



28 September 2017

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
CANBERRA ACT 2600

Submitted via email: em@aph.gov.au

Dear Secretary

ACF Submission: Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto

The Australian Conservation Foundation would like to thank you for the opportunity to make submission for the third time to this inquiry (please refer to our first and second submissions that were made on 31st October 2016 and 4 September 2017.)

The ACF is proud of its political independence. Over the past 50 years our independent advocacy has helped drive extraordinary commitments from governments of all political persuasions as well as from business and communities.

On this occasion our submission will focus specifically on point number two of the Inquiry's Terms of Reference: *The extent of donations and contributions from foreign sources, persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.*

We re-iterate concerns articulated in our previous submission to this inquiry that the Committee focus its attention on the pollution of democratic and government policy processes in favour of corporate vested interests.

The Importance of Charities and Advocacy

A thriving democracy needs many voices and robust and vibrant public debate. It works for everyone and represents everyone. Australian not-for-profits and charities have a long, proud history of speaking up for those who may not be able to have their voices heard, asking hard questions, and holding Governments to account.



Our advocacy makes Australia a better and fairer place to live. Because of advocacy, we can snorkel on a Reef without oil rigs and the Franklin still flows. We have the NDIS, privacy laws, and unleaded petrol, to name just a few achievements won through advocacy. Australians trust charities and care about the causes we fight for - supporting our efforts in huge numbers.

Charities are already heavily regulated, and their activities must be in furtherance of their charitable purpose. Advocacy is a legal, proper and important way in which many charities further their charitable purpose.

The difference between Charities and other participants in elections

We believe that it is also vitally important that the Committee clearly distinguishes between Charities, and other types of participants in political debate – political parties, associated entities and private interests.

Charities are already heavily regulated, and must act in furtherance of their charitable purpose. They are explicitly forbidden from a primary purpose of supporting a political party or candidate for office. This is in stark contrast with political parties which have access to public funding, the electoral roll, and ultimately, political office. It is also not the same as the situation of advocacy bodies representing industries such as the Minerals Council of Australia, which are not regulated in the same way that charities are, and advocate for their own private gain, and not a charitable purpose. It would be a serious error to treat charities as the same category of 'entity' as a union or a business or industry lobby. It would be an error to treat international philanthropy which supports charities which engage in advocacy as being in the same category as 'political donations' made to parties or to associated entities to campaign on behalf of political parties or candidates.

Priorities for regulating foreign donations

Recent research by The Australia Institute shows that Australia's mining industry is 86% foreign owned and has spent over \$541 million in the last ten years on lobbying Australian governments through its peak lobby groups, which are dominated by foreign interests¹.

The Minerals Council of Australia (MCA) claims to have successfully driven the abolition of Australia's short-lived carbon price, claiming: "The MCA was at the forefront of the debates over the carbon and mining taxes; and their abolition (expected after July 2014) will be in no small part due to the council's determined advocacy on both issues."² The MCA played a key role in the successful campaign to unseat the WA Nationals leader Brendon Grylls in the 2017 WA election, in opposition to his proposed iron ore rental fee.³

¹ http://www.tai.org.au/sites/default/files/P307%20Foreign%20influence%20on%20Australian%20mining_0.pdf

² http://www.minerals.org.au/news/2013_annual_report_minerals_council_of_australia

³ <http://www.abc.net.au/news/2016-12-13/brendon-grylls-fighting-two-front-war-on-mining-tax/8117518>



In June 2017, the MCA worked to undermine adoption the Finkel review,⁴ successfully seeking to prevent the formation of a bipartisan position on climate and energy policy.⁵ The MCA is driving a campaign to curtail environment groups' ability to advocate. In recent submissions to parliamentary inquiries the MCA has argued:

- many environmental charities should no longer have tax deductibility status,
- they should be required to dedicate 50% of their expenditure to environmental remediation, and limited to spending only 10% of their resources, including volunteer resources, on advocacy,⁶ and that
- Australian charities should be prevented from receiving international philanthropy.⁷

In comments to The Australian, former MCA chief executive Brendan Pearson argued that environmental charities should be stripped of DGR status if they are engaged in supporting unlawful activity, facilitating the transfer of tax-deductible funds to non-DGR groups, or politically partisan activities – all activities it accuses most of Australia's major ENGOs from engaging in.⁸ The MCA has now making these calls for some years.⁹

In 2015 in the Australian Government launched a parliamentary committee inquiry – the House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations 2015/16 – that recommended moving to strip environmental advocacy organisations of their DGR status. Here is a clear example of the way private special interests, in this case predominantly foreign owned interests, can distort Australian politics and sway policy outcomes to their own gain, against the national interest.

