

Mr Gerry McNally
Committee Secretary
Senate Select Committee - Political Influence of Donations
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FOR
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Submitted via email: politicaldonations.sen@aph.gov.au

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Dear Secretary

Regulation of third parties – Political funding and disclosure

The Australian Council for International Development (ACFID) appreciates the opportunity to contribute to the Senate Select Committee into the Political Influence of Donations inquiry into the regulation of third party organisations with respect to political funding and disclosure. We refer to your letter of 28 March 2018 and respond to the five questions therein as follows:

ACFID commends your aim to rebuild community trust in the political process and elected representatives, and enhance transparency in the financing of political parties and political activity. As a principle, **ACFID supports transparency** so that the public can understand who is seeking to influence Government decision making, and who is funding those in public office. ACFID supports improvement to the integrity of elections but only if this can be achieved without silencing third party voices.

As we emphasised in our recent submission to the Joint Standing Committee on Electoral Matters¹, **advocacy by charities in pursuit of their charitable purpose is distinct from partisan political activity and expenditure**. Reform opportunities should target genuine political activities tied to electoral processes, not the efforts of civil society groups advocating towards their charitable purpose. Politicising charitable organisations only serves to delegitimise their valuable work and carries an inherent reputational risk to these entities. It is important to emphasise here that the advocacy and public debate undertaken by charities is both legitimate and constructive².

We are concerned that the current (updated March 2018) AEC regulations governing political expenditure, and the proposed Electoral Funding and Disclosure Reform Bill currently before Parliament, may have a **chilling effect** on legitimate and constructive advocacy and public debate, severely undermining Australia's open and democratic system of government - which we believe should encourage, not restrict, public engagement.

The current definition of 'political expenditure' under the AEC legislation classifies the full spectrum of public comment, policy assessment and advocacy work carried out by charities as 'political expenditure'. This **broad and ambiguous definition** blurs the lines between legitimate and lawful advocacy that advances charitable purpose, and partisan campaigning that results in election to public office. It can be

¹ ACFID submission to JSCEM's Inquiry into the Electoral Funding and Disclosure Reform Bill 2017 is available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/ELAEFDRBill2017/Submissions

² 2010. AID/WATCH INCORPORATED v COMMISSIONER OF TAXATION [2010] HCA 42. Accessed 16 January 2018. Available at: <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2010/hca42-2010-12-01.pdf>. The High Court upheld the right of charities to advocate and campaign on issues of public concern in the Aid/Watch Incorporated v Commissioner of Taxation of 2010, finding advocacy activities to be essential to Australia's constitutional system of parliamentary democracy.

united against poverty

ACFID unites Australia's non-government
aid and international development
organisations to strengthen their collective
impact against poverty

argued that any subject of public interest fits the definition of ‘political expenditure’, such that the definition is not practically useful for identifying organisations that engage in actual campaigning.

Categorising a charity’s activities as political expenditure increases the vulnerability of these charities to future accusations of possessing a partisan political purpose - thereby disqualifying them from charitable status and creating a strong incentive for charities to avoid this risk by not engaging in or limiting public comment.

ACFID therefore **recommends clearly distinguishing between issues-based advocacy and partisan electioneering**. When thinking about ‘political expenditure’ by charities, we recommend that the committee rather use definition of ‘political purpose’ under the Charities Act 2013:

Political purpose means the purpose of promoting or opposing a political party or a candidate for political office. This does not apply to the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office (such as by assessing, critiquing, comparing or ranking those policies).

If there is any reform to laws governing third party organisations and their political expenditure, **ACFID recommends the following principles be upheld:**

1. Charities and Not for Profit (NFP) organisations should not face a greater compliance burden than they do presently;
2. Charities and NFPs should not be subject to more onerous regulatory controls and administrative requirements than other third parties (e.g. businesses and industry associations); and
3. The right of charities and NFPs to use funding and donations (including from international sources) for issues-based advocacy should not be restricted.

As the peak body for Australian NGOs working in international development, we assert that it is entirely appropriate for international philanthropy to play a role in many civil society organisations, including contributions to funding the activities of Australian charities

The ability of civil society organisations to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association, and the constraints of the Bill risk violating article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights.³

In closing, I reiterate that there is a clear distinction between issues-based advocacy and partisan electioneering. As such there should be different regulatory regimes for the different categories of organisations – appropriate to their risk and access to political power. Reform opportunities should target genuine political activities tied to electoral processes, not the efforts of civil society groups advocating towards their charitable purpose.

ACFID urges the Committee to continue with your thorough consultation on any reforms targeting Australia’s political funding and disclosure regime, and commends you for being sensitive to the impacts changes may have on Australia’s charitable sector.

