



Australian Government



04 September 2019

Committee Secretary  
Joint Standing Committee on Electoral Matters  
Department of the House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

BY EMAIL: [em@aph.gov.au](mailto:em@aph.gov.au)

Our reference: EXT2019/93

### ACNC Submission to the Inquiry into the 2019 Federal Election

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to the Joint Standing Committee on Electoral Matters' (**JSC**EM) Inquiry into the 2019 Federal Election and matters related thereto (**the Inquiry**).
2. The ACNC was established on 3 December 2012 by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). The objects of the ACNC Act are to:
  - a. maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
  - b. support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
  - c. promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.<sup>1</sup>
3. Currently the ACNC's regulatory responsibility extends only to registered charities, as distinct from the wider NFP sector.
4. Nearly 58,000 charities are regulated by the ACNC<sup>1</sup>. Australia's charities deliver services, make grants and perform a wide range of other activities to advance health, education, welfare, religious and other charitable causes. Charities range in size from extra small (less than \$50,000 –36% of all charities) to extra-large with revenue over \$100 million (less than 1% of all charities). Almost half (49%) of charities have no paid staff, and the sector is supported by 3.3 million volunteers.<sup>2</sup>

### Charity law and political activities

5. The ACNC lodged a submission with the JSC

<sup>1</sup> As at 15 August 2019. See [acnc.gov.au](http://acnc.gov.au) for the most current figure for registered charities.

<sup>2</sup> [Australian Charities Report 2017](#)



7. Section 5 of the Charities Act defines 'charity':

charity means an entity:

(a) that is a not-for-profit entity; and

(b) all of the purposes of which are:

(i) charitable purposes (see Part 3) that are for the public benefit (see Division 2 of this Part);

or

(ii) purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and

Note 1: In determining the purposes of the entity, have regard to the entity's governing rules, its activities and any other relevant matter.

Note 2: The requirement in subparagraph (b)(i) that a purpose be for the public benefit does not apply to certain entities (see section 10).

(c) none of the purposes of which are disqualifying purposes (see Division 3); and

(d) that is not an individual, a political party or a government entity.

8. Political parties are explicitly excluded from the definition of 'charity'. Organisations with a 'disqualifying purpose' are also excluded from the definition. The meaning of 'disqualifying purpose' is defined by section 11 of the Charities Act:

**disqualifying purpose** means:

(a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or

Example: Public policy includes the rule of law, the constitutional system of government of the Commonwealth, the safety of the general public and national security.

Note: Activities are not contrary to public policy merely because they are contrary to government policy.

(b) the purpose of promoting or opposing a political party or a candidate for political office.

Example: Paragraph (b) 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).

Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country may be a charitable purpose (see paragraph (l) of the definition of charitable purpose in subsection 12(1)).

9. Relevantly to election and advocacy, a charity must not have a purpose of promoting or opposing a political party or a candidate for political office. Importantly, a charity's purpose is distinct from its activities. In determining whether a charity has a disqualifying political purpose, the ACNC will consider all the relevant circumstances of the charity, including its governing rules and its activities. Assessment of these matters will be a question of fact and degree.

**ACNC guidance for registered charities on political campaigning and advocacy**

10. The ACNC has publicly available guidance "[Charities, elections and advocacy](#)" which assists charities to understand and comply with their obligations in relation to political campaigning. This guidance was released prior to the 2016 election. Before the 2019 election the ACNC advertised its existence through the ACNC media channels to remind charities of their obligations.



11. The ACNC also utilised its media channels to ensure that charities were aware of the changes to the *Commonwealth Electoral Act 1918* (Cth) related to electoral expenditure, pointing registered charities to the Australian Electoral Commission guidance on this topic.

### **Concerns about charities engaging in political campaigning**

12. The ACNC publishes an annual compliance report setting out its compliance priorities. In the 2018 Compliance Report the ACNC identified that 'political or unlawful activities' was one of four forms of conduct that are so detrimental to trust and confidence in the charity sector that they are always considered a priority.
13. Members of the public are able to raise concerns about charities with the ACNC by calling 13 ACNC (13 22 62) or by visiting <https://www.acnc.gov.au/raise-concern>. The ACNC also monitors media and other intelligence to identify concerns. The ACNC carefully considers all concerns.

### **The ACNC Secrecy Provisions**

14. The secrecy regime in Division 150 of the ACNC Act prohibits ACNC officers from using or disclosing 'protected ACNC information', subject to certain exceptions. The exceptions are very limited and do not permit the ACNC to make public the grounds under the ACNC Act or the ACNC's reasons for revoking a charity's registration. The exceptions also afford only limited scope for ACNC officers to comment publicly on investigations and regulatory outcomes. Such an exception would be where the charity itself gave permission for this.
15. While it is highly likely that the ACNC did receive concerns about political activities of registered charities during the election period, due to the secrecy provisions the ACNC is unable to detail these concerns and any actions that may have been taken to address these concerns.

### **Further information**

16. The ACNC can provide further information on any of the above, should this be useful to the Committee. Contact information is provided below:

, Policy Manager

Sincerely,

**The Hon Dr Gary Johns**  
Commissioner  
Australian Charities and Not-for-profits Commission