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Submission to the Commonwealth Treasury

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

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Introduction

The St Vincent de Paul Society National Council (the Society) welcomes the opportunity to contribute to the review of the Australian Charities and Not-for-profit Commission (ACNC) legislation. Charities and not-for-profit organisations (NFPs) operate in a complex regulatory environment and are subject to multiple requirements and obligations at the state, territory and federal levels. As a national charity operating in every state and territory, the Society strongly supports an independent charity regulator that can reduce unwieldy and unnecessary red tape, while at the same time maintaining probity and public trust in the sector. Accordingly, we believe the current statutory review provides a timely opportunity to reflect on the successes of the ACNC and identify options to further refine and strengthen its role.

The terms of reference for the review focus on the suitability and effectiveness of the ACNC Acts, and in particular to:

i. Examine the extent to which the objects of the ACNC Acts continue to be relevant.
ii. Assess the effectiveness of the provisions and the regulatory framework established by the ACNC Acts to achieve the objects.
iii. Consider whether the powers and the functions of the ACNC Commissioner are sufficient to enable these objects to be met.
iv. Consider whether any amendments to the ACNC Acts are required to enable the achievement of the objects and to equip the ACNC Commissioner to respond to both known and emerging issues.

Our submission considers the terms of reference in light of our own experiences navigating existing regulatory settings, drawing on input from across our national network and from our state and territory offices. We also frame our response with regard to the ongoing and future challenges for our own organisation and the wider sector, including a backdrop of escalating demand and reduced funding for essential services, and various legislative proposals which threaten to undermine the independence of the sector and its capacity to engage in public advocacy.

From the outset, we wish to acknowledge and affirm the success of the ACNC in its first five years. While there may be some areas for improvement, we believe the underlying regulatory approach taken by the ACNC should form the basis of the approach going forward. To ensure the ACNC continues to build on its successes, this submission identifies several cross-cutting themes and issues which we believe should be foregrounded in the current review, namely:

- ***Maintaining the current objects of the ACNC Act***.
  We support the current objects of the ACNC Act, which are based on supporting the sector, promoting confidence in the sector and its work, and reducing the regulatory burden on charities. These objects were developed through extensive consultation with the sector. While the ACNC has not fully met these objects within its first five years, they remain essential and relevant. Broadening the current objects would serve no useful purpose, and risks diluting the focus of the ACNC.
- ***Reaffirming the independence of charities and NFPs, including their capacity to advocate.***
  Regulation should not be used to direct the activities of charities and suppress advocacy. Advocacy is a legitimate and important means by which organisations fulfil their charitable purpose, and current laws already provide appropriate boundaries around the advocacy activities of charities (such as prohibiting charities from promoting unlawful activities or endorsing political candidates or parties). Regulations that attach additional red tape to

advocacy activities will create a regulatory 'chill', deterring organisations from engaging in advocacy and thereby eroding democratic accountability and the independent voice of the charitable sector.

- ***Determining charitable status on the basis of an organisation's purpose, not its activities***. Government prescription of how an organisation should achieve its charitable purpose is not appropriate. Focusing on activities, rather than purpose, muddles important regulatory distinctions, is at odds with common law understandings of charity, and is untenable on practical and demonstrative grounds – both from the perspective of individual charities and the regulator. Interfering in, and directing, the activities of the sector would undermine public confidence and compromise the legitimacy and effectiveness of the regulator.
- ***Reducing red tape***.
  While inroads have been made by the ACNC, more needs to be done to harmonise laws and regulatory processes *between* the Commonwealth and states and territories, as well as removing inconsistencies and duplication in laws and regulatory processes *within* jurisdictions. It is critical the current review, and other legislative proposals currently under consideration, do not increase the amount of compliance activity or regulatory uncertainty.
- ***Ensuring accountability frameworks are proportionate and fit-for-purpose.***
  Transparency and accountability should be encouraged provided it is proportionate, effective and fair. While disclosure of financial statements is crucial to ensure probity and protect against misconduct, it is not appropriate for regulatory bodies to make judgements about what constitutes the effective and efficient use of resources for specific organisations. Nor should financial data be used as a basis for comparing and ranking the performance of charities. The financial data produced under existing accounting standards lacks precision and comparability, and provides a poor measure of organisational effectiveness. Focusing on financial metrics can also have adverse effects and foster the 'NFP starvation cycle', pressuring charities to reduce investment in the infrastructure, internal systems and staffing that is needed to ensure organisational effectiveness and longer-term sustainability. Relying on simplistic performance metrics can also discourage systemic advocacy and produce a situation where only what's measured gets done, thereby encouraging a focus on the most easily achievable and immediately quantifiable goals.
- ***Strengthening the independence of the ACNC***.
  The independence of the regulator (both perceived and actual) is fundamental to its effective functioning and its credibility. The need for a regulator that is robustly independent is heightened in a context where the status of charities and NFPs has been increasingly politicised. To strengthen the independence of the ACNC, the process for appointing the Commissioner should be clarified and enshrined in the ACNC Act to ensure it is a merit-based, publicly transparent and independent selection process.

Charities and NFPs are at the heart of our communities: building connections, combatting social exclusion and contributing to the wellbeing of those they support. A well-funded and effective charitable sector provides a range of services and supports, as well strengthening democratic accountability by advocating for legislative and policy change to address systemic issues. Given the crucial role of charities and NFP organisations, it is important this review affirms the role of the regulator in supporting and sustaining charities and their activities, helping them to continue to their vital work while at the same time ensuring they are accountable and maintain the trust and confidence of the communities they serve.

Who we are

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 149 countries around the world. Our work in Australia covers every state and territory, and is carried out by more than 64,000 members, volunteers, and employees. Our people are deeply committed to social assistance and social justice, and our mission is to provide help for those who are marginalised by structures of exclusion and injustice. Our programs assist millions of people each year, including people living with mental illness, people who are homeless and insecurely housed, migrants and refugees, women and children fleeing family violence, and people experiencing poverty.

This submission is informed by input from the Society's networks and from our state and territory Councils.

Key considerations and priorities

Affirming the value of the ACNC

For many decades there was no consistent regulation of charities in Australia, and the thicket of regulations applied by different agencies and levels of government was complex, opaque and incoherent. We strongly supported the establishment of an independent national regulator and have welcomed the supportive and educative approach that it has adopted since its inception.