Yours Sincerely

³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39: C19-20, Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

Marc Purcell

Chief Executive Officer

Annexe

List of ACFID Members

* Denotes Interim Full Members

Full Members

- ACC International Relief
- Act for Peace - NCCA
- ActionAid Australia
- Action on Poverty
- Adara Development Australia
- ADRA Australia
- Afghan Australian Development Organisation
- Anglican Aid
- Anglican Board of Mission - Australia Limited
- Anglican Overseas Aid
- Anglican Relief and Development Fund Australia
- Asia Pacific Journalism Centre
- Asian Aid Organisation
- Assisi Aid Projects
- Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine
- Australia for UNHCR
- Australia Hope International Inc.
- Australian Business Volunteers
- Australian Doctors for Africa
- Australian Doctors International
- Australian Himalayan Foundation
- Australian Lutheran World Service
- Australian Marist Solidarity Ltd
- Australian Medical Aid Foundation
- Australian Mercy
- Australian Red Cross
- Australian Respiratory Council
- AVI
- Beyond the Orphanage
- Birthing Kit Foundation (Australia)
- Brien Holden Vision Institute Foundation
- Bright Futures Child Aid and Development Fund (Australia)
- Burnet Institute
- Business for Millennium Development
- CARE Australia
- Caritas Australia
- CBM Australia
- ChildFund Australia
- CLAN (Caring and Living as Neighbours)
- Credit Union Foundation Australia
- Daughters of Our Lady of the Sacred Heart Overseas Aid Fund
- Diaspora Action Australia
- Diplomacy Training Program
- Door of Hope Australia Inc.
- Edmund Rice Foundation (Australia)
- EDO NSW
- Engineers without Borders
- Every Home Global Concern
- Family Planning New South Wales
- Fairtrade Australia New Zealand
- Food Water Shelter
- Foresight (Overseas Aid and Prevention of Blindness)
- Fred Hollows Foundation, The
- Global Development Group
- Global Mission Partners
- Good Shepherd Services
- Grameen Foundation Australia
- Habitat for Humanity Australia
- Hagar Australia
- HealthServe Australia
- Heilala*
- Hope Global
- Hunger Project Australia, The
- International Children's Care (Australia)
- International Christian Aid and Relief Enterprises
- International Needs Australia
- International Nepal Fellowship (Aust) Ltd
- International RiverFoundation
- International Women's Development Agency
- Interplast Australia & New Zealand
- Islamic Relief Australia
- KTF (Kokoda Track Foundation)
- Kyeema Foundation
- Lasallian Foundation
- Leprosy Mission Australia, The
- Live & Learn Environmental Education
- Love Mercy Foundation
- Mahboba's Promise Australia

- Marie Stopes International Australia
- Marist Mission Centre
- Mary MacKillop International
- Mary Ward International Australia
- Mercy Works Ltd.
- Mission World Aid Inc.
- MIT Group Foundation
- Motivation Australia
- MSC Mission Office
- Murdoch Children's Research Institute
- MAA (Muslim Aid Australia)
- Nusa Tenggara Association Inc.
- Oaktree Foundation
- Opportunity International Australia
- Oro Community Development Project Inc.
- Oxfam Australia
- Palmera Projects
- Partner Housing Australasia*
- Partners in Aid
- Partners Relief and Development Australia
- People with Disability Australia
- PLAN International Australia
- Quaker Service Australia
- RedR Australia
- Reledev Australia
- RESULTS International (Australia)
- Royal Australian and New Zealand College of Ophthalmologists
- Royal Australasian College of Surgeons
- Salesian Missions
- Salvation Army (NSW Property Trust)
- Save the Children Australia
- Service Fellowship International Inc.
- School for Life Foundation
- SeeBeyondBorders
- Sight For All
- So They Can
- Sport Matters
- Surf Aid International
- Tamils Rehabilitation Organisation Australia
- TEAR Australia
- Transform Aid International (incorporating Baptist World Aid)
- UNICEF Australia
- Union Aid Abroad-APHEDA
- Uniting World
- Volunteers in Community Engagement (VOICE)
- WaterAid Australia
- World Education Australia

- World Vision Australia
- WWF-Australia
- YWAM Medical Ships

Affiliate Members

- Australian Federation of AIDS Organisations
- Australian National University – School of Archaeology and Anthropology, College of Arts and Social Sciences
- Deakin University – Alfred Deakin Research Institute
- La Trobe University – Institute of Human Security and Social Change
- Murdoch University – School of Management and Governance
- Refugee Council of Australia
- RMIT – Global Cities Research Institute
- Swinburne University of Technology Centre for Design Innovation
- Transparency International Australia
- University of Melbourne – School of Social and Political Sciences
- University of New South Wales- International
- University of Queensland – Institute for Social Science Research
- University of Sydney – Office of Global Engagement
- University of the Sunshine Coast – International Projects Group
- University of Technology, Sydney – Institute for Sustainable Futures
- University of Western Australia – School of Social Sciences
- Vision 2020
- Western Sydney University- School of Social Sciences and Psychology