



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CM18/10621

Mr Patrick McClure
Chair
Panel for Review of ACNC Legislation
Via email: ACNCReview@treasury.gov.au

Dear Mr McClure

ACT Government Submission to the Review of the Australian Charities and Not-for-profits Commission Legislation

The ACT Government welcomes the opportunity to provide a submission to the statutory review of the Australian Charities and Not-for-profits Commission (ACNC) legislation. The submission outlines the ACT Government's continued support of the ACNC as the national regulator in both the charities and not-for-profits space.

The ACT Government looks forward to any recommendations resulting from the review and will continue to work with the ACNC to ensure that the charities and not-for-profits sector continues to operate in a transparent and accountable manner, while keeping administrative burdens to a minimum.

Should you require any further information, please contact my office on 6205 0468 or through adam.stankevicius@act.gov.au

Yours sincerely

Adam Stankevicius
Director
Government and Regulatory Reform
Policy and Cabinet

28 February 2018



ACT
Government

Submission to the

Review of the

Australian Charities and

Not-for-Profits Commission

(ACNC) Legislation

February 2018

Background

The ACT Government welcomes the opportunity to respond to the Review of the Australian Charities and Not-for-profits Commission (ACNC) Legislation.

It is acknowledged that the Review arises from the statutory obligation to review the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (ACNC Acts) after their first five years of operation.

Context

The ACT Government strongly supports the current objects of the ACNC Acts, which are:

1. *To maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector.*
2. *To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.*
3. *To promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.*

The ACT Government also supports charities and not-for-profit organisations being allowed to undertake advocacy activities and retain their charitable status. These activities are clearly inherent in the definitions of ‘charitable purpose’ within the *Charities Act 2003*, which variously refers to “advancing”, “promoting” and “opposing”. A charity’s ability to undertake advocacy in line with its core purpose is fundamental to a robust, vibrant, independent and innovative sector. Charities and not-for-profit groups should not be penalised for advocating to change the policies and systems which have resulted in the community need for their services. The strong focus that the ACNC has had on supporting compliance through its guidance materials for charity boards or committee members on governance issues has been an effective strategy in that it enables a targeted, timely and comprehensive approach to managing these issues.

The objective of a national regulatory system that promotes good governance, accountability and transparency for not-for-profit entities to maintain, protect and enhance public trust and confidence in the sector is strongly supported. The ACNC has demonstrated the value of having a national regulator in supporting this objective.

In particular, the elimination of duplication and overlap across layers of government is strongly supported. As far as practicable, governments should operate at their ‘natural’ levels, that is, policy and regulatory oversight for issues agreed to be ‘national’ should take place at the Australian Government level. The ACT Government has worked closely with the ACNC to streamline the regulatory requirements applying to ACT-based charities, in particular their reporting obligations. This streamlining process has been welcomed by ACT-based charities as a positive step.

This approach is consistent with the Deloitte Access Economics Report for the ACNCⁱ, which drew attention to the overwhelming support from key stakeholders in the charitable sector for the ACNC as the entity that would be best placed to centralise processes, and reduce red

tape across fundraising, state taxation and incorporated associations' regulations. It is clear that the ACNC should remain the key enabler for states and territories to streamline their own regulation and increase consistency with each other and the Australian Government in order to reduce complexity for the sector. This is particularly the case given the increasingly cross-jurisdictional role played by many charities.

Improvements for Charities in the ACT

The ACNC and its underpinning legislation has effectively enabled the ACT Government to streamline administration for ACNC-registered charities in the ACT. This includes addressing duplication between ACT and Australian Government requirements and removing certain fees for ACT incorporated associations to bring them in line with ACNC practice.

The continued enhancement of the ACNC legislation, and an assessment of the feasibility of further reducing duplicative burdens on incorporated associations and charities across jurisdictions should be a high priority for future work. Stakeholder feedback has been positive so far, with charities operating in the ACT also pleased that reporting requirements have been reduced.