Overall, we believe the first five years of the ACNC has been remarkably successful and beneficial, despite numerous barriers and periods of uncertainty about the Commission's future. Its ability to deliver on red tape reduction has been slower than hoped, due in part to matters outside the ACNC's control. Nevertheless, progress has been made in reducing regulatory duplication relating to incorporated associations and fundraising (especially in Tasmanian, South Australia and the ACT) and, on most other measures, considerable progress has been made. This includes:

- Establishing a national charities register that provides authoritative, up-to-date and publicly accessible information about charities;
- The publication of detailed, tailored guidance and educational material for charities to promote good governance, clarify obligations and improve compliance;
- Improving compliance and accountability through a risk-based and proportionate regulatory approach that emphasises education and rectification as a first-step;
- The establishment of a charity portal and charity passport;
- An ongoing willingness to consult, listen to, and support organisations, and a demonstrated understanding of the diverse needs and issues within the charitable and NFP sector;
- Establishing a centralised complaints mechanism to investigate cases of alleged misconduct;
- Promoting dialogue and negotiating with the relevant government bodies to reduce duplication and encourage cooperation;
- Furthering the understanding of the sector and areas for further reform through the commissioning of independent research; and,
- Improving accountability and public confidence in charities by deregistering organisations that have engaged in improper conduct or failed to meet their reporting obligations.

This snapshot of achievements underscores the value of an independent national regulator. Since its establishment, we believe the ACNC has been well served by its foundation legislation. Making substantive changes to the legislation or to the way the ACNC operates would be counterproductive and unnecessary. Ultimately, it is not good public policy to undermine what is already working well, and we urge the current review to build on the positive foundation that has been established over the past five years.

Preserving the independence of the sector and its capacity to advocate

The current review is taking place against a backdrop in which the independence of the charitable and NFP sector is under increasing pressure. Governments have used various regulatory and financial levers to stifle public advocacy and micromanage the activities of charities and NFP organisations.[1,2] At same time this review is being undertaken, the Federal Government has proposed a range of regulatory and legislative changes that would impede fundraising and substantially increase the administrative burden for NFPs that engage in advocacy.[*,3,4]

For governments in Australia and abroad, there is an ever-present temptation to use regulatory and financial levers to silence criticism and legitimate public advocacy by charities and NFPs. This underscores the importance of legislative safeguards that enshrine the right of charities to engage in public advocacy. Current laws already provide appropriate boundaries around the advocacy activities of charities, such as prohibiting charities from endorsing or supporting political candidates or parties for political office, as well as prohibiting the promotion of unlawful activities. It is essential governments do not go beyond this to limit or exclude – by legislation, regulations or onerous and unnecessary administrative processes – the capacity of charities to draw on the experiences of others and have input into the formation of good public policy.

The Society is deeply concerned about recent proposals to police and restrict advocacy activities, including additional reporting requirements for Deductible Gift Recipient (DGR) entities and burdensome financial reporting obligations for NFPs that engage publicly in election issues. Such measures undermine democratic accountability and the vibrancy of civil society. In our view, advocacy undertaken towards a charitable purpose is a social good that is fundamental to the robust functioning of civil society and our democratic system of government. The strength and independence of voice of the NFP sector is critical to informed public debate, holding those in positions of power to account, and contributing to more effective policy-making.[1] Charities and NFP organisations often give voice to the needs of the marginalised and excluded, providing valuable insights into the lived experience of the most vulnerable social groups. Drawing on their practical experience and community connections, these organisations can provide expertise and otherwise unrepresented points of view in the process of formulating legislation and policies.[5]

We contest the presumption that advocacy and charity are mutually exclusive. For the Society, advocacy has always been a key means of creating a more just and compassionate society: addressing the causes of poverty and inequality, and not just the consequences, is crucial to our charitable mission and values. As our CEO, Dr John Falzon, explained during Parliamentary Committee hearings into the disclosure regime for charities, advocacy has been an integral feature of the Society since its inception:[6]

> From the perspective of the St Vincent de Paul Society, we would see advocacy as absolutely non-negotiable. It is integral to our charitable purpose. This is not something we have invented in recent years; it goes to the heart of our founding. In Paris in 1833, our founder made very

[*] Relevant Bills that are before Federal Parliament at the time of writing include the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth)* and the *Foreign Influence Transparency Scheme Bill 2017 (Cth).* Also under consideration are proposed changes to the reporting requirements for organisations with Deductible Gift Recipient status, including the obligation to provide a breakdown of activities and the funds expended on such activities (see: The Treasury, (2017). *Tax deductable gift recipient reform opportunities, Discussion paper*. Commonwealth of Australia: Canberra).

> explicit the principle that we were not simply to give assistance to the poor but to seek out and understand the structures that give rise to poverty and inequality, and to actively advocate to change those structures.

From this perspective, the distinction between charitable purpose and advocacy is artificial, confusing the purpose of an organisation with the means it employs to achieve this purpose. Advocacy is an essential, and often the most effective, means of achieving charitable purposes. Thus, for the Society, tackling poverty and inequality entails not only providing services to ameliorate the symptoms of social problems, but also advocating for policy and legislative change to address the root causes. As noted in the Productivity Commission report into *Access to Justice*, advocacy provides an efficient use of resources as it addresses systemic issues rather than just individual cases and has the potential to relieve pressure from other frontline services.[7, 8,†]

Australian charity law has long recognised that advocacy is a legitimate and important means by which organisations fulfil their charitable purpose. This was confirmed in the High Court ruling of *AID/WATCH Incorporated v Commissioner of Taxation [2010] HCA 42*.[9] In this landmark case, the Court accepted that advocacy in furtherance of a charitable purpose is a valid and important function of modern charities, and that it is "indispensable" for charities to have the right to advocate and to ensure "representative and responsible government". These principles are also enshrined in the *Charities Act 2013 (Cth),* which states that "promoting or opposing a change to any matter established by law, policy or practice" is a legitimate activity if it furthers or aids a charitable purpose.

Furthermore, rather than strengthening public confidence in charities, regulations that prescribe the permissible activities of charities damage the integrity of the regulatory framework and undermine public trust. There is a risk that the more control governments exert over access to charitable status, the more suspicious the public are likely to be of the process and those organisations that successfully navigate it. As Adam Pickering argues:

> I do not think that we should risk our philanthropic and civic freedom by handing the government the responsibility for choosing which causes and donors it favours. The point at which potential donors feel that their philanthropic choices are being skewed towards the government's agenda, however benign, might be the point at which their sense of agency evaporates, along with their willingness to give.[10]

We believe it is critical that this review retains the principle that advocacy is a legitimate means by which a charity can pursue its charitable purpose. Related to this is the importance of ensuring regulations focus on regulating purpose, and not means.

