in strengthening our communities and our NFPs. There have been numerous reports and recommendations relating to the NFP sector over the last decade, but relatively few have been acted upon.

Surveys conducted by ProBono Australia of leaders across the charities sector find their number one concern is their capacity to speak out and advocate for public policies that will improve the lives of the people they serve.

Current moves to restrict the advocacy activities of charities that receive foreign donations or international philanthropy; to review the tax deductibility of environmental charities that engage in advocacy; to change the purpose of the ACNC so it becomes more active in restricting the advocacy of charities, are collectively raising concern amongst charities that their voice is being silenced.

CCA believes it is critical that governments exclude charities from any new impositions around advocacy, particularly those relating to foreign donations and political parties.

The contribution of charities and NFPs to the formation of public policy should not be collapsed into the same category as industry groups or others seeking personal gain.

From a charity perspective, the most powerful players in forming national policy are not those seeking to improve our communities, but those with a vested economic interest.

## **Background context: advocacy, public policy and purpose**

It is important to note at the outset that any charity that campaigns in support of a political party or makes donations to a political party will lose their charitable status.

It is also important to explain that any charity pursuing its purpose can legitimately become an advocate for that purpose, and many do. This means many charities rightly seek to influence public policy.

Most charities do not set out to be public policy advocates engaging in the political process. For instance, a charity may have a purpose of working with the homeless to offer food and comfort. They may collect blankets every winter to keep the homeless who sleep rough warm at night. Year after year they may collect blankets, but at some point, they may decide they need to do more for the homeless than just feed them and try to keep them warm. They may decide to try and find safe accommodation that meets the needs of the homeless community they serve. When they move into this area, the charity will find structural and policy barriers that make it difficult to put in place safe sustainable housing for the poorest people in our society. As a consequence, they may become advocates for particular housing policies. They do not do so for personal or organisational gain. They become advocates to better serve their purpose. As part of their advocacy, they may talk to similar advocates in other countries, or seek to learn more about what works overseas. This is part of informing ourselves and framing good public policy.

Most charities pursue their purpose and serve their communities partly through offering various services and partly through advocating to improve the community. This applies in almost every area of charitable endeavour. In this way, most charities engage in advocacy for public policies, but without having the resources to mount major campaigns, develop modelling, conduct research, or pay consultants and lobbyists. Most will not be able to attend Parliament and host meetings with government Ministers. Most will have very limited input into formation of government policy. Most are part time advocates who just want what is better for the communities they serve.

The *Report of the Consultation Panel on the Political Activities of Charities*, released in Canada this year, makes some salutary points about the important role of charities advocating for their purpose and the difficulty of excluding what are termed 'political activities'. In framing their report, the authors clearly set out the benefits of charities playing an active role in public policy:

***Charities have long played a critical role in our society. Along with providing much-needed programs and services, they serve all Canadians by pressing for positive social and environmental change. Charities bring commitment and expertise to the formulation of public policy, develop innovative solutions to issues and engage a diverse group of stakeholders, many directly affected by the matters under discussion. This is particularly valuable in an era of complex social and environmental challenges and constrained government budgets, where all informed perspectives and ideas are vital.***

The four recommendations in the Canadian report include lines like: ***to enable charities to fully engage in public policy dialogue and development ...to allow charities to fully engage, without limitation, in non-partisan public policy dialogue and development, provided that it is subordinate to and furthers their charitable purposes.***

If Australia is to develop flourishing communities and better respond to emerging social, economic and environmental issues, the voices of charities in public policy should be encouraged and facilitated. Governments need to be very careful not to limit or exclude, by regulations or by processes, the capacity of charities to draw on the experiences of others and have input into the formation of good public policy.

## Key issues in the Foreign Influence Transparency Scheme Bill 2017

### 1. The terms of the bill are too broad and ill defined

Under the provisions of this Bill, anyone in any kind of arrangement with anyone outside of Australia (including donors and supporters) will be required under quite strong laws (jail penalties, etc.) to register. Ignorance of the scheme is explicitly not a defence. The registration process seems quite onerous and includes details of communications and copies of materials produced. There are exemptions for humanitarian aid (relief after disasters etc.) and for commercial companies (the multinationals etc.), but none for most charities. The terms are so broad that they will capture many charities seeking to pursue their normal activities in support of their charitable purpose.

