



**Submission to:**

**The Australian National Audit Office (ANAO)**

**Performance review of the  
Australian Charities and Not-for-profits Commission  
(ACNC)**

**August 2019**

## Introduction

This brief submission outlines key issues in relation to the performance of the Australian Charities and Not-for-profit Commission (ACNC) as a regulator for Australian charities.

CCA has consulted with members in framing this submission, however, it is important to note that this submission does not override the policy positions outlined in any individual submissions from CCA members.

CCA has long been a supporter of the need for an independent regulator of charities in Australia. CCA has advocated for the establishment and retention of the ACNC as a way of delivering increased transparency, accountability, and sustainability for the Australian charities and not-for-profit sector.

The content of this submission includes: a brief background to CCA; a summary listing of key points within this submission, an overview of the current context for the NFP sector; considering the scope of the review, a more detailed outline of six specific issues to be considered in reviewing the performance of the ACNC, and a conclusion.

Most of the information referenced in this submission comes from the three most recent self-assessed performance reports produced by the ACNC and Senate Estimates transcripts (see references).

CCA welcomes this opportunity to provide input into this performance review of the ACNC.

It is important to note at the outset that David Crosbie, CEO of CCA, was one of the founding ACNC Advisory Board members.

## The Community Council for Australia

The Community Council for Australia (CCA) is an independent non-political member-based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

## **Summary of key points in this submission**

### **1. The first five years of the ACNC have been remarkably successful**

The ACNC initially set the standard internationally for what a charities regulator can and should be.

### **2. Performance metrics have been very positive – but it is difficult to tell if the positive trends are continuing**

While we await the latest performance report from the ACNC, there are some concerns about the last performance report self-assessment and what appears to be a declining level of performance information.

### **3. The provision of value-add information provided to researchers, policy makers and the charities sector appears to be diminishing**

Disbanding support for charity researchers and producing less information for the sector risks undermining the mutuality of information flows between the sector and the ACNC.

### **4. The promised Charity Passport is yet to be a reality**

Good progress was made establishing the Charity Passport, but many government departments, regulators, funders, and others have not significantly enhanced their use of the ACNC data since 2017.

### **5. There are indicators suggesting a loss of management and leadership skills at the ACNC over the last two years is now negatively impacting performance**

While staff surveys are not being released (despite FOI requests), many senior staff have left the ACNC in the last two years and staff morale appears to have declined significantly. The lack of a positive workplace culture combined with a decline in senior management expertise will have a negative impact on ACNC performance.

### **6. Charities want the ACNC to focus on being a better regulator**

What charities really want is a strong and effective charities regulator. This means reducing red tape by increasing use of the Charity Passport, thorough investigation of complaints and appropriate enforcement, provision of well targeted advice and guidance, value added information about the sector to inform better policy making, and effective timely service to all who use the regulator and the information it collects.

## **Background context: the not-for-profit sector**

The NFP sector encompasses over 600,000 organisations - from large to very small - and employs well over 1.3 million staff (around 10% of all employees in Australia). Australia's 56,000 charities collectively turn over more than \$143 billion each year and hold over \$275 billion in assets. In the last decade, sector growth has continued at more than 7% a year, a figure that is higher than any other industry group.

These facts tell only a small part of the story. The real value of the NFP sector is often in the unmeasured contribution to Australian quality of life. NFPs are at the heart of our communities; building connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians. Collectively, they make us a more resilient society.

The importance of the NFP sector is now being internationally recognised with many governments putting in place measures to increase NFP investment and productivity. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement, social entrepreneurship and productivity within the NFP sector.

For many decades there was no consistent regulation of charities in Australia other than the one-off requirement for those seeking any form of taxation concession to register with the Australian Taxation Office. For many, the process of working with the Australian Taxation Office to gain charitable status was a negative experience. Once registered, most charities never had any further contact with any regulator.

The establishment of the Australian Charities and Not-for-profit Commission (ACNC) is the first time the NFP sector has had an independent regulator dedicated to providing a one stop shop approach to charity regulation and enhancing their capacity. The ACNC has already proved to be a positive step towards red tape reductions, increased transparency, and enhancing trust in the community. The national charities register has also provided invaluable information to millions of Australians.

