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Mr Murray Crowe
Principal Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Crowe,

Review of Australian Charities and Not-for-profits Commission (ACNC) legislation

Thank you for the opportunity to comment on the current legislation governing the ACNC. I will limit my submission to three related issues.

1. Regulatory Framework

Registration

1. The ACNC's primary function under the Act is to register not-for-profit entities, however, currently, charities are the only type of entity eligible for registration with the ACNC.
2. It seem the federal government has limited the ACNC's focus to charities, however there is a legislative ability to include all not-for-profit entities.
3. I agree with the submission made to this review by the ACNC that its name accurately reflects the potential scope of the regulatory framework established by the ACNC Act, but it does not reflect its current actual scope. In other words, the original vision to encompass the entire range of not-for-profit entities in the ACNC's jurisdiction has disappeared.
4. By any estimate, the total entities now registered by the ACNC (55,000) is only a small subset of all not-for-profit entities (257,000) and I believe the ACNC's jurisdiction should be extended to all classes of entities and registration made compulsory. The ACNC's current focus on a much smaller eligible group of charities is sadly quite artificial. Many entities are excluded solely due to their state jurisdictions and/or because they may not have charitable purposes.

2. Focus on Charities rather than the broader not-for-profit sector

1. The ACNC's regulatory approach is defined in its submission (page 18) and clearly take the narrow focus as it states; "The ACNC aims to be a regulator that is equipped to meet the unique needs of a diverse **charity** sector". (emphasis added). In fact the ACNC's submission has also even floated the idea of changing its name "... to reflect that it regulates the charity sector rather than the broader not-for-profit sector."
2. In my view, this restriction of the work of the ACNC would be quite wrong as it would leave a very large number of entities permanently without the benefits of improved levels of transparency, accountability and governance. It also fails to empower the public to make informed choices, promote philanthropy, nor does it enhance public confidence in the not-for-profit sector.
3. No doubt it can be argued that certain types of entities including churches, sports clubs, universities, parents and citizen associations, scout groups etc should not be registered. However, I contend that the test should be to justify why a certain type of entity must be excluded, rather than to justify why they should be included. Clearly the exclusion of the vast majority of entities is completely inconsistent with the first two of the objects of the ACNC Act which are; *"to maintain, protect and enhance public trust and confidence in the Australian **not-for-profit sector**; and (b) To support and sustain a robust, vibrant, independent and innovative Australian **not-for-profit sector**."* (emphasis added).

3. 'Government Entities' can also be Charities

1. The ACNC relies on the definition of charity in section 5 of the Charities Act which provides that a 'charity' cannot be a 'government entity'. As the ACNC's review submission notes; *"The definition does not reflect the relevant common law principles in this area. The ACNC has found the definition difficult to interpret and apply in practice. This lack of certainty has significant implications for entities created by or under statute that seek to determine whether they are entitled to charity registration."*
2. An everyday example of this anomaly are the many thousands of Australian parents and citizen associations (school support organisations) which are set up under state government statutes and therefore are ineligible for inclusion on the ACNC register and are also ineligible for ATO tax exemptions, concessions and benefits.
3. I therefore fully concur with the ACNC's submission which requests the federal government; *"Consider whether the definition of 'government entity' in the Charities Act should be amended to increase clarity, certainty and internal consistency."* (Recommendation 40)

Yours Sincerely



Ewan Filmer