Rather than restrict foreign donations to a not-for-profit organisation on the basis that they are engaging in “political activity” it is powerful industry lobbies which should be the focus of improved regulation. The political activities of charities are already well protected in Australian law. It is perfectly legitimate for a registered charity to undertake advocacy and engage in election debates, so long as they do so in furtherance of their charitable purposes. In fact, the High Court of Australia has recognised the benefits of the contribution made by charitable organisations to public discussion, which informs voters and policymakers.¹⁰

⁴ <http://www.smh.com.au/federal-politics/political-news/minerals-council-steps-up-coal-lobbying-as-agl-calls-for-end-to-political-gridlock-20170619-gwu60q.html>

⁵ <http://www.theaustralian.com.au/business/mining-energy/bhp-billiton-warns-for-crisis-in-power-market/news-story/2fd327cdc5258667701754788883bcb9?nk=041e2389e6c763abf862fa2e41cb8ddb-1504081073>

⁶

http://www.minerals.org.au/file_upload/files/submissions/MCA_submission_Tax_Deductible_Gift_Recipient_Reform_Opportunities_discussion_paper_29_Aug_2017.pdf

⁷ http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Submissions

⁸ <http://www.theaustralian.com.au/national-affairs/mca-demands-more-oversight-for-environment-groups/news-story/493f2890f8dd5c670754501e7f532666>

⁹ <http://www.lcnewsgroup.com/mining-lobby-calls-for-some-green-groups-to-lose-tax-deductible-status/>

¹⁰ AID/WATCH Incorporated v Commissioner of Taxation [2010] HCA 42



On the contrary, peak bodies like the Minerals Council of Australia which represent private interests, and may be partly or predominantly foreign owned, can deploy vast amounts of money and soft power to distort the political process in their favour, and do so with very little transparency or regulation.

The Australian Conservation Foundation recommends:

1. The Australian not-for-profit sector is highly, and effectively regulated, trusted by the public, and delivers huge benefit to the public. There should be no additional limitations on the rights of charities to engage in advocacy, or to benefit from international philanthropy.
2. The Australian Government should lead the search for national best practice in the regulation and transparency requirements governing political campaign and political party and candidate finance, in place of present piecemeal legislation and practice at Commonwealth and State levels.
3. 'Associated entities' (eg. entities that are controlled by a political party or that operate solely for the benefit of a political party) and third-party donors to political parties should be subject to the same disclosure provisions as political parties. We would caution an approach where non-partisan, independent, charitable organisations are caught by disclosure requirements when their activities are limited to non-partisan analysis and commentary on issues during an election.
4. On-line, real-time continuous disclosure of donations to political parties, political candidates and associated entities should be introduced in all jurisdictions.
5. All donations to political parties, political candidates and associated entities should be capped at \$1000 per financial year and the threshold for mandatory disclosure of donations be reduced to \$500.
6. Prohibit any offshore corporation or individual that doesn't hold Australian citizenship from making any donation to an Australian political candidate or political party. Again, we caution an approach where philanthropy to charitable organisations are captured.
7. Limit the amount political parties' candidates and Associated entities can spend on elections to remove the incentive for politicians to amass big money war chests, and ensure a level democratic playing field for everyone.
8. Ministers and MPs should be prevented from becoming registered lobbyists for three years after they leave office.



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9. The Australian Government should establish an independent corruption watchdog such as a Federal Independent Commission Against Corruption to strengthen public confidence in the Australian Parliament.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kelly O'Shanassy'.

Kelly O'Shanassy
Chief Executive Officer