The importance of regulating purpose, not means

Recent charity case law in Australia has indicated that charities may legitimately adopt a wide range of means to achieve an end, so long as that end is consistent with their charitable mission and the means are not fundamentally harmful to society.[11,12] This focus on purposes helps preserve the independence of charities, and we believe any reforms to the ACNC and it foundational legislation should also respect this distinction. Any reforms proposed through this review should not involve micromanaging the merits of charity decisions about how they pursue their organisational purpose.

† The Report of the Charities Definition Inquiry in June 2001 also noted that "advocating on behalf of those the charity seeks to assist, or lobbying for changes in law or policy that have direct effects on the charity's dominant purpose, are consistent with furthering a charity's dominant purpose. We therefore recommend that such purposes should not deny charitable status provided they do not promote a political party or a candidate for political office."

Focusing on activities, rather than purpose, muddles important regulatory distinctions and is at odds with fundamental concepts of charity law. It has long been established that the activity of a charity is not what matters in determining charitable status. Rather, the common law of charity emphasises that it is an organisation's *purpose* (and specifically whether this purpose is of public benefit) that determines its status as a charity. As defined by the ACNC, a "charity's purpose is the reason it has been set up, or what [the] charity's activities work towards achieving".[13] By this definition, it is the overarching purpose that is the point of reference, with charities having relative autonomy to undertake activities that further this stated purpose.

Aside from the legal and public policy concerns, shifting the focus from purpose to activities is untenable on practical and administrative grounds. Integrity and transparency in a regulatory system require clear and unambiguous regulations so that charities have certainty and clarity in relation to their compliance obligations. Focusing on 'activities', however, muddles the scope and application of regulations, increasing administrative burdens and introducing uncertainty and definitional ambiguity.

Determining what activities are legitimate and 'charitable' is inherently fraught. So too are proposals for the charity regulator to assess how 'efficiently' an organisation is using its funds to pursue its charitable purpose. It is impossible to be definitive about the permissible or desirable scope of activity (including advocacy activity) without reference to a charity's purpose. In relation to advocacy, this lack of clarity will likely have a chilling effect, deterring organisations from speaking out about systemic injustices or matters that affect the communities they support.

A consistent, principled and apolitical approach should be adopted in the regulation of charities. While assessing the 'purpose' of an organisation to determine its charitable status is legitimate, government prescription of how an organisation should achieve its purpose is not. It is the *purpose* in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature.[14] Shifting the focus to activities blurs this distinction, posing legal inconsistencies, creating confusion and ambiguity, and ultimately increasing the administrative burden on both charities and regulators.

Amending the Act to affirm the independence of the sector

The independence of the sector is acknowledged in the objects of the ACNC Act. However, to ensure greater statutory protection of this independence, we endorse the proposal to introduce an additional clause into the ACNC Act[‡], with wording to the following effect:

> Independence of the NFP Sector [*under Subdivision 205-C – Other concepts*]
>
> Independence of the sector means that NFP entities are autonomous entities subject to the direction and control of their Boards or Governance body(ies). The independence of an NFP entity, including in relation to advocacy, cannot be set aside, limited or controlled by condition of direct or indirect Government funding.

[‡] As proposed by the Australian Council of Social Service (ACOSS).

Reducing red tape

Simplifying and streamlining the complex maze of charity regulations remains a key challenge and priority for the ACNC. Despite the inroads that have been made, the overwhelming problem facing the charitable and NFP sector remains one of too much regulation, not too little. It is therefore essential that any reforms proposed by this review do not increase this compliance burden.

While inroads have been made by the ACNC, more needs to be done to harmonise laws and regulatory processes *between* the Commonwealth and states and territories, as well as removing inconsistencies and duplication in laws and regulatory processes *within* jurisdictions. As mentioned, the Society is a national organisation operating in all states and territories. This means we are subject to multiple state-based regulators and the ACNC, as well as various other regulatory bodies at the Commonwealth level, such as the ATO and ASIC. Regulatory requirements and processes between jurisdictions and these various regulatory bodies remain inconsistent and are frequently cumbersome, convoluted and confusing. Issues also need to be addressed in terms of the interaction of charity legislation with other legislation (such as consumer law, incorporations law, tax law and charity law).

Particular areas of ongoing concern include:

- ***Fundraising laws***
  Overwhelmingly, fundraising is the greatest source of regulatory burden for our organisation and for other organisations across the NFP sector. The costs to the sector of administering fundraising regulations is in excess of $15 million each year.[15] Current laws do not support fundraising activities across state and territory borders or through digital platforms. Australia's seven different fundraising regimes vary widely in terms of the regulatory requirements at each stage: from when and if a fundraising licence is needed; to how long a licence is valid; through to what must be reported and when. This fragmented and outdated regime is extremely costly to administer, creates risks for donors, barriers to innovation, and negatively impacts the sector's sustainability and growth.
  We recognise the ACNC has been working with states and territories to harmonise and streamline reporting and regulatory practices. However, more needs to be done to reform state and territory fundraising laws and replace them with a nationally-consistent and fit-for-purpose regulatory regime. We note that the recent NSW Government Inquiry into the fundraising activities of the RSL Branch of NSW recommended that "consideration be given to the introduction of a single, unified Australian statutory regime for the regulation of charitable fundraising", but cautioned that "if there is to be a unified model across Australia, then this would require extensive consultation between the States, the Territories and the Commonwealth".[16] One option is to clarify and improve how fundraising activities are covered by Australian Consumer Law, and to repeal state and territory fundraising laws. Any changes, however, should be made in consultation with the sector and relelvant state and territory agencies to avoid unintended consequences. The Society believes that this is an area where the ACNC should continue to provide a useful leadership and coordination role.

- ***Income tax exemption special conditions***
  Ongoing areas of regulatory duplication and legislative ambiguity exist in relation to taxation at the Federal level. In particular, we believe that attention should be given to inconsistencies

between the ACNC Act and the *Income Tax Assessments Act 1997 (Cth)*. This includes the governing rules and 'sole purpose conditions' that were introduced in 2013 through the *Tax Laws Amendment (2013 Measures No 2) Bill 2013*. The special conditions introduced through these amendments have led to uncertainty and confusion about the respective regulatory roles of the Commissioner of Taxation and the ACNC. Section 50-50(2) of the *Income Tax Assessment Act 1997 (Cth)* gives the ATO regulatory oversight functions for determining whether an income tax exempt charity has complied with all the substantive requirements in its governing rules and has applied its income and assets solely towards the purposes for which it is established. These functions overlap with the regulatory functions of the ACNC. We support the repeal of the relevant income tax exemption special conditions and the removal of regulatory duplication.