- a. **Liable to register** is defined to have the meaning given by section 18. Section 18 provides that a person becomes liable to register under the scheme in relation to a foreign principal if the person undertakes an activity on behalf of a foreign principal that is a registrable activity, or enters into a registrable arrangement with a foreign principal. A person will be liable to register under the scheme if there is a registrable arrangement in place with a foreign principal, even if no registrable activities are actually undertaken.
- b. **Foreign principal** is defined to mean: a foreign government, a foreign public enterprise, a foreign political organisation, a foreign business, or an individual who is neither an Australian citizen nor a permanent Australian resident.
- c. Paragraph 11(1)(a) provides that a person is undertaking an activity **on behalf of** a foreign principal if the person undertakes the activity under an arrangement with the foreign principal. Arrangement is broadly defined in section 10 to include a contract, agreement, understanding or other arrangement of any kind, whether written or unwritten.
- d. Paragraph 11(3)(b) clarifies that the person and the foreign principal need not have thought about the existence of the scheme. If both the person and foreign principal knew or expected the activities would or might occur, this would be sufficient for the activities to be **on behalf of** the foreign principal.
- e. Subsection 12(1) confirms that the purpose of political or governmental influence only needs to be a purpose for why an activity is undertaken, whether or not there are other purposes. The purpose of political or governmental influence need not be the sole, or even the dominant, purpose of an activity undertaken on behalf of a foreign principal. In addition, the influence over the above-mentioned processes can be direct or indirect.
- f. Subsection 12(2) clarifies that an activity is taken to be for the purpose of political or governmental influence if a purpose of the activity is to influence an aspect of a process or proceedings mentioned under subsection 12(1) by influencing the public or a section of the public, in relation to the process or proceeding. As above, the purpose of influencing the public or a section of the public in relation to a process or proceeding mentioned at subsection 12(1) need not be the sole or dominant purpose for which an activity is undertaken, and there may be other purposes. The role of the public is essential for Australia's robust representative democracy.

## 2. Real political influence is not captured in the bill

CCA believe the real impact of this Bill will be to encourage overseas interests to establish their own offices and not use Australian entities.

We know that individuals and organisations seeking to influence or support political parties may want to remain anonymous for several reasons including:

- not wanting to establish a potential link between a political donation to a political party and the political party subsequently adopting policies that support the interests of the donor
- not wanting to be identified as a donor to a political party that loses an election - it may mean the donor is not seen as being supportive of the successful political party that wins government
- donating to all major political parties ensures a donor is seen as a supporter of whoever wins government, but if it is known the donor contributed to other political parties as well, the donor might not be seen as a strong supporter and their donation would not be as highly valued.

There are many ways to offer private support and seek to influence public policy including:

- conducting research on an issue of interest in a specific electorate and making all results exclusively available to a particular politician or political party
- funding functions and events that the politician might attend
- providing travel, accommodation, meals or other benefits
- providing staff expertise and knowledge at no cost or special rates
- funding a third party or other organisation to support the politician or political party
- engaging in fundraising and other activities at a level that ensures your donations are known but not recorded.

In any democracy, successful business people, industry groups and others should be able to make their views known and seek to influence national policies. Similarly, charities pursuing their charitable purpose should be able to advocate for their cause and their community.

This Bill allows any foreign company to engage in any activity in support of their international commercial interests, but seeks to restrict most others. Any overseas business seeking to influence a government or political party can set up an office in Australia and have their staff engage in direct lobbying activities with little or no accountability, and certainly no requirement to register as a foreign principal.

The power of multinational companies to dictate Australian public policies may or may not be an issue for the government, but it does seem bizarre to restrict the activities of registered charities in Australia seeking to pursue their charitable purpose in accordance with the regulations and restrictions enforced by the charities regulator, while allowing any international business to pursue their vested interests without any restriction.

### **3. Public benefit versus personal gain**

Charities can only be registered if they demonstrate they have been established to pursue a purpose that provides a public benefit. Charities cannot operate for personal profit or gain, and any surplus must be directed towards the public benefit purpose. Charities cannot pursue individual wealth. Charities cannot be privately owned.

When charities advocate to politicians and political parties, they do so on behalf of the communities they serve. Often charities are arguing the case for individuals and communities who do not participate in public policy formulation. Charities advocate on behalf of the most marginalized, the environment, animal welfare, the unemployed, refugees, the sick, disabled, imprisoned, those with the least capacity to have their own input into public policy.