Relevance of ACNC Legislation

The objects of the ACNC Acts clearly continue to be relevant to the development and accountability of the charitable sector, but it is also evident that a remit broader than the current focus on charities, was envisaged when the ACNC was established.

There should be a second phase of implementing the ACNC legislation, with a focus on bringing organisations in the broader not-for-profit sector within its purview, as supported by the original Explanatory Statement to the Bill for the primary ACNC Act: *'initially, registration with the ACNC is limited to charities. However, the ACNC's role is expected to expand over time to include all NFPs'*. The Review could usefully consider how this expansion could most effectively be undertaken, based on the charities experience with the legislation's implementation.

Despite the wide variety of organisational activities, the inherent governance and accountability requirements for not-for-profit organisations mean that the requirements across States and Territories are broadly similar, making a national regulatory scheme inherently possible.

Other aspects of the legislation should also be re-considered, particularly with a focus on maintaining community and donor confidence. Specifically the secrecy provisions contained with the ACNC Acts should be reviewed to ensure the balance is correct between preserving the privacy interests of entities, with the use of publicly available information that would help to contribute to the effectiveness of the stated objects. This also applies to the way in which complaints may be handled and investigations may be undertaken.

The recent case of the Returned and Services League of Australia New South Wales highlighted that while there may be a range of regulatory agencies undertaking inquiries into aspects of complaints, if there is no official notification or announcement publicly made that such

investigations are occurring, then the level of community confidence in the regulators and their powers is diminished. Transparency about such activities should not have to rely on investigative journalism or organisations self-declaring they are under investigation.

For instance, various issues in relation to the practices of charities and not-for-profits have come to light over the past few years, such as the conduct of fundraisers (including third-party fundraising contractors), misuse of donor information, use of unscrupulous selling tactics, employment conditions and rights, supply chain arrangements, use of harassment techniques and the targeting of vulnerable members of the community. The effective and public responses by regulators to these issues is key to maintaining community confidence.

A standardised financial reporting framework would also be beneficial in enhancing transparency and reducing red tape. There is already sufficient transparency under the legislation to inform the ACNC of how funds are being used but it is apparent that this is often a cause for concern for the public.

While one framework is not recommended over another, it is acknowledged, in reference to the work carried out by the Australian Accounting Standards Boardⁱⁱ, that the current various methods used by ACNC registered charities in submitting their financial reports may vary to such a degree as to hinder the transparency and comparability of the data published. Consistency and simplicity with regard to financial reporting frameworks is key to ensuring charities are able to provide information in the least burdensome manner possible. Thresholds for financial reporting may also be worth reviewing.

It is clear that there is a significant distance between the organisational character of charities with the highest and lowest revenues across jurisdictions, and as such, there may be scope to consider whether the public's expectation of the regulatory framework for a small local landcare group should be akin to that of a multi-billion dollar university. Clearly there are broader regulatory systems which may apply to the functional activities of larger organisations, however there remains a question about the suitability of the regulation of their governance systems.

It is also important that during review processes, consideration is given to offence provisions and enforcement powers to ensure that those contained in legislation are appropriate, proportionate and effective.

Conclusion

The ACT Government strongly supports the continued role of the ACNC in both the charities and the broader not-for-profits sectors. Having a national regulator has enabled ACT-based charities to benefit from reduced administrative burdens, and an expansion of the ACNC's remit to consider other not-for-profits will see these benefits being realised by more organisations.

The ACT Government will keenly monitor the outcomes of the ACNC legislative review and will support any recommendations that contribute to a balanced and proportionate regulatory framework that provides increased transparency and accountability of the sectors.

ⁱ Deloitte Access Economics, Australian Charities and Not-for-profits Commission, *Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation*, February 2016

ⁱⁱ Specifically the AASB Discussion Paper – *Improving Financial Reporting for Australian Charities*, November 2017