



Submission to:

The Treasury

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

August 2022

Introduction

This brief submission outlines key issues in relation to the legislation establishing the Australian Charities and Not-for-profit Commission (ACNC) with a focus on possible legislative changes.

CCA has consulted with members (see listing in appendix 1) 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; an overview of the current context for the NFP sector; an overview of ACNC legislation and proposed changes, and a conclusion.

CCA welcomes this opportunity to provide input into this review of the legislative framework of the ACNC and is keen to engage in detailed discussion about any proposals for a more in-depth consideration of the future of the ACNC.

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

The Community Council for Australia

The Community Council for Australia 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.

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 11% of all employees in Australia). Australia's 55,000+ charities collectively turn over more than \$160 billion each year and hold around \$300 billion in assets.

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.

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 including potential donors.

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

At a broader level, 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 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.

Making substantive changes to the way the ACNC operates or increasing the amount of compliance activity required of charities is not going to be conducive to building confidence and investment in the charities sector.

Given the size of the sector and its critical role in our community, the Federal Government can achieve real economic and social benefits if it chooses to strategically invest in strengthening charities and supporting their regulation. To this end, this submission suggests building on the two recent reviews of the ACNC conducted in 2018 by the ACNC Review Panel ([Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review 2018 | Treasury.gov.au](#)) and the 2020 review conducted by the Australian National Audit Office ([Regulation of Charities by the Australian Charities and Not-for-profits Commission | Australian National Audit Office \(anao.gov.au\)](#)).

Key recommendation in relation to the ACNC Legislation

The context – legislative changes to the ACNC

Since the ACNC was established, there have been numerous reviews and proposed changes to the ACNC legislation. These include two major reviews: ACNC Review Panel ([Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review 2018 | Treasury.gov.au](#)) and the 2020 review conducted by the Australian National Audit Office ([Regulation of Charities by the Australian Charities and Not-for-profits Commission | Australian National Audit Office \(anao.gov.au\)](#)).

The proposed changes to ACNC legislation include proposed changes to the powers of the ACNC (March 2021), proposed changes to secrecy provisions (August 2021), and changes to definitions including thresholds for classification of the size of a charity (small, medium, large) and related party transactions.

CCA has provided five submissions in response to these inquiries and proposed significant improvements to the way the ACNC operates. All of these CCA submissions also addressed the need to make changes to the ACNC Legislation.

There are also substantive recommendations made in the Strengthening for Purpose report from 2018.

With the notable exception of the re-classification of the size of charities, most of these recommendations have not been adopted.

The Context - timing of legislative changes

The ACNC legislation will lapse in April 2023 unless the legislation has passed the parliamentary approval process and been signed off by the Governor General. This represents a time frame of just under six months.

CCA understands that redrafting the ACNC legislation, engaging in an appropriate consultation, and then finalising drafting to be taken through the parliament is invariably a time-consuming exercise. It is unlikely this whole process could be given the time it deserves if the April deadline is to be achieved.

The Context – support for significant legislative changes

CCA has argued in previous submissions in support of many of the recommendations from the 2018 review of ACNC legislation, including changes in relation to governance standard 3 and secrecy provisions.

CCA believe there are a range of other changes that would benefit the ACNC legislation relating to issues including charity reporting, basic religious charity exemptions, amending governance standard 5, statements related to reasons for revocations, auditing requirements, delegation of powers and the ACNC executive.

Recommendation

There are some areas where it may be possible to make minor or already supported changes to the ACNC legislation based on the 2018 review recommendations and drawing on findings from subsequent consultations.

For instance, CCA sees no reason why the proposed change to abolish governance standard 3 could not proceed within the amended ACNC legislation to be put into the Parliament prior to April 2023 without further consultation. Many charities support this proposed change, it was recommended by the review panel, and has been extensively consulted on when changes were proposed by the previous government. It would also require minimal drafting changes.