When groups like; alcohol producers, the Pharmacy Guild, the Minerals Council of Australia, the Food and Grocery Council of Australia, major companies or industry groups advocate to politicians, they invariably do so for personal gain. These groups will use their very extensive resources to oppose good public policy if it is not in their vested interests.

Charities should not be treated in the same way as those pursuing vested economic interests. Advocating for public policy that serves self-interest is not the same as advocating for public benefit.

### **4. The role of the Australian Charities and Not-for-profit Commission**

Unlike most players competing to influence national policies, charities face restrictions on their activities enforced by a regulator with significant powers. Charities can and do lose their charitable status if they engage in what are deemed to be political activities. The guidelines from the ACNC to charities on political activity are very clear:

- Charities cannot donate to any political party or candidate
- Charities cannot produce how to vote cards
- Charities cannot stand candidates in elections
- Charities cannot advocate publicly on any issue that is not part of their charitable purpose

The Australian Charities and Not-for-profit Commission has undertaken significant enforcement activities and obtained various undertakings from charities in relation to their advocacy, particularly during election periods. The current regulations prevent the ACNC making details of these actions public.

It is important to note that a charity can rate the policies of any political party, but only in relation to their charitable purpose. Invariably this means charities can only advocate on single issues – the environment, education, health, poverty, homelessness, etc. Rating the policies of a political party or candidate against a specific charitable purpose is not the same as telling people how to vote. For example; information about whether a candidate supports policies that reflect Christian values may be produced by the Australian Christian Lobby, but that does not mean all Christian voters will vote a specific way.

It is also important to note that no restrictions apply to businesses in promoting their vested interests during election periods as the activities of the Pharmacy Guild of Australia, the Minerals Council of Australia, the Winemakers Federation of Australia, and many others, clearly demonstrate.

Given charities, unlike business, are already regulated and restricted in this area, further regulation would be an over-reach.

## 5. Summary of the negative impact on charities

Below is an article from CCA CEO David Crosbie, published in ProBono News on Thursday, 1<sup>st</sup> of February 2018 (<https://probonoaustralia.com.au/news/2018/02/its-all-about-the-evidence/>). This article is largely based on the transcript of Mr Crosbie's opening statement to the public hearing into the Bill held in Canberra on Tuesday, 30<sup>th</sup> of January 2018.

### **It's all about the evidence – by David Crosbie**

On Tuesday I presented to the Parliamentary Joint Committee on Intelligence and Security in relation to the *Foreign Influence Transparency Scheme Bill 2017, National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*. The context for this appearance is the government commitment to ensuring that foreign powers do not inappropriately influence Australian elections. Unfortunately, the proposed legislation is drafted so broadly that it will impose very significant new administrative and compliance requirements on any Australian charity that receives donations or has any kind of relationship with someone overseas. I was going to write an article about the Bill and CCA's concerns, but thought it might be more informative to provide an extract from the Hansard proof record of my opening statement to the Committee and a selected set of questions and answers. I hope readers find it of some interest to see how groups like CCA engage in these processes.

*Thank you, Chair. I welcome the opportunity to present to the committee. I would like to make a very brief opening statement. I should explain that the Community Council for Australia is a peak body for the charities sector. Our role is to try and enhance the work of charities. We are not a union for charities. We don't think everything that happens in every charity is great. We're a very broad church. We have on our board the CEOs of World Vision, RSPCA, Musica Viva, Hillsong Church, The Smith Family, Life Without Barriers and Wesley Mission amongst others. Our membership is also very broad. We're independently funded through membership fees.*

*Part of our primary work has been trying to create a regulatory environment that enhances rather than restricts the work of charities—which is why I'm here, because it appears to me that this bill is all encompassing for any charity that receives any kind of support or donation from outside of Australia. The bill suggests that any charity in any kind of arrangement with anyone outside of Australia, including donors and supporters, will be required under quite strong laws—jail penalties et cetera—to register, and ignorance of the scheme is explicitly not a defence. The registration process, while it's not clear, appears quite onerous. I know there are a number of important exemptions, including humanitarian aid, but these are not clearly defined, and I don't believe that these exemptions cover the vast majority of charities in Australia that receive international philanthropy and support.*

