

Review of Australian Charities and Not-for-profits Commission (ACNC) legislation – response to request for public submissions 20th December 2017

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This submission focusses on specific points identified in the Terms of Reference for the review of the ACNC Acts announced in December 2018 and also the submission by the ACNC made public on 18th January 2018. The particular areas that this submission focusses on are:

1. Objects of the ACNC Acts (Terms of Reference 1)
2. Trust in charities and risk of misconduct (Terms of Reference 4, 5, 6 & 7)
3. Reporting burden on charities (Terms of Reference 8)
4. ACNC submission to the Review

1. Objects of the ACNC Acts (Terms of Reference 1)

The current objects of the ACNC Acts are focussed on supporting the not-for-profit sector so that it can continue to be a vibrant part of the Australian community and economy. However the current objects are not explicit in addressing the purpose of the sector, to provide benefits outside of the organisations themselves.

Without an explicit focus on maximising the benefits provided by the sector there is the risk that actions may be taken to address other issues, that have the unintended consequence of reducing the benefits provided by the sector to Australia. With the current 24 hour news cycle this risk is exacerbated by the simplicity of negative stories over the complexity of positive ones.

An explicit object aimed at increasing the benefits that the sector provides to Australia will provide the framework to assist in the sector achieving the positive impact that is at the core of its purpose.

Recommendation: the first object within the ACNC Acts be established as:

- (a) to support and promote measures to increase the benefits provided by the Australian not-for-profit sector

2. Trust in charities and risk of misconduct

(Terms of Reference 4, 5, 6 & 7)

The terms of reference 4 through to 7 focus on the issues of erosion in trust or increasing misconduct in not-for-profits. As will all sectors within the economy these are a significant issues, however it is not more of an issue in the NFP sector than is others. An over-emphasis on minimising risks will have a cooling effect of the abilities of NFPs to innovate, reducing their ability to provide benefits to Australia. As with other sectors, the level of regulation must be carefully balanced.

During 2017 a total of 26 organisations out of approximately 55,000 were stripped on their charitable status due to misconduct or mismanagement – 0.05%. It's clear that there must be other charities who are mismanaged within the other 99.95%, however there is no evidence of systemic issues such has been demonstrated in other sectors of the economy.

Indeed trust in charities remains high, despite a relative reduction over the last 4 years. As reported in the "ACNC Public Trust and Confidence in Australian Charities 2017" report, the percentage of people who had low trust in Australian Charities (14%) was similar to those who had low trust in the High Court (11%), the ATO and the Reserve Bank (17% each). This very positive view contrasts with the very low trust expressed in other critical parts of Australian society, with more than 1/3rd of people expressing low trust in local councils, State Parliament and Federal Parliament.

Given the above figures, the emphasis should be on increasing the benefits provided by the vast majority of charities that are doing the right thing (whilst maintaining measures to address misconduct) rather than on introducing additional reporting or regulation that will result in increased costs and a corresponding reduction in benefit. The results of the ACNC report above also emphasise the importance of knowledge of the regulator in supporting trust in charities.

Recommendation: the ACNC be funded, and the ACNC Acts be reviewed and amended as required, to enable:

- 1. The ACNC to seek and utilise information provided by a charity to it, or to another government organisation (subject to approval for personal information), so as to demonstrate the level of benefit provided by the charity according to its purpose.**
- 2. The ACNC to increase the Australian public's knowledge and understanding of the regulation of Australian not-for-profits and the impact of that regulation.**
- 3. The ACNC to develop and provide forums and guides to assist not-for-profits in increasing the benefits that they provide.**

3. Reporting burden on charities

(Terms of Reference 8)

The regulatory burden on charities comes from unnecessary duplicative reporting, but also from unnecessary reporting and from regulatory impositions that increase costs without providing a larger counterbalancing benefit.

Within the NFP the bulk of reporting is done through labour rather than automation, due to the typically very small size of many organisations. As a result reporting requirements tend to take labour from value-adding activities and directly reduce the benefits that an organisation can deliver; so should only be implemented where the benefits from the reporting can be clearly identified to be greater than the costs.

The issue of duplicative reporting is partially addressed by the Charity Passport and efforts to further its use should continue. Unnecessary reporting, information that will not be utilised in providing a benefit of either increasing positive actions or decreasing negative ones, is a greater problem.

However the greatest issue is from complexity of regulation that makes it difficult for a NFP to understand what it needs to do to in meeting its compliance obligation at a local, state/territory or national level.

As demonstrated in two ACNC reports into the issue of regulation of Australian charities (*Research into Commonwealth Regulatory and Reporting Burdens on the Charity Sector*, 2014; and *Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation*, 2016) reporting requirements for funding and the regulation of fundraising are the two largest avoidable regulatory costs on charities, worth tens of millions of dollars per year. Action on these issues will correspondingly increase the benefits that charities provide to Australia.

Recommendation:

- 1. The ACNC be funded, and the ACNC Acts be reviewed and amended as required, to work with organisations at all levels of Government on ways to Reduce, Refine & Replace their reporting requirements so as to enable the best cost:benefit outcome.**
- 2. The Commonwealth Government provide specific incentives to State and Territory governments to enact changes that enable the ACNC to act as a central regulatory body for charities.**

4. ACNC Submission to the review

The ACNC made its submission to the review public on 18th January. This submission made 40 recommendations. We support the vast majority of these recommendations as made, however the following specific comments are also provided:

- a) Recommendation 1 – measures to protect a charity’s accumulated income & assets.
This is strongly supported, along the lines of an approach similar to that taken in Canada.
- b) Recommendation 2 – addition of new objects to promote the effective use of resources and to enhance accountability.
Effectiveness and accountability are both critical for not-for-profits, however the likely outcome from introducing measures like this will be increased restrictions & reporting, which are far more likely to increase costs and thus decrease benefits. It would be far more effective for the ACNC to be explicitly focussed on increasing benefits, as per the first recommendation of this submission.
- c) Recommendations 4, 5 & 6 – improvements to the collection and provision of data.
We strongly support amendments aimed at allowing the ACNC to collect (including from other governments or agencies; unless the data is personal or confidential and provided without agreement) and use information that enables a charity or the ACNC to better inform the public on how it is achieving its mission and delivering benefits.

Recommendation: the recommendations of the ACNC be accepted, with the exception of recommendation 2; and with the emphasis of recommendations 4, 5 and 6 being on allowing the ACNC to collect (including from other governments or agencies; unless the data is personal or confidential and provided without agreement) and use information that enables a charity or the ACNC to better inform the public on how it is achieving its mission and delivering benefits.