- ***State and Territory charitable tax concessions***
  The introduction of the *Charities Act 2013 (Cth)* helped to establish uniformity in determinations of charitable status at the federal level. However, inconsistencies remain between this Act and state and territory definitions of charity, which in turn has implications for access to charitable tax concessions.[17] Definitions can also vary within a single jurisdiction in situations where each separate state or territory government agency conducts its assessments of charitable status in isolation. This creates unnecessary administrative complexities and confusion, particularly for organisations operating across jurisdictional boundaries. We support ongoing efforts to align state and territory tax concessions for charitable organisations with the framework and definitions provided under the *Charities Act 2013 (Cth)*.

- **Grant conditions**
  Charities receiving grants from Commonwealth agencies continue to endure unnecessary administrative burdens due to multiple acquittals to different grant providers. Although a previous version of the Commonwealth Grants Guidelines directed agencies to rely on financial information lodged with the ACNC as satisfying their acquittal requirements, this direction was omitted from subsequent versions of the Guidelines. We believe this direction should be reinstated and further work should be undertaken to streamline the numerous conditions and reporting obligations imposed by governments and their agencies in grant agreements.

- **Deductible Gift Recipient (DGR) Status**
  Current DGR arrangements are complex, cumbersome and convoluted, with various regulators each imposing their own conditions and requirements. These arrangements are currently under review, and the Society supports reforms to simplify and streamline the administration of DGR status.[3] We believe this could be best achieved by transferring responsibility for DGR registration to the ACNC (currently, there are four registers administered by different Commonwealth Departments).

- **Incorporated associations legislation**
  Under current arrangements, charities that are incorporated associations are regulated at both state, territory and Commonwealth levels. This means that as an incorporated association they must comply with state and territory legislation, while as a charity they must comply with ACNC requirements.[15] Some of these requirements are duplicative, leading to unnecessary administrative costs which could be reduced if the areas of regulatory overlap were resolved.

Supporting proportionate and meaningful accountability

As a matter of principle, the Society supports efforts that encourage transparency and accountability provided such measures are proportionate, effective and fair. A clear regulatory framework that promotes transparency and probity in the use of donated funds is vital to ensure donations are used appropriately and that public trust and confidence in the NFP sector is maintained. However, there needs to be a balance. Reporting and compliance requirements should be proportionate and commensurate to risk. The community expects that their donations to charities will be used in the implementation of the organisation's mission, rather than in administering onerous compliance obligations.

We believe the ACNC's registration, governance and reporting requirements are sufficient to maintain public confidence and robust regulatory oversight. The current reporting regimen includes an annual information statement from all charities and financial statements for larger charities. Furthermore, the ACNC and the ATO have statutory powers to investigate and, where appropriate, sanction charities that fail to comply with their obligations. The ACNC's compliance and auditing system also has a process for de-registering defunct or dormant charities that fail to comply with their requirements. The number of charities that have had their registration revoked indicates that the ACNC is actively exercising these powers.

We note that there have been recent proposals to introduce rolling reviews, audits and sunsets clauses for charities with DGR status.[3] Given the ACNC's existing powers and compliance requirements, these proposals do not strike the right balance, are unnecessary and excessive, and would impose additional administrative costs on charities and government alike.

Further concerns stem from the ACNC's recent proposal to introduce an additional object in the ACNC Act to "promote the effective use of the resources of not-for-profit entities". Among the recent proposals from the ACNC is an increased focus on reporting and comparing the financial metrics and performance data of charities and NFPs. According to the ACNC, publishing and promoting more detailed and comparative metrics is necessary to enhance the transparency of the sector and allow the public to assess the effectiveness and efficiency of charities.

While the disclosure of financial statements is crucial to ensure probity and protect against misconduct, we do not believe it is appropriate for regulatory bodies to make judgements about what constitutes the effective and efficient use of resources for specific organisations. Nor should financial data or simplistic metrics be used as a basis for comparing and ranking the performance of charities.

Firstly, transparency without meaningful comparability is ineffective and misleading. There is currently no common approach to fundraising disclosures in annual reports and annual financial statements. This is because the financial reporting framework formally established by the Australian Accounting Standards Board (AASB) is sector neutral, making no distinction between commercial for-profit entities and charities, and providing limited clarity and usability for the NFP sector. This means that the practices for formally recording costs vary greatly from one charity to another: what one charity includes in its broad category of administration will likely differ to that of another charity. Furthermore, many costs can't be easily isolated from a charity's 'direct' services and set aside as 'administration'. Delivering a service may consist of a wide range of connected activities which incur

a variety of costs – each one an important part of the overall delivery of services. As such, determining exactly which activities are 'administration' and which are 'direct' service costs can be difficult. Accordingly, the disclosures of fundraising income and expenditure are not suitable for comparative purposes, and the financial data currently collected by the ACNC would not provide an accurate or meaningful basis for comparison. It is concerning that commentators and the media could rush to generate league tables and ascribe ratings to different charities when the data they draw upon is not suitable for such use.

Rather than focusing on the use of financial metrics to assess whether charities have 'efficiently' used their resources, we believe that efforts should be focused on developing a dedicated accounting standard that applies to the NFP sector, with clear guidelines that set out how charities report different income and expenses. The problems with applying a conceptual framework and accounting standard developed in the business sector are well-documented and widely recognised.[18] For example, these accounting standards provide little guidance in terms of how fundraising is defined and related transactions are to be reported. This was illustrated by an Australian study which analysed the financial statements of thirteen charities across different states and territories, and found that no two sets of reported fundraising income and expenditure were calculated and disclosed in the same way.[19]

The lack of a sector-specific accounting standard in Australia contrasts with other jurisdictions, such as the US, UK and Canada where accounting standard setting bodies have developed standards tailored to the NFP sector. Without a consistent accounting framework, it is impossible to meaningfully compare one charity's financial reports with those of another. We understand the Australian Accounting Standards Board (AASB) are currently working toward the development of a more nuanced, sector-specific accounting standard. We support this ongoing work and believe the key criteria in developing a Financial Reporting Framework should be that it is fit-for-purpose; resource efficient; and sensitive to the relative financial risk of the organisations involved.

