

**AMNESTY  
INTERNATIONAL**



SUBMISSION TO THE TREASURY REVIEW OF AUSTRALIAN  
CHARITIES AND NOT-FOR-PROFITS COMMISSION  
LEGISLATION

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Submitted by

Amnesty International Australia

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## **About Amnesty International**

Amnesty International is the world's largest independent human rights organisation, comprising more than seven million supporters in more than 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

## **1. Summary**

- 1.1 Amnesty International welcomes the opportunity to provide this submission to the Treasury on the Review of the Australian Charities and Not-for-profits Commission (ACNC) legislation (the Act).
- 1.2 Amnesty International is supportive of the ACNC and its regulatory regime. Its advisory role is exemplary, with questions being answered in a timely manner on a wide range of issues. This is incredibly helpful particularly to small charities with limited resources. Its regulatory regime is graduated from reminders, through warnings, investigations then to deregistration depending on the scale and frequency of non-compliance. We believe this is appropriate for as diverse a sector as the charitable sector.
- 1.3 Amnesty International believes that the Act's objects are adequate and that the ACNC is meeting them. We believe the regime strikes the right balance between accountability, transparency (and hence, public trust in the sector) and reducing the administrative burden - or 'red-tape' - on Australia's approximately 54,000 charities. The 'report once' principle is central to this aim by ensuring that reports to the ACNC can be accessed and used by other regulatory agencies.
- 1.4 Amnesty International is supportive of measures taken to increase accountability to donors and the public within the parameters of not unduly burdening charities and not detracting from their ability to advocate around the subject matter of their charitable purpose/s. Further, these measures should only be introduced after close consultation with the sector. We note that additional compliance measures can detract from achieving an organisation's charitable objects and expend precious resources.

## **Recommendations**

- 1.5 Amnesty International recommends that:
  - (1) Recommendation 1: The objects of the ACNC legislation do not require updating.
  - (2) Recommendation 2: Consideration be given to increasing resourcing of the ACNC in order to enable it to meet its existing objects.
  - (3) Recommendation 3: Appropriate additional measures which enhance transparency and accountability to the public, donors and beneficiaries which are not unduly burdensome on charities could be introduced and which do not curtail the ability of charities to effectively advocate for the subject of their charitable purpose/s. This should only occur after close consultation with the sector.

## 2. Responses to Questions set out in the Terms of Reference

### 2.1 Question 1: *Are the objects of the ACNC Act still contemporary?*

Yes. Amnesty International believes that the objects of the Act are still contemporary, appropriate for the sector and that the ACNC is broadly meeting them.

The objects of the Act are:

- (a) *to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector;*
- (b) *to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and*
- (c) *to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.*<sup>1</sup>

Amnesty International believes that the objects strike the right balance between accountability, transparency (which both enhance public trust in the sector) and reducing the administrative burden on Australia's more than 50,000 charities.<sup>2</sup>

We note that the ACNC has been working to reduce unnecessary regulatory obligations on the sector. This has largely been achieved in relation to federal government agencies where duplication in reporting has been significantly reduced.

However we acknowledge that overly burdensome regulatory obligations on the sector remain in relation to fundraising. Charities fundraising around Australia must still report to a number of state regulators, each with different requirements. This is extremely burdensome - in particular for smaller charities. It unnecessarily increases administrative costs, in turn diverting resources from charities' purposes.

We commend the ACNC in securing regulatory harmonisation on fundraising with South Australian, Tasmanian and Australian Capital Territory agencies. We believe that increased resourcing to the ACNC would help achieve a further important 'red-tape reduction' in by harmonising the remaining states' regimes with the ACNC reporting regime

Amnesty International notes the ACNC's submission to this review recommends two further objects:

- (i) *to promote the effective use of the resources of not-for-profit entities; and*
- (ii) *to enhance the accountability of not-for-profit entities to donors, beneficiaries and the public*

Amnesty International believes that the proposed new objects are unnecessary. A charity's governing body - such as a board - have existing obligations under the ACNC Governance Standards. They include responsibly managing the resources of the charity to achieve its purposes as set out in its founding documents.

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<sup>1</sup> *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) Part 1.2, Division 5, section 15-5.

<sup>2</sup> <http://australiancharities.acnc.gov.au/explore-the-report/sector/> accessed on 23 February 2018.

The second proposed object (ii) is already implicit in the existing object (a). This is because public trust can only be ensured by transparency and accountability of the sector to donors, beneficiaries and the public. The ACNC Register publishes a charity's founding documents, its Annual Information Statements and other key information which go towards transparency and accountability. Accountability to stakeholders is another key obligation of a charity's governing body in order to retain trust and their licence to operate.

RECOMMENDATION 1: The objects of the ACNC legislation do not require updating.

2.2 Question 2: *Are there gaps in the current regulatory framework that prevent the objects of the Act being met?*

According to the submission by the ACNC to this Review,<sup>3</sup> it believes that further powers and resourcing have constrained its ability to achieve in particular object (b).<sup>4</sup> Amnesty International believes that a single federal fundraising regulatory regime would greatly assist charities in reducing their administrative costs and achieve their charitable purposes.

RECOMMENDATION 2: Consideration be given to increasing resourcing of the ACNC in order to enable it to meet its existing objects.

2.3 Question 3: *Should the regulatory framework be extended beyond just registered charities to cover other classes of not-for-profits?*

Amnesty International does not have a view on this question.