It is important to note the ACNC was set up in consultation with the charities sector and sought to support the sector as well as regulate the sector (see this explanation of Object 2 in the ACNC Act <https://probonoaustralia.com.au/news/2019/02/second-object-acnc-act-mea> ).

When there were proposals to disband the ACNC, many charities expressed significant concern. Surveys conducted between 2012 and 2015 by Pro Bono Australia consistently identified over 75% of charities supported the establishment and maintenance of the ACNC.

The recent history of the NFP sector is framed by growth and reform, but new issues and challenges are emerging. The level of volunteering and individual philanthropic giving as a percentage of income has still not recovered to the highs of 2009. The revenue available to governments to support the work of charities is effectively falling in real terms against a backdrop of increasing demands and higher community expectations. Competition for fundraising and services income has increased.

The level of uncertainty across the charities sector is having a negative impact on medium and longer term strategic-planning, and reducing investment in organisational capacity. This translates into diminished capacity and limited expenditure on the organisational activities that increase the quality and responsiveness of services provided to communities.

Having a well-functioning high-performance charities regulator is critical to the future credibility and sustainability of the charities sector.

## **Scope of the ANAO Performance Review of ACNC: why the six key areas raised in this submission are of importance**

*The objective of the audit is to assess the effectiveness of the Australian Charities and Not-for-profits Commission's (ACNC's) regulation of charities. The ANAO proposes to examine the ACNC's arrangements for:*

- *registering charities and maintaining the Charity Register;*
- *supporting charities to meet their ongoing compliance obligations; and*
- *reducing the regulatory burden on charities and strengthening the sector.*

The actual performance data sets and achievements of the ACNC over the first five years are very clearly in scope for this review, as is the issue of performance metrics in general, how they are being collected and shared.

The provision of value-added information provided to researchers, policy makers and the charities sector is critical to the performance of the ACNC in that it reinforces the benefits of voluntary compliance. Knowing the information provided by charities to the ACNC will help inform researchers, policy makers and other charities ensures real value is placed upon the information by charities themselves. Charities know that the provision of an Annual Information Statement is not just another form filling exercise to enable information to be collected and filed away for no real benefit to anyone. Not properly drawing on this information diminishes the mutuality of information flows between the sector and the ACNC. Over time this will lead to poorer compliance which is counter-productive to good regulator performance.

While ACNC staffing and management practices may not be the primary focus of this review, there is no question that the quality of senior staff, the morale of staff in completing their tasks, and the willingness of staff to invest themselves in the organisation, all have a major impact on the performance of the ACNC. This is particularly true in relation to both the customer service elements of the ACNC performance (registering new charities, advice lines, operating the charities register, investigations and compliance activities); and the charities passport area, where senior management are charged with the task of bringing other agencies on board to the concept and reassuring them about the capacity of the ACNC to provide timely, accurate, validated information.

What charities really want is a strong and effective charities regulator. The six areas raised within this submission all clearly impact on the performance of the ACNC and all should be in scope for this performance review of the ACNC.

## Key issues in the performance of the ACNC

### 1. The first five years of the ACNC were remarkably successful

It is almost inconceivable that the ACNC could have been any more successful in its first five years establishment phase. In hindsight, this is no accident, but a product of; over 12 months operating as a task force; careful and considered staff selection mixing regulatory expertise with charity experience; extensive consultation with charities, governments, other regulators, and associated experts; a strong focus on sector education and awareness; learning from other regulators around the world; drawing on quality researchers, technical expertise, media and communications; an outcomes based performance matrix; regular engagement and reporting with the Advisory Board, practitioners and sector users. As a consequence, the ACNC delivered real outcomes including:

2011	2017
Once registered with the Australian Taxation Office, charities not required to report to anyone	Charities reporting annually providing key information on who is involved, income and expenditure, activities in pursuit of mission
No agreed governance standards	Five agreed governance standards
Ad hoc inconsistent advice and support	High level of advice and support for all charities
No public register of charities	Over 13,000 inactive charities de-registered establishing a highly reliable, regularly updated and accessible national register of charities
A lack of information available about charities in Australia	Comprehensive information is publicly available about the charities sector that can be cross referenced against; area of activity, location, income levels, staffing levels, etc.
No single point of reference for key organisational information about a charity for governments, their Departments, regulators, Councils, or donors	Government Departments, regulators in State and Territories, and philanthropists increasingly drawing on ACNC data (the Charity Passport) rather than duplicating information
No clear complaints process for anyone with concerns about a charity behaving badly	Over 1500 complaints lodged and either resolved or investigated drawing on input from multiple regulators and information sources
Little independent research about charities in Australia	Extensive independent research on the state of the charities sector is commissioned on an annual basis
Paper based forms for charity regulation	99% of charities completed their Annual Information Statements online in 2017
No Australian charities regulator	Internationally acclaimed charities regulator with the highest rate of voluntary compliance by charities anywhere in the world

The above list is a truncated snapshot of achievements – so much more could and should be said about the remarkable achievements of the ACNC in its first five years.

It should also be noted that the initial lack of support from the Federal Government (at times seeking to abolish the ACNC altogether) impeded the capacity of the ACNC to work across governments.

The leadership of the ACNC throughout its first five years was a critical factor in its success. Not only did the ACNC have an outstanding Commissioner in Susan Pascoe, but also Deputy Commissioners David Locke and Murray Baird provided genuine expertise, knowledge and high-quality management skills. The senior staff team below this level were also outstanding in their work, despite not having a secure future to look forward to.

What is beyond dispute is that, despite the barriers, in its first five years **the ACNC set the standard internationally for what a charities regulator can and should be.**

## **2. Performance metrics have been very positive - but it is difficult to tell if the positive trends are continuing**

One of the requirements of the ACNC is to provide an annual report to the Parliament and to generally be accountable through processes such as the Senate Budget Estimates questioning of senior officials. The charities sector, the parliament and many policy and regulatory bodies are rightly interested in the regulation of charities. The provision of information about the performance of the ACNC was always seen as an important part of enabling the ACNC to fulfil its role as a respected regulator.

Since publication of the 2017/18 performance report no update has been provided. Many of the examples used to justify positive reporting of performance in the 2017/18 report relate to work initiated or completed previously.

We do know the number of complaints received about the performance of the ACNC increased significantly from less than 200 in a year in 2016/17 to more than 1200 in 2017/18. While some of this relates to new IT systems, good management should have made any transition to new IT systems less onerous for users of ACNC data. In many cases links to important data simply disappeared without notice.

There were many more guides and fact sheets published in 2016/17 than there have been since.

Similarly, we know from 2017 there were 76 speaking engagements and 52 sector events run by the ACNC, but this level of engagement has also declined.

It is pleasing to see wait times for phone inquiries averaging less than 40 seconds and processing times for new charity applications below 15 days once all paperwork is submitted for 98% of cases.

These trends seem a little inconsistent with recent tweets to the sector – e.g. @ACNC\_gov\_au 26/8/19 *Hold the phone! We're experiencing higher than normal wait times on our 13 22 62 Advice phone line. If your query is not urgent, please wait until next week to call. If your query is urgent, thank you for your patience. (Gif Hold the phone)...*

The 47% increase in complaints raised about charities with the ACNC may be a positive indicator that the public are becoming aware of the role of the ACNC, although more information about complaints would be useful. There is some data suggesting more internally initiated investigations. CCA would like to see more details and an explanation for any shift in compliance, investigation and enforcement activities.

The fact that only 1 of 26 FOI requests received the full document and 5 of the 26 requests received only a partial release of documents suggests the ACNC FOI policy might need to be reviewed. Refusing so many FOI requests seems unusual.

In some areas it is possible to monitor performance over time and see trends, but not all areas, and the lack of a current performance reporting is of concern to the sector.

More timely public reporting processes around key performance metrics would be welcome.