A further issues stems from the reliability of simplistic financial metrics, such as 'overhead ratios', as a measure of an organisation's effectiveness or its 'efficiency' in using resources. There is a common misconception that charities should spend as little as possible on expenses other than direct service delivery, and an increased focus on financial data may fuel this misconception. As the ACNC itself concluded in research undertaken in 2015, while public trust and confidence in charities is generally high, perceptions that "charities spend too much on administration, salaries, advertising and fundraising or general wastefulness could result in respondents trusting charities less".[20] So-called 'overheads' are the basic elements of organisational capacity and effectiveness. They might include the costs of training and developing of workers, the investment of time by charities to bring in financial and in-kind support, or the advocacy activities that turn individual contact into systemic or preventive solutions. A fixation on overhead and efficiency ratios may have unexpected consequences, with several studies from the United States finding that an increased focus on rating performance via financial metrics results in a debilitating trend of underinvestment in organisational infrastructure and staff, thereby harming the effectiveness and sustainability of the NFP sector and eroding working conditions.[21]

At the extremes the overhead ratio can offer insight: it can be a valid data point for rooting out fraud and poor financial management. In most cases, however, we believe that focusing on financial metrics without considering other critical dimensions of a charity's goals and organisational

performance does more damage than good. Relying on simplistic performance metrics can also produce a situation where only what measured gets done, thereby encouraging a focus on the most easily achievable and quantifiable goals, to the detriment of longer-term goals and intangible outcomes. There is also some evidence from the UK that, despite the stated intention of increasing transparency, the focus on financial data as an indicator of efficiency has resulted a greater tendency for charities to 'fudge' the numbers and provide inaccurate disclosures.[22]

Finally, most of the available research suggests that donors do not actively seek and monitor financial information about charities, and that the availability of such information has a limited impact on donor intentions.[23] Empirical research, in both Australia and abroad, has found there is no significant relationship between the donations a charity receives and the disclosure of financial information.[24,25] This prompts the question of whether the resources and administrative costs of providing more detailed financial reporting – both by charities themselves and by regulatory authorities – is a sound and prudent use of resources. It is somewhat ironic that a measure ostensibly designed to drive efficiency may simply add another unnecessary layer of red tape that diverts resources away the activities a charity undertakes to fulfill its mission.

In short, while we support accountability measures that are propionate and effective, we do not believe it is appropriate for the regulator to make assessments about how efficiently a charity uses its resources, nor should there be a focus on using financial metrics to rate a charity's effectiveness. We do not believe such measures would increase accountability, improve the effectiveness of charities, or increase public confidence and trust in the NFP sector.

Maintaining the independence and effectiveness of the regulator

Maintaining the independence of a regulatory agency is fundamental to its effective functioning and its legitimacy in the eyes of the public and the sector itself.[26] Independence from both government and party politics is vital for the credibility of a regulator, particularly when that regulator oversees a sector that is party-political neutral but who may at times raise issues of concern that are uncomfortable to those in positions of power.

It is critical, moreover, that this independence is both perceived and actual.[26] Any *perception* the Commission lacks independence is damaging, whether that perception reflects reality or not. This issue has been prominent in other jurisdictions such as the UK, where perceptions of political bias have tarnished the reputation of the national charity regulator and resulted in intense media scrutiny and an erosion of public confidence.[27,28] As noted in a 2015 discussion paper on the independence of the UK Charity Commission:

> A charity regulator perceived to be political risks undermining perceptions of charities… [P]erceived independence – being seen to be independent – is just as important as actual independence. It is not necessary to accept that the accusations of political bias levelled against both current and previous Commission boards have any merit in order to see that they can be damaging. Charities cannot afford for their regulator to be anything other than beyond all suspicion.[29]

Any developments that suggestions that the ACNC is politicised are, therefore, of considerable concern and risk undermining its position and its ability to be seen as a credible regulator of the charitable and NFP sector.

To support and strengthen the independence and ongoing legitimacy of the ACNC, we recommend that the processes for appointing the Commissioner and ACNC Board members be reviewed. While there are various dimensions of independence in relation to regulatory agencies, one key aspect is the formal independence of the process through which leading officials are selected, and whether this process is codified in legislation.[26]

Thus, to strengthen public trust and sector confidence in the regulatory functions of the ACNC, the Society recommends that the mechanism for appointing the Commissioner be revised to ensure it is a merit-based, publicly transparent and independent selection process. This independent and merit-based process should in turn be enshrined in the ACNC Act.

Specifically, we recommend that Section 115-5 of the ACNC Act (2012) be amended to ensure due process is followed in appointing the Commissioner. The present appointment process, set out at Section 115-5, states that the Commissioner is to be appointed by the Governor-General by written instrument and appointed on a full-time basis. However, the Act does not stipulate the specific process under which the Commissioner is selected, nor does it set out any key considerations or vetting processes. At a minimum, we believe that the appointment process prescribed in the legislation could include:

a. appointment through a Joint Parliamentary Committee;
b. a candidate vetting processes;
c. public hearings prior to confirmation of an appointment; and
d. merit-based selection decisions.

There may also be merit in inserting provisions in the Act to ensure an independent and merits-based process for appointing the ACNC's Advisory Board, and to strengthen the role of the Advisory Board in working with the Commissioner. The ACNC Act establishes the ACNC Advisory Board as separate from both the Commissioner and the ACNC. We believe this appropriate, as the Advisory Board's independence is important to the function and perception of the ACNC.

However, currently the Advisory Board can only advise the Commissioner at his or her request. We believe that the Board should be able to proactively raise issues and provide advice to the Commissioner rather than waiting for requests. This will strengthen the relationship between the Advisory Board and the Commissioner, making greater use of the Board's skills, expertise and experiences. Public confidence in the effectiveness of the ACNC's activities would also be enhanced by ensuring that the ACNC Advisory Board can regularly convene and meet with the Commissioner to provide independent advice on relelvant matters. We do not believe such meetings and the delivery of advice should be contingent upon the request of the Commissioner.

Accordingly, we recommend that consideration is given to strengthening the role of the ACNC Advisory Board by amending section 135-15 (1) of the ACNC Act. This could allow the Board to convene and review any matters under the Act without requiring the request of the Commissioner. Under any amendments that are made, it is important the Commissioner retains the prerogative of how to respond and act upon advice from the Advisory Board (as currently set out in Section 135(3), which makes it clear that the Advisory Board cannot direct the Commissioner in any way).

Another issue that affects the independence of the regulator and its ability to discharge its duties is the nature and adequacy if its funding. Given the scope of the ACNC's responsibilities under the Act, it is critical the ACNC is adequately resourced and encouraged to build up internal capability and

institutional memory. As both the ACNC and the ACNC Advisory Board acknowledge in their submissions to this review, the ACNC has so far been funded to undertake operations primarily relating to the first object of the Act ("to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector"), and this has limited the capacity of the ACNC to concentrate on the other two objects, including red tape reduction.

