



***Submission to the House of Representatives Standing
Committee on the Environment***

The administration and transparency of the Register of Environmental Organisations (the Register) and its effectiveness in supporting communities to take practical action to improve the environment.

May 2015

Introduction

This submission briefly outlines some of the key issues for Australia's not-for-profit sector in response to The House of Representatives Standing Committee on the Environment inquiry into the administration and transparency of the Register of Environmental Organisations (the Register) and its effectiveness in supporting communities to take practical action to improve the environment.

This CCA submission has been prepared with CCA members (see listing of CCA members, Attachment A) as well as other key organisations working in the environment protection area and within the broader not-for-profit sector. It is important to note that this submission does not over-ride any policy positions that may be outlined in any individual submissions from CCA members. This is especially true when talking about charitable status and DGR eligibility as many groups working in the environment, international development, arts and harm reduction areas are very wary of any proposed changes.

CCA is concerned that this inquiry seeks to confuse the established definition of charity by bringing into question one particular area of charitable endeavour, seeking to use activity rather than purpose in determining organisational status, and potentially adding more complexity to an onerous process that serves little purpose in terms of delivering real community benefits.

CCA welcomes this opportunity to provide input into this inquiry and is willing to engage in further discussion about any of the issues raised in this submission.

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 to 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.

Current situation – the context

The not-for-profit sector

The charities and not-for-profit sector turns over more than \$105 billion annually, contributes over \$55 billion to GDP per annum, and employs over one million staff (or eight per cent of all employees in Australia). The sector holds over \$175 billion in assets, and across the last decade, sector growth has continued at approximately 7% a year, greater than any other industry group. Over 30% of all not-for-profit income is derived from government contracting, grants and services.

These figures tell only a small part of the story. The real value of the sector is that these are the organisations at the heart of our communities; building social connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians.

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

There have been no less than 15 major reviews, reports and inquiries into the regulation and contribution of the charities and not-for-profit sector since 1995. Most of these, including the Productivity Commission report into the sector and the review of Australia's Future Tax System (2010), have supported the need for a statutory definition of charity, and the establishment of an independent regulator of charities.

The successful establishment of the Australian Charities and Not-for-profits Commission (ACNC) is the first time the NFP sector has had an independent regulator dedicated to serving the purpose of determining charitable status, building a one stop shop national register of charities, operating a report once use often charities passport, and applying appropriate enforcement practices. The ACNC has already proved to be a positive step towards red tape reduction, increased transparency and community trust in charities.

The inability of governments to streamline their own regulatory processes, their tendering processes, contract management and programs monitoring has consistently been identified as a major barrier to improving productivity in the not-for-profit sector in Australia. The lack of certainty in the government regulatory environment, funding and contracting processes