*If commercial activities are carved out, why aren't charitable activities? My reading is that, in practice, if an international company like Diageo seeks to influence our alcohol policies, that's okay. There is no inappropriate influence there. But if the Bill & Melinda Gates Foundation gives money for alcohol research, via the Foundation for Alcohol Research and Education, they would have to register. Extending this view, pharmaceutical companies, mining companies et cetera, don't have to register or comply, but health groups, environmental groups and others not engaged in humanitarian aid who are in any way involved in public policy would have to register.*

*I should note at this point that charities already face significant regulations and limitations on their capacity to engage in political activities. A charity cannot support a particular political candidate, cannot support a particular political party, cannot donate to a political party and cannot hand out how-to-vote*



*cards. No such restrictions apply to business or any other vested interest groups. Charities can advocate only for their charitable purpose.*

*I should also note that the community is very concerned about the amount of money charities spend on administration. It seems to be an ongoing debate in the media. It's also clear that governments all claim to be committed to reducing red tape. There is no way that this new legislation will not impose significant new administrative costs on any charity that raises funding from anyone overseas.*

*CCA believes the carve-outs in the proposed bill are inadequate to allow charities to continue to accept overseas donations and to pursue their legitimate charitable purpose without having to satisfy a whole new range of reporting and compliance activities. CCA supports the Law Council of Australia recommendation that 'charitable entities registered with the Australian Charities and Not-for-profits Commission should be exempt from the registration scheme.'*

*Finally, let me say that charities are very well-regulated in Australia. In fact, with the charities regulator, the Australian Charities and Not-for-profits Commission, charities' compliance in Australia is higher than anywhere in the world. To be a charity an organisation must demonstrate that they deliver a public benefit. Charities do not seek political power or monetary gain. Their bona fides have to be well-established and reported on. Any charity not pursuing its charitable purpose can be subject a complaint from anyone and the complaint will be investigated. Charities found not to be pursuing their purpose or seen to be pursuing a political purpose will be deregistered. So, I fail to see what the issue is with charities receiving donations from overseas and advocating for their charitable purpose and why we would want to create a whole regulatory structure, compliance and red tape for charities that do receive any kind of donation from overseas.*

After more than 35 minutes of questions and answers, the appearance before the Committee began winding up with the following exchange:

**CHAIR:** *.. you understand the intent, which was to protect our political and governmental processes. The bill explains those processes, which include federal elections, political parties, influencing independent candidates, proceedings of parliament, federal government decisions and decisions of independent MPs. What I've heard from you today is that charities aren't interested in influencing those processes. Is that right?*

**Mr Crosbie:** *No; charities want to influence those processes in order to have stronger communities.*

**Senator WONG:** *They're allowed to do that.*

**CHAIR:** *I know; I'm just making it clear.*

**Mr Crosbie:** *As I said in the opening, I don't know of a single charity that doesn't advocate.*

**CHAIR:** *Sure.*

**Mr Crosbie:** *Advocacy on behalf of their cause or their community is exactly why they were established, why the community support them, why they get donations and why they exist. There seems to me within the bill to be an implication that people speaking up for causes or issues is a problem. That is exactly what makes our democracy strong, and I think we should be encouraging more input from charities, community groups and civil society into the way government shapes policies and makes laws, because then we'll have better laws and we'll have stronger communities. Trying to restrict those activities harms our democracy. I think you can make a case that that's what's happened in a number of democracies where those voices have been quietened and trust and confidence in democracy have diminished.*

## Conclusion

CCA believes the current system of influence and power in national politics often favours the most economically powerful who benefit economically from certain policies. These policies may or may not be in the broader public interest. This bias towards the most powerful having more input into public policy mostly operates outside of the disclosure regimes.

Charities that try and advocate for the benefit of community are often at a major disadvantage against very strong and powerful economic interests. CCA supports increased transparency and moves to ensure public policy is primarily informed by public rather than private interest. This includes ensuring Foreign Powers do not overtly influence Australian electoral outcomes.

CCA is very concerned that the new measures in the proposed Bill will strangle charities in more red tape, further diminishing the capacity of charities to be active participants in the formation of public policy.

Given the limitations already applying to charities through regulations and the work of the ACNC, CCA believes charities should be treated separately from vested interest groups that currently operate without any restrictions and apply considerable economic and political pressure on the public policy process.