The ACNC's independence is also potentially compromised by the fact that its staff resourcing and finances are overseen by the Australian Taxation Office (ATO). This creates a creates a tension between the necessity for the ACNC to act as an independent entity whilst relying on another government agency for its funding and staff resourcing. We suggest the review gives consideration as to how such tensions between funding arrangements and the objectives and operations of the ACNC as an independent entity can be best managed. The Society believes it is important for the ACNC to be both adequately resourced and independent from government in undertaking all its legislative objectives. The importance of a clear statutory basis for its independence is important to free it from potential inference from any minister of the Crown, or any government department.

Response to consultation questions

1. Are the objects of the ACNC Act still contemporary?

Division 15 of the ACNC Act sets out three objects:

a. 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; and
c. To promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

We support the current objects of the ACNC Act, which are based on supporting the sector, promoting confidence in the sector and its work, and reducing the regulatory burden on charities. These objects were developed through extensive consultation with the sector. While the ACNC has not fully met these objects, it has proven to be remarkably successful in its first five years, and we believe that the objects remain essential and relevant. We do not, therefore, believe that the objects of the Act require revision or augmentation. Broadening the current objects would serve no useful purpose and would risk diluting the focus of the ACNC.

On that basis, the Society rejects the ACNC's proposal that its objects be amended to include the following:

- To promote the effective use of the resources of not-for-profit entities; and
- To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public.

The additional objects proposed by the ACNC duplicate the current objective relating to 'public trust and confidence' and are also potentially in conflict with the objective relating to 'reduction of unnecessary regulatory obligations'. With regard to first proposed objective, the Society rejects the notion that there is any role for the ACNC in telling charities how to use their resources. Interfering with the use of resources by charities and NFPs by assessing the 'effectiveness' of resourcing decisions is both inappropriate and, from the regulators perspective, impossible to achieve in a precise, consistent and objective manner. This object would introduce an inappropriate degree of legal imprecision and ambiguity, and would create regulatory uncertainty across the sector.

Such additional powers would also set the ACNC apart from every other regulatory body in Australia. The Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA) and the Australian Competition and Consumer Commission (ACCC) do not have the power to tell corporations, banks, and businesses whether or not they operate efficiently, even when they are the recipients of major subsidies and tax exemptions.

We note that if the ACNC believes that there is malfeasance they have sufficient powers to deal with wrongdoing. Further, while we acknowledge it is appropriate that resources of a charity be used effectively, the use of resources is a matter for the governing body of that charity – not for the regulator. We note most charities will formalise this requirement in their constituent document (e.g. clause 43.1 of the ACNC template constitution). Further, charities are already required to report to

their members, publish their audited accounts and advance their mission statements. Those who receive government funding are subject to additional and extensive reporting requirements.

Directing charities and NFPs as to how they should expend their funds is not an appropriate role for a regulator and would risk compromising the high level of compliance and cooperation that the ACNC currently enjoys. Further, the ACNC submission fails to present any evidence of widespread accountability problems in the sector or any convincing rationale for proposed objective of 'enhancing accountability', particularly given that it duplicates the current objective relating to 'public trust and confidence'.

In relation to the additional Objects proposed by the ACNC, we note that under the Act the Commissioner is explicitly tasked with having regard to principle of regulatory necessity, reflecting risk and proportionate regulation (section 15-10 (e)). The additional requirements risk imposing an additional compliance burden on the sector, and any addition to the objects would also require additional resourcing. As noted in the ACNC's own submission, the ACNC "has been funded only to undertake operations directly related to the first Object".

We are also in disagreement with the ACNC's recommendation (Recommendation 28 in its submission) which suggests amendment to the accounting standards in the ACNC regulations. This appears to be connected to the second additional Object proposed by the ACNC. We support ongoing efforts to develop a tailored standard financial accounting framework for charities and do not agree with amendments to financial reporting provisions until a standard is developed.

2. Are there gaps in the current regulatory framework that prevent the objects of the Act being met?

Regulatory conditions should enable, rather than constrain, the effectiveness of NFPs to fulfil the purposes that they exist to meet. The ACNC Act provides the conditions under which charities are registered and provides the conditions under which that registration should occur. The St Vincent de Paul Society is able to meet the prescribed conditions for registration as a charity and we do not believe additional provisions are required in this regard.

As noted above, while the ACNC has made progress on reducing red tape, more needs to be done, and consideration should be given as to areas of the Act which could be strengthened to support this ongoing work. In particular, there is a pressing need for establishing a uniform federal fundraising regime. As noted above, significant issues remain in terms of laws across jurisdictions in relation to fundraising, the definition of charity, and the interaction between Australian Consumer Law and other laws affecting charities. To support the ACNC in pursuing its red tape reduction Object, there may be merit in amending the Act to confer the ACNC with the ability to make recommendations to the Minister on changes to the ACNC Act or Charities Act that could assist with the harmonisation of laws and ongoing efforts to reduce red tape.

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

Our view is that extending the ACNC's framework to ensure other classes of NFPs are covered would be beneficial and ensure these other organisations are also true to their purpose and worthy of any legislative and taxation concessions they receive. Extending the regulatory framework's umbrella would provide financial transparency to members and other interested parties of these organisations, and our understanding was that this was an initial goal of the ACNC.

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

Australian charities and NFPs have historically commanded greater levels of public trust than either the public or private for-profit sectors. However, as with other sectors, corruption and misuse of funds are likely to erode public trust. There are many behaviours that have potential to erode public confidence in the sector, including not doing what the charity or NFP entity portrays it will do (actions not adhering to stated purpose), misrepresentation of operations, misappropriation of funds, unethical conduct, poor governance, and receiving funds or taking advantage of tax exemptions or concessions they are not entitled to. We note – as per our response above – that the ACNC has played a substantial role in minimising such behaviour within the Australian NFP sector. We support the regulator in its ongoing capacity to identify maladministration and instances of misconduct, and believe it is currently accorded sufficient powers to do so.

We also believe it is important to emphasise that an additional threat to public trust comes not from the behaviour of the sector itself, but from governmental efforts to undermine charity advocacy and to use financial levers and muscular regulation to direct their activities or constrain their independent voice. Many charities exist not only to provide essential services, but also to advocate on behalf of the communities and individuals they serve. Public trust is enabled through this process and the independence of the sector's voice in our democracy must be upheld, supported and encouraged. Public trust may be eroded through any regulatory attempts to direct the activities or control the political advocacy of our civils society organisations and institutions.

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?