There are other proposed changes that clearly require further consultation and consideration including for instance the 2018 review recommendation *“...Remove the subtype classifications in item 13 (health promotion charities) and 14 (public benevolent institutions) as these are not charitable purposes but rather exist for taxation purposes. Add new sub-sections to allow tax entities to register in one or more categories under the ACNC Act, and include health promotion charities or public benevolent institutions in these subsections.”*

CCA believe there are grounds for a more in-depth review of the ACNC to consider more substantive changes that may improve the function of the ACNC and benefit both the charities sector and the broader Australian community.

Given the timelines for renewing the ACNC legislation such an in-depth review could not be conducted, finalised and reflected in redrafted legislation passed through Parliament within the required timelines.

CCA therefore proposed a two-stage process:

1. Make improvements to the ACNC legislation that are already widely supported and agreed to in order to meet the re-establishment of ACNC legislation timelines.
2. Conduct a more thorough and extensive review of the ACNC legislation within the next 12 months to enable the new government to consider proposed changes outlined in the 2018 review and other emerging legislative issues, and provide a period for consultation and appropriate redrafting of the legislation to achieve a better functioning ACNC.

Conclusion

The ACNC has been an outstanding success, despite numerous barriers, initial uncertainty about its future and a loss of senior leadership knowledge and skills in recent years.

There are some areas and activities where the ACNC can further strengthen its role and effectiveness as a charity regulator. CCA believe some of these changes are relatively straight forward and do not require further consultation. However, there are numerous outstanding recommendations for positive reform that have yet to be fully considered either by the current government or by the broader charities and not-for-profit sector.

CCA believes it is important to make the positive changes that can be expedited quickly to meet the required timelines, but also allow for a more considered process for reform of the ACNC legislation.

Current Membership – Community Council for Australia *Attachment A*

Adult Learning Australia

Alannah and Madeline Foundation

Arab Council Australia

Australian Conservation Foundation

Australian Council for International Development, Marc Purcell, CEO (CCA Board Director)

Australian Environmental Grantmakers Network

Australian Scholarships Foundation

Australians Investing in Women

Barnardos Australia, Deirdre Cheers, CEO (CCA Board Director)

Brotherhood of St Laurence

Camp Quality

Carers Australia

Centre for Social Impact

Chain Reaction Foundation

Christians Against Poverty

Churches of Christ Community Care Vic/Tas

Community Bridging Services (CBS)

Community Broadcasting Association of Australia

Community Colleges Australia

Connecting Up

Drug Arm Australia

Ethical Jobs

Everyman

Exodus Foundation

Feanix Foundation

Fitted for Work

Foundation for Alcohol Research and Education

Foundation for Young Australians

Fragile X Association of Australia

Good Samaritan Foundation

Good2Give

Hammondcare

Hillsong Church, George Aghajanian, CEO (CCA Board Director)

InfoXchange

Justice Connect

Kilfinan Australia

Learning Links

Life Without Barriers, Claire Robbs, CEO (CCA Board Director)

Lock the Gate

McGrath Foundation

Menslink

Mission Australia

Missions Interlink

Non Profit Alliance

Our Community

OzHarvest

Painaustralia

Philanthropy Australia

Pro Bono Australia

Public Interest Journalism Initiative

Queensland Water & Land Carers

Ronald McDonald House Charities

RSPCA Australia, Richard Mussell, CEO (CCA Board Director)

Saba Rose Button Foundation

SANE

SARRAH

Save the Children

Settlement Services International

Smith Family

Social Ventures Australia, Suzie Riddell, CEO (CCA Board Director)

St John Ambulance

Social Leadership Foundation

Starlight Foundation, Louise Baxter, CEO (CCA Board Director)

Sydney Children’s Hospital Foundation, Nicola Stokes, CEO (CCA Board Director)

Ted Noffs Foundation

The Centre for Volunteering

Variety – the Children’s Charity of Victoria

Volunteering Australia, Mark Pearce, CEO (CCA Board Director)

Wesley Mission

Workplace Giving Australia

World Vision Australia

World Wide Fund for Nature Australia

YMCA Australia