

December 11, 2023

Blueprint Expert Reference Group
Secretariate
Department of Social Services,
Government of Australia
(through the DSS Engage Portal)

Submission for Not-for-Profit Sector Development Blueprint Consultations

The [Stronger Charities Alliance \(SCA\)](#) appreciates the opportunity to make a submission to the Blueprint Expert Reference Group (BERG). We also admire the sector-led effort that the Government has initiated to draft a blueprint for holistic development of the not-for-profit and charity sector.

Our submission addresses point 4 in the discussion paper, i.e. "Policy, advocacy, communications and engagement", with a focus on advocacy.

SCA is an alliance of around 140 Australian charities, and the submission is on behalf of the Alliance. However, the submission does not override any policy positions outlined in any individual submissions/documents by SCA member organisations.

Summary of Our Recommendations

We request the BERG to **highlight the urgency of implementing safeguards for future-proofing charity and the not-for-profit sector's advocacy role within the current parliamentary cycle.** While the current government supports the sector's advocacy role, there is a lingering fear within the sector that its advocacy role can come under attack in the future. This, among others, could be addressed by legislating the following simple and largely budget-neutral changes:

- Amend the *Charities Act 2013 (Cth)* to stipulate that charitable advocacy is presumed to be for public benefit.
- Amend the *Not-for-profit Sector Freedom to Advocate Act 2013 (Cth)* to prevent indirect ways of preventing charity advocacy and establish principles/objectives on the importance of charity advocacy in the law.

- Legislate a transparent, merit-based process for the appointment of the ACNC commissioner.

About Stronger Charities Alliance

The Stronger Charities Alliance was formed in 2017 in response to some 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 Recommendations

The urgency for future-proofing charity and not-for-profit sector's advocacy role.

In late 2022 and early 2023, the Alliance surveyed the sector on the state of charity and not-for-profit advocacy in Australia to build an evidence base for our policy engagement¹. Compared to similar past surveys, the Voices for Change survey indicated that charities have increased investment in carrying out advocacy and have been more successful in their policy advocacy in recent years. But they also reported some ambiguities in the legal and regulatory environment hindering charitable advocacy. While survey respondents were positive about changes that the current government had initiated by the time of the survey, they expressed underappreciation of the sector's advocacy role by policymakers and regulators (see more below). In our discussions with the Alliance members and others in the sector to unpack the survey findings, we understand that there is a lingering fear within the sector that our advocacy role could come under attack in future again.

¹ See our *Voices for Change Survey* report here: <https://www.strongercharities.org.au/our-work/voices-for-change-survey/>

Building on the survey findings and a series of consultations with our members and some sector legal experts, the Alliance shortlisted the following legislative proposals as its priorities for 2023-24. **These recommendations are simple to enact and are largely budget-neutral.** They require prioritisation by the Government to find space within its legislative agenda for the next year and before the next elections.

Recommendation: BERG highlights the urgency of legislating safeguards for future-proofing the sector's advocacy role.

Establish presumption of public benefit for charity advocacy.

Charities engage in a broad range of activities to achieve their charitable purpose. This reflects the complexity of the social and environmental problems charities seek to address: wicked issues like income inequality require diverse methods to solve them. Policy advocacy for systematic changes is one such avenue that charities consider essential for lasting change and solving wicked problems.

Around 77% of the charities participating in the Voices for Change survey considered advocacy important for their charitable purpose. However, only 28% of respondents reported that state and federal governments understand charities' policy advocacy role. Only 19% indicated that regulators, such as the Australian Charities and Not-for-Profits Commission (ACNC), understand their advocacy role well. The situation partly arises from the ambiguities in the legal and regulatory framework. 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, it is important that any ambiguity around this is resolved.

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

Prevent further the use of gag clauses.

In recent years, the Australian Government and some state governments have used funding agreements to prohibit or deter advocacy by community organisations². While the *Not-for-profit Freedom to Advocate Act 2013* partly addressed this, unfortunately, it does not prevent indirect prohibitions from being made in funding agreements. Through the Voices for Change survey 2023, many charities still expressed that they were not engaging in the advocacy due to the fear of funding cuts or government funding restrictions on their advocacy role. BERG's consultation paper also highlights this issue, saying that '27% of community sector organisations recently reported having contract conditions that explicitly preclude systemic

² Human Rights Law Centre, *Defending Democracy: safeguarding independent community voices*, 2017, p.4.

advocacy' (page 18).³ The Act needs to be strengthened, and standard terms to federal funding agreements allowing advocacy need to be introduced.

Recommendations:

Amend the Not-for-profit Freedom to Advocate Act to explicitly prohibit actions that might prevent charities from performing their advocacy role.

Introduce a statement of principles/objectives into the Not-for-profit Freedom to Advocate Act, which articulates the importance of advocacy by not-for-profit organisations and its contribution to effective and informed government policymaking. Such principles should recognise the independent status of charities even when receiving government funding.

Introduce standard terms to federal funding agreements that clarify that organisations receiving government funding are in no way prevented from undertaking advocacy consistent with their mission, including publicly debating the issues on which they are funded and speaking out on government policy in those areas. Furthermore, organisations receiving government funding are not to include gag clauses or other terms that would prevent or fetter advocacy in their contracts with subcontractors.

Establish means to oblige the Australian Government to adopt policies that are consistent with this statement of principles in the Not-for-profit Freedom to Advocate Act.

A transparent and merit-based appointment process for ACNC Commissioner

A minister is responsible for appointing the ACNC Commissioner, and no legally binding meritorious and transparent appointment procedures are in place. Hence, the appointment process is vulnerable to misuse and other issues that may arise from the lack of a legally defined transparent and merit-based appointment process. The current government has followed a merit-based process, but 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.⁴ The Attorney General's office also published guidelines on how these appointments will be made following the amended legislation.⁵ The process sets a

³ With a reference to Cortis N and Blaxland M (2022) Carrying the costs of the crisis: Australia's community sector through the Delta outbreak: Australian community sector survey 2022. Australian Council of Social Services. <https://www.acoss.org.au/australias-community-sector-survey-2022/>.

⁴ See the legislation here:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6884, accessed on 11 December 2023

⁵ See Guidelines here:

https://humanrights.gov.au/about/news/new-guidelines-commission-appointments?mc_cid=6f61b096ca&mc_eid=95463030db, accessed on 11 December 2023

precedent that can be emulated for the ACNC Commissioner's appointment in consultation with the sector.

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

Once again, we thank you for allowing us to present our suggestions for the sector blueprint. We will be available to answer any questions about our submission or provide oral evidence if helpful.

Please direct your inquiries or requests to Hassan Mirbahar, Stronger Charities Alliance Coordinator, at strongercharities@australiandemocracy.org.au. He can also be reached via his phone number, [REDACTED].