More timely and accurate reporting to the Parliament of Australia would also be welcome. Previously the ACNC Commissioner and Assistant Commissioners would attend most Senate Estimates hearings, often supported by other staff with additional knowledge and expertise. The current Commissioner's refusal to bring staff expertise to the table for Senate Estimates suggests a lack of genuine interest in providing the best possible information to the Australian Parliament. Sending along a single ACNC staff member with less than three weeks employment experience at the regulator to answer Senators' detailed questions about the operations of the ACNC showed a level of disrespect for the process of parliamentary accountability. The rationale used that the Commissioner was at a conference where he was not speaking seems inadequate. The suggestion that travel for staff to attend three Senate Estimate hearings each year is too expensive also seems inconsistent given the extraordinary travel costs associated with a Brisbane based Commissioner claiming significant travel expenses for all attendances at the ACNC offices in Melbourne.

### **3. The provision of value-add information provided to researchers, policy makers and the charities sector appears to be diminishing**

It took a long time for the current ACNC leadership to produce an Annual Charities Report and when it was produced, it seems to be a cut down version lacking the depth of insight and analysis previously provided. This lack of commitment to the ACNC's role as a provider of quality information about the charities sector is of concern, especially when it is combined with the discontinuance of support and encouragement for research into the charities sector previously provided by the ACNC.

The 2016/17 ACNC performance report states:

*We also maintained the ACNC research network, providing a forum for researchers and academics interested in studying the sector to get together with the ACNC. At network teleconferences, attendees received updates about the ACNC's research work and shared information about their projects.*

The ACNC research network has been disbanded in the last two years.

The open provision of ACNC data and encouragement to researchers to draw on this data is central to the role of a charities regulator. For many in the sector it is one of the most important reasons for supporting a charities regulator. If charities know that the information they provide to the ACNC will inform value-added reports and research, the additional work to provide timely data can be seen as a worthwhile contribution to improving knowledge and policy making for the sector.

CCA believes the mutual benefit of two-way information flows is one of the reasons the ACNC has enjoyed strong support across the charities sector. The ACNC currently enjoys the highest level of voluntary information provision of any charity regulator in the world. Less added-value information flow back to the charities sector will undermine this achievement and risks less voluntary compliance. This sense of mutuality will diminish if the ACNC provides less value-add information.



#### **4. The promised Charity Passport is yet to be a reality**

When charities were being asked to support the new ACNC, one of the positive selling points of the regulator was the capacity to cut red tape by developing a Charity Passport which could be used by government departments, funders, and other regulatory authorities at a federal, state and local level.

Prior to the ACNC, if a charity wanted to book a local community hall, gain a concessional rates approval from a local council, seek an exemption from payroll tax from a state government, apply for funding from a charitable foundation, seek charitable funding through a federal government department, seek approval to fundraise or engage in many other activities, they would have to prove their charitable status (often requiring multiple copies of letters from the Australian Taxation Office) and provide detailed information about their charity to establish their bona fides.

The Charity Passport is a single document drawn from ACNC data that meets the basic identity and credentialing requirements as well as conveying verified information about the charity. Adoption of the Charity Passport has the potential to save many millions of dollars of duplicated administrative tasks within charities.

The major barrier to early adoption of the Charity Passport was the determination of the Federal Government to abolish the ACNC. Once this threat was no longer being made, the ACNC achieved very significant progress in having a broad range of organisations adopt the Charity Passport as meeting basic identification and credentialing requirements.

Unfortunately, it appears progress in advancing the Charity Passport has slowed since 2017 with many charities still reporting multiple duplicated administrative tasks largely providing the same sets of information in different forms to different authorities and government departments. According to the ACNC self-assessment, the number of agencies using the Charity Passport increased by over 25% in 2017 and only 5% in 2018.

Many charities have complained that after several years operation there is still a lack of alignment between ASIC and ACNC databases in terms of maintaining the officers of the company. This often creates issues with some people still referring to ASIC despite ACNC being the appropriate regulator.

The failure to align fundraising regulations has become a major issue for many charities. While this in part relates to Australian Consumer Law, the lack of State and Territory regulator alignment to the ACNC creates a huge administrative burden in many charities.

There are many other contributors to red tape in the charities sector, but the failure to gain widespread acceptance and adoption of the Charity Passport continues to represent a major failure in effective charity regulation.

Only by working diligently and authentically with many government departments and regulatory authorities will the barriers to adoption of the Charity Passport be overcome.

Whether the current leadership of the ACNC can advance this task is now an issue of concern given the poor progress reported in the most recent ACNC self-assessment.

The important point here is that in terms of ACNC performance, this failure to see the Charity Passport more widely adopted is very frustrating and annoying for the charities sector.

## **5. There are indicators suggesting a loss of management and leadership skills at the ACNC over the last two years is now negatively impacting performance**

In assessing the ACNC performance, the issue of organisational culture and the ability to attract and retain quality staff should clearly be considered as these factors directly impact organisational performance.

Many in the charities sector are concerned with what could be described as a total leadership clean out at the ACNC over the last 18 months. The following senior staff have left the ACNC: David Locke, Murray Baird, Annie Keely; Carolyn Doyle, Prue Monument, Susie Cotterill, Ben Rashid, Sean Lounder. CCA understand some of the senior positions – including Assistant Commissioners – will remain unfilled.

The Australian Taxation Officer has had to employ a ‘mobility officer’ within the ACNC – so many staff were seeking to leave. The latest ACNC staff survey has apparently revealed a significant drop in morale since the new leadership was installed, but the full survey has not been released (despite FOI requests).

Concerns have also been expressed about the processes now being employed to award contracts such as the Tulipwood Economics report.

The ACNC Commissioner has instigated a new project that seems to mirror the way the ‘Donor Inform’ company previously sought to operate. The Donor Inform company was deregistered two years ago having been unsuccessful in tapping into any demand for this kind of information.

All of these concerns matter because they suggest an operating environment that is not conducive to the best possible performance within the charities regulator.

Leading an effective charity regulator requires good management skills, good leadership and a shared vision of what excellence means within the organisation. A high-performance organisational culture is unlikely to be achieved in a workplace with low staff morale and a lack of senior experienced and respected staff. There is concern that the required management and leadership skills are in diminishing supply within in the ACNC and this will inevitably translate into poorer organisational performance.

## **6. Charities want the ACNC to focus on being a better regulator**

It may seem obvious, but it is important to emphasise that what matters most to charities is ensuring the sector is well regulated. Any charity malpractice has the potential to significantly damage the charity brand. Some charities have indicated that their donations from the public are negatively impacted by stories in the media highlighting how one bad charity has misled donors.

Ensuring charities are held to account is good for charities, their workers, the people they serve, and the broader community. This is why charities have been so engaged in pushing for a charities regulator and supportive of the establishment phase of the ACNC.

CCA would like to see the ACNC more actively engaged with the sector, producing more reports, supporting more research, expanding the Charity Passport, recruiting high quality and experienced senior staff to broaden the leadership team, and being more accountable to Parliament and the public for its own performance. We would like the ACNC focused more on being a good regulator and less on new projects like creating a marketplace for donors. These measures are critical to good performance.

A good charities regulator is very important for all charities.

## **Conclusion**

The ACNC has been an outstanding success, despite numerous barriers and years of uncertainty about its future. It enjoys a strong reputation in Australia and around the world as one of the best charity regulators. The remarkable achievements of the ACNC across the first five years of operation are a testimony to the expertise and resolve of an outstanding group of people working at and with the ACNC during the first five years.

Maintaining the confidence of the charities sector in the ACNC is important to the effectiveness of the regulator. This confidence is now not as strong as it was previously largely because the ACNC is providing less information about its activities, services such as telephone advice lines seem to be experiencing declining standards, and advances in critical areas such as the Charity Passport seem to be slowing.

The performance of the ACNC must be sustained, enhanced and improved, not diminished.

It is to be hoped the ACNC will be held to account to ensure the key achievements of the ACNC in its first five years continue to form the foundation of a very effective charities regulator.

## Main References:

ACNC 2017-18 Regulator Performance Framework Self-assessment (accessed from:  
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