In summary, CCA calls for an exemption for charities registered with the ACNC, as does the Law Council of Australia, and draws attention to the transcript of evidence from Mr Crosbie before the Committee on 30<sup>th</sup> January 2018, in particular:

*Committee Hansard 30<sup>th</sup> of January 2018 (Proof copy)*

**Mr DREYFUS:** I just want to see if I can distil what you have said. Your position is that charities engaging in advocacy is an entirely legitimate activity, provided it is within the scope of the purposes of that charity. Is that right?

**Mr Crosbie:** Yes.

**Mr DREYFUS:** Your further proposition, as I understand it, is that the Australian Charities and Not-for-profits Commission is an adequate, or perhaps more than adequate, regulator of the charities sector in relation to that aspect of charitable work—namely, charities keeping within their purposes.

**Mr Crosbie:** Yes.

**Mr DREYFUS:** Further, as I understand your submission to the committee, you're suggesting that, because of the ACNC's regulation, there is no need to subject charities in Australia to this transparency scheme and all of the obligations that it carries with it.

**Mr Crosbie:** Yes.

**Mr DREYFUS:** Perhaps as a final point, you've drawn attention to the fact that individuals directly employed by foreign businesses are entirely exempt from all of the requirements of this legislation, no matter what political activities they choose to engage in.

**Mr Crosbie:** Yes.

**Mr DREYFUS:** Thank you.

## **Current Membership – Community Council for Australia Attachment A**

**Access Australia's National Infertility Network**

**Access Housing**

**Adult Learning Australia**

**Alcohol, Tobacco and Other Drugs Association ACT**

**Arab Council Australia**

**Australian Charities Fund**

**Australian Community Support Organisation (ACSO)**

**Australian Council for International Development, Marc Purcell, CEO (CCA Board Director)**

**Australian Indigenous Leadership Centre**

**Australian Institute of Superannuation Trustees**

**Australian Major Performing Arts Group**

**Australian Research Alliance for Children and Youth**

**Australian Women Donors Network**

**Business Council of Cooperatives and Mutuals**

**Carers Australia**

**Centre for Social Impact**

**Church Communities Australia**

**Churches of Christ Vic and Tas**

**Community Based Support (Tas)**

**Community Broadcasting Association of Australia**

**Community Colleges Australia**

**Connecting Up**

**Drug Arm Australasia, Dennis Young, CEO (CCA Board Director)**

**Ethical Jobs**

**Everyman**

**Foresters Community Finance**

**Foundation for Alcohol Research and Education**

**Foundation for Young Australians**

**Fragile X Association of Australia**

**Fundraising Institute of Australia**

**Good Samaritan Foundation**

**Good to Give**

**Hammondcare**

**Hillsong Church, George Aghajanian, CEO (CCA Board Director)**

**Justice Connect**

**Legacy Australia**

**Life Without Barriers, Claire Robbs, CEO (CCA Board Director)**  
**Lock the Gate**  
**Mater Foundation**  
**Menslink**  
**Mission Australia**  
**Missions Interlink**  
**Musica Viva Australia, Mary Jo Capps, CEO (CCA Board Director)**  
**Non Profit Alliance**  
**Our Community**  
**OzHarvest**  
**Painaustralia**  
**Palliative Care Australia**  
**Philanthropy Australia**  
**Playgroup Qld**  
**Port Phillip Housing Association**  
**Power Housing Australia**  
**Pro Bono Australia**  
**Queensland Water & Land Carers**  
**RSPCA Australia, Heather Neil, CEO (CCA Board Director)**  
**SANE**  
**SARRAH**  
**Save the Children, Paul Ronalds, CEO (CCA Board Director)**  
**Settlement Services International**  
**Smith Family, Lisa O'Brien, CEO (CCA Board Director)**  
**Social Ventures Australia**  
**St John Ambulance**  
**Starlight Foundation**  
**Ted Noffs Foundation**  
**Touched by Olivia**  
**Variety Australia**  
**Veterans Off the Streets Australia**  
**Volunteering Australia**  
**Wesley Mission, Keith Garner, CEO (CCA Board Director)**  
**White Ribbon Australia, Libby Davies (CCA Board Director)**  
**World Vision, Tim Costello, Chief Advocate (Chair CCA Board)**  
**World Wide Fund for Nature Australia**  
**YMCA Australia**