The Society provides details in annual reports about its income and use of funds. The Society is committed to this transparency. Our funds are used prudently, our administrative costs are contained to what is needed to help fulfil our mission, and all activities are directed to support the people we serve. We believe that the requirement for organisations to complete the Annual Information Statement (AIS) provides sufficient transparency under current legislation.

As indicated above, charities are best placed to determine if they are operating efficiently rather than having additional and arbitrary requirements placed on their activities. It is the organisation

that is accountable to its mission, vision and values. The collection of additional data and analysis could potentially place onerous conditions on the operations of charities and divert resources from the pursuit of its mission. It could, as discussed, also result in a range of negative consequences, and is not appropriate in a context where current financial accounting standards to not give rise to comparable data. All registered charities are already required to report their activities and incomes and, if they are not acting in accordance with their started purpose, the ACNC has the power to deregister them.

6. Have the risks 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?

We believe the ACNC, through its foundation legislation, has sufficient powers to identify and address the risks of misconduct by charities and NFPs and those that work with them. The ACNC was established to provide registration for charitable organisations, and the provisions under which they would be registered. The ACNC requires annual reports on activities to confirm compliance with stated mission, values and organisational objectives. The various activities have provided a positive governance arrangement in support of the charitable sector. In 2017 alone, we note that the ACNC finalised 80 investigations, and 26 charities had their registration revoked. A further 115 charities were issued with penalty notices for failing to submit their AISs.

We also note that the ACNC also has the power to conduct investigations and to partner with other law enforcement and regulatory bodies in the pursuit of charities thought to be operating improperly. We believe this is a positive legislative provision of the ACNC Act.

As discussed above, there remains considerable inconsistencies between Commonwealth and state and territory laws and regulatory processes. The multiplicity and divergent scope of regulatory agencies across jurisdictions, together with the complex and incoherent set of regulations that arises, creates risks in terms of misconduct not being appropriately prevented and identified. As noted, the recent findings of serious misconduct into the NSW Branch of the RSL (and related entities) led to the recommendation that “consideration be given to the introduction of a single unified Australian statutory regime for the regulation of charitable fundraising.” This recommendation has been made by numerous reports over a number of decades, and addressing it should be a ongoing priority for the ACNC in cooperation with governments across Australia.

In addition, in order to more effectively support the charities sector and reduce instances of misconduct, there may be scope for the ACNC to be more proactive in offering governance advice and guidance to charities to assist the sector improve their governance and overall processes and procedures.

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

Overall, we believe the current powers of the ACNC Commissioner are sufficient to address the risk of misconduct by charities and NFPs so as to maintain public trust and confidence. The ACNC has done a great deal to promote transparency across the sector, particularly through the establishment of the National Charities Register. The Commissioner is obliged to use the ACNC's regulatory powers in a proportionate manner and, under the ACNC Act, has very extensive powers, including:

- the power to compel registered entities to provide information (Section 60-75) and to provide documents (Division 70);
- extensive monitoring powers, including rights of entry and to execute warrants (Division 75);
- powers to issue warnings (Division 80) and give enforceable directions (Division 85), including directions which would otherwise not be permitted under the registered entities governing rules or in breach of contract (Section 85-15);
- powers to seek and accept enforceable undertakings (Division 90);
- powers to seek injunctions (Division 95); and
- powers to suspend, remove, and replace responsible entities (Division 100), including the right to direct the activities of an acting responsible entity (Section 100-60).

These powers are comparable with the powers of other federal regulators such as the ACCC and ASIC, and we do not believe a regulator of the charitable sector needs, or ought to require, greater powers.

We note, however, that the ACNC has proposed several additional powers in their submission, including the removal of secrecy provisions that govern the release of information. Under current provisions, it is not possible for the ACNC to release details about investigations unless they have the approval of the charity being investigated or are correcting the public record. The ACNC has recommended that the secrecy provisions be amended to allow the Commissioner discretion to publish ACNC information; make public comment on current investigations and a range of additional matters; and enable data sharing to facilitate data matching, research or red tape reduction.

Many of these changes are uncontroversial, and we believe a review of the secrecy provisions in the ACNC Act is warranted. However, we express caution in relation to the proposal to amend Subdivision 150C of the ACNC Act to give ACNC officers authorisation to disclose protected ACNC information, including information about investigations of misconduct that are underway. In the context of regulatory actions, including investigations and decisions, transparency must be balanced with the need to not unfairly diminish the public reputation of individual charities or the charitable sector more broadly.

We recognise that, where regulatory action has been undertaken to address misconduct, public confidence would be increased if the ACNC were able to communicate to the public what the misconduct was and how it had been addressed. However, it is also important to ensure organisations under investigation are afforded natural justice and procedural fairness, and that their

reputation is preserved until an outcome has been determined. We do not believe it would be appropriate for the ACNC to disclose that it is undertaking an investigation prior to making a determination. Accordingly, we believe the provisions of Subdivision 150C should be preserved to ensure that investigations remain confidential until they are concluded.

8. Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further reduce regulatory burden?

As noted above, simplifying and streamlining complex and duplicative regulations remains a key challenge and priority for the ACNC. While the ACNC has made significant inroads into reducing red tape, the overwhelming problem facing the charitable and NFP sector remains one of too much regulation, not too little. It is therefore essential that any reforms proposed by this review do not increase this compliance burden, and that efforts to harmonise laws and regulatory processes continue.

Opportunities to reduce the regulatory burden relating to fundraising, the definition of charities, taxation, grant reporting, and incorporated associations are discussed above. Further, we it is important that legislative amendments and proposals that would increase red tape are not implemented, such as those that would arise under the proposed *Electoral Funding and Disclosure Reform Bill*.

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?

There is a fine balance between supporting charities and deterring misconduct. Overall, we believe the ACNC has successfully achieved this balance. Key to this has been the proportionate, risk-based approach to regulation that emphasises education and rectification as a first step.

The central role of the ACNC is to deter or deal with misconduct, which has a high potential to damage the reputation of the sector and impact on all charities. More enhanced investigative powers for the ACNC – perhaps for organisations without good governance – may be warranted, however this would need to be balanced against the additional administrative burden it would place on organisations.

Conclusion

Charity regulation is a matter of balance. Overall, we believe the ACNC has achieved this balance in its first five years of operation, and has proven successful in supporting a thriving and diverse charitable and NFP sector, while at the same time ensuring probity and maintaining public confidence in the sector. While there may be some areas for improvement, we believe the foundational legislation and underlying regulatory approach of the ACNC require limited changes, and should form the basis of the approach going forward.