2.4 Question 4: *What activities or behaviours by charities and not-for-profits have the greatest ability to erode public trust and confidence in the sector?*

Amnesty International notes that the sector is large and diverse. It is comprised of over 50,000 charities of a variety of sizes, charitable purposes and geographical areas of operation.<sup>5</sup> It is responsible for engaging over 4 million people as either volunteers or as employees.<sup>6</sup> Its revenue is \$148.6bn.<sup>7</sup>

The sector plays a critical role in providing services to the most vulnerable in Australia and around the world, advancing religion, culture, education, health, social and public welfare, promoting reconciliation, mutual respect and tolerance between individuals and groups, promoting human rights, advancing the natural environment and the welfare of animals.<sup>8</sup> The sector participates in dialogue on issues of public interest with government decision makers.

<sup>3</sup> Submission to the Review from the Australian Charities and Not-for-profits Commission 19 January 2018 paragraphs 2.6-2.8 accessed at [https://www.acnc.gov.au/ACNC/Comms/LN/LN\\_20180119.aspx](https://www.acnc.gov.au/ACNC/Comms/LN/LN_20180119.aspx) on 23 February 2018.

<sup>4</sup> The objects are set out in full in paragraph 2.1 above.

<sup>5</sup> See for example the ACNC's data on the diversity of the sector at: <http://australiancharities.acnc.gov.au/explore-the-report/sector/> accessed on 23 February 2018

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> See for example the list of charitable purposes set out in the *Charities Act 2013* (Cth) section 12.

However, as with the private, corporate and public sectors, issues involving maladministration, fraud and other criminal behaviour have the capacity to damage the sector. Only a very small proportion of the charitable sector have been the subject of the ACNC's compliance regime in 2017.<sup>9</sup>

2.5 Question 5: *Is there sufficient transparency to inform the ACNC and the public more broadly that funds are being used for the purpose they are being given?*

Amnesty International believes that there is sufficient transparency to inform the ACNC and the public that funds are being used for the purpose they are being given. Registered charities are required to submit annual financial statements which are published on the ACNC register. Larger charities are required to submit financial statements as well as an auditor's report. In this regard, transparency around financial management is broadly analogous to that required of the corporate sector. Charities are also required under the governance standards to provide opportunities to their members to scrutinise the organisation's operations such as through annual general meetings. Charities' founding documents which contain their purposes are also published on the register.

Amnesty International would be supportive of additional measures which enhance transparency and accountability which are not unduly burdensome on charities - in particular smaller charities - and that do not have a negative impact on civil society, and the ability of charities to speak up for Australians and deliver essential support to the Australian community.

**RECOMMENDATION 3:** Amnesty International would be supportive of appropriate additional measures which enhance transparency and accountability to the public, donors and beneficiaries which are not unduly burdensome on charities and which do not curtail the ability of charities to effectively advocate for the subject of their charitable purpose/s. This should only occur after close consultation with the sector.

2.6 Question 6: *Have the risk of misconduct by charities and not-for-profits, or those that work with them, been appropriately addressed by the ACNC legislation and the establishment of the ACNC?*

Amnesty International believes the regulatory regime and graduated compliance measures are appropriate for the sector. For example, a compliance oversight by a small, tightly resourced charity is provided with a reminder, rather than an immediate fine or other penalty. Such a measure is proportional to oversight and does not involve resource taxing responses. Similarly, gross misconduct, fraud or continued non-compliance are met with serious consequences.

Importantly, the compliance regime is underpinned by an excellent educational and supportive service which efficiently assists charities meet their obligations.

2.7 Question 7: *Are the powers of the ACNC Commissioner the right powers to address the risk of misconduct by charities and not-for-profits, or those that work with them, so as to maintain*

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<sup>9</sup> Submission to the Review from the Australian Charities and Not-for-profits Commission paragraph 1.68, n3 above.

*the public's trust and confidence? Is greater transparency required and would additional powers be appropriate?*

It is Amnesty International's view that the powers of the ACNC Commissioner to address risk of misconduct are sufficient for the reasons set out in 2.5 and 2.6.

- 2.8 Question 8: *Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further reduce regulatory burden?*

Yes. Consideration should be given to the introduction of a single unified Australian statutory regime for the regulation of charitable fundraising, as mentioned in 2.1 and 2.2 above.

- 2.9 Question 9: *Has the ACNC legislation and efforts of the ACNC over the first five years struck the right balance between supporting charities to do the right thing and deterring or dealing with misconduct?*

Amnesty International is supportive of the ACNC and its regulatory regime.

It is noted that under the Commissioner's Policy Statement: *Compliance and Enforcement* (CPS 2013/01) compliance measures and responses will be proportional to the problem they seek to address. This means that where charities have made an honest mistake or oversight, the Commission will ordinarily work with them to correct the error and get the charity back on track.

This is consistent with the Commission's approach to provide guidance and education to assist charities to comply with their obligations. AIA believes that the Commission's advisory role is exemplary, with questions being answered within 5 business days on a wide range of issues. This is very helpful particularly to small charities.

Amnesty International believes that this regulatory regime is consistent with the principles of best practice regulatory design encompassing the "regulatory continuum" and is graduated from reminders to deregistration depending on the scale and frequency of non-compliance. We believe this is appropriate for as diverse a sector as the charitable sector.

Amnesty International believes that the ACNC objects are adequate and that it is meeting them. We believe it strikes the right balance between accountability, transparency (and hence, public trust in the sector) and reducing the administrative burden - or 'red-tape reduction' - on Australia's approximately 54,000 charities. The 'report once' principle is central to this aim by ensuring that reports to the ACNC can be accessed and used by other agencies.

### **3. Conclusion**

- 3.1 Amnesty International has been and remains supportive of the role of the ACNC in enhancing accountability and public trust in the sector. We believe the regulatory regime is appropriate and its educational and advisory services exemplary. We do not believe that additional objects to the ACNC legislation are necessary.
- 3.2 However we support the addition of extra powers and resources which would bring the disparate fundraising regulations in states and territories under the umbrella of a single reporting requirement managed by the ACNC.