REFERENCES

[1] Human Rights Law Centre, (2016). *Safeguarding democracy: freedom, respect, equality dignity, action*. Human Rights Law Centre: Melbourne. http://www.bmartin.cc/dissent/documents/rr/HRLC16.pdf

[2] United Nations Human Rights Office of the High Commission (OHCHR), (2016). *End of mission statement by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, Visit to Australia, 18 October 2016*. OHCHR: Geneva. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E

[3] St Vincent de Paul Society National Council, (2017). *Response to Tax Deductible Gift Recipient Reform Opportunities Discussion Paper*. St Vincent de Paul Society National Council: Canberra. https://www.vinnies.org.au/icms_docs/272649_Response_to_DGR_Reform_Discussion_Paper.pdf

[4] St Vincent de Paul Society National Council, (2018). *Policy briefing: electoral funding and disclosure reform Bill*. St Vincent de Paul Society National Council: Canberra. https://www.vinnies.org.au/page/Publications/National/Factsheets_and_policy_briefings/Electoral_Funding_and_Disclosure_Reform_Bill/

[5] Caplin, M., & Timbie, R., (1975). Legislative activities of public charities. *Law and Contemporary Problems* 39(4):183-210.

[6] Falzon, J., (2008). *Official Committee Hansard (28 October 2008): Senate Standing Committee on Economics – Disclosure regimes for charities and not-for-profit organisations*. Parliament of Australia: Canberra.

[7] Productivity Commission, (2014). *Access to Justice Arrangements*. Inquiry Report No. 72. Productivity Commission: Canberra. http://www.pc.gov.au/inquiries/completed/access-justice/report

[8] Sheppard, I., & Treasury, (2001). *Report of the Inquiry into the Definition of Charities and Related Organisations*. Australian Treasury: Canberra.

[9] *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 (1 December 2010).

[10] Pickering, A., (2016). 'Philanthropic power: the awkward consequences of pluralism.' https://futureworldgiving.org/2016/09/09/philanthropic-power-the-awkward-consequence-of-pluralism/

[11] *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55, 236 CLR 204.

[12] Murray, I., (2017). *The taming of the charitable shrew: State roll back of charity tax concessions*. University of Western Australia, Faculty of Law, Research Paper No. 2017-3. University of Western Australia: Perth.

[13] Australian Charities and Not-for-profits Commission (ACNC), (2011). Charity subtypes and charitable purpose. [Viewed 3 August 2017]. https://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/Typ_char/ACNC/Reg/TypesCharPurp.aspx?hkey=2bb8e414-8396-4278-953c-8cb080a70c0a&TemplateType=P

[14] Broder, P., (2015). The purposes and activities divide in charity regulation. *LawNow Magazine* 39(6):51-53. http://www.lawnow.org/wp-content/uploads/PDFs/Vol396.pdf

[15] Deloitte Access Economics, (2016). *Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation*. Report prepared for the Australian Charities and Not-for-Profit Commission (ACNC). ACNC. https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-cutting-red-tape-align-charity-regulation-230216.pdf

[16] New South Wales Department of Finance, Services and Innovation, (2018). *Report of the Inquiry under the Charitable Fundraising Act 1991 into The Returned and Services League of Australia (New South Wales Branch), RSL Welfare and Benevolent Institution and RSL LifeCare Limited*. NSW Government: Sydney. https://www.finance.nsw.gov.au/sites/default/files/inquiry_report_cfa.pdf

[17] ACNC, (2016). *A common charity definition?* Presented at the National Division, 27 July 2016. ACNC. https://www.acnc.gov.au/CMDownload.aspx?ContentKey=d4ad85f4-a7b4-4f4d-940a-a3c6a6935c18&ContentItemKey=dec936b6-57c6-423e-a300-0e0e81a82928

[18] McGregor-Lowndes, M., Flack, T., Poole, G., & Marsden, S., (2014). *Defining and Accounting for Fundraising Income and Expenses*. The Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology: Brisbane. https://eprints.qut.edu.au/73420/8/73420%2830-7-14%29.pdf

[19] Flack, T., McGregor-Lowndes, M., Marsden, S. J., & Poole, G. (2014). Go Your Own Way: Reporting of fundraising in Australian charity financial statements. *Third Sector Review* 20(2):9-25.

[20] ACNC, (2015). Public trust and confidence in Australian charities 2015: summary. ACNC. https://www.acnc.gov.au/CMDownload.aspx?ContentKey=724300a4-4cb7-4e51-8ce9-d73c74c5f61a&ContentItemKey=6a839235-8174-4e26-8c00-4d7bf4ab1bdc

[21] Desai, M.A. and Yetman, R.J., (2005). *Constraining Managers Without Owners: Governance of the Not-for-Profit Enterprise*. NBER Working Paper No. w11140. https://ssrn.com/abstract=667183

[22] Connolly, C., Hyndman, N., & McConville, D. (2013). Conversion Ratios, Efficiency and Obfuscation: A study of the impact of changed UK charity accounting requirements on external stakeholders. *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 24(3):785-804.

[23] Australian Accounting Standards Board, (2017). *AASB Discussion Paper: Improving Financial Reporting for Australian Charities.* Australian Government: Canberra. http://www.aasb.gov.au/admin/file/content102/c3/ACCDP_IFRAC_11-17.pdf

[24] Haski-Leventhal, D., & Foot, C. (2016). The relationship between disclosure and household donations to nonprofit organizations in Australia. *Nonprofit and Voluntary Sector Quarterly* 45(5):992-1012.

[25] Bekkers, R., & Wiepking, P. (2010). A literature review of empirical studies of philanthropy: Eight mechanisms that drive charitable giving. *Nonprofit and Voluntary Sector Quarterly* 40:924-973.

[26] Gilardi, F., & Maggetti, M. (2011). 'The independence of regulatory authorities'. In D. Levi-Faur (ed.), *Handbook on the Politics of Regulation*, pp. 201-214. Edward/Elgar: Cheltenham/Northampton.

[27] Morris, D., (2016). The Charity Commission for England and Wales: A Fine Example or Another Fine Mess. *Chicago-Kent Law Review* 91(3):965-990.

[28] Hind, A., (2018). Andrew Hind: Where now for the political independence of the Commission? *Civil Society* (online), 7 February 2018. https://www.civilsociety.co.uk/voices/andrew-hind-where-now-for-the-political-independence-of-the-charity-commission.html#sthash.7OhHzwV8.dpuf

[29] The National Council for Voluntary Organisations (NVCO), (2015). *Charity Commission independence NCVO discussion paper*. NVCO: London. https://www.ncvo.org.uk/images/documents/policy_and_research/independence_and_values/charity-commission-independence-ncvo-discussion-paper-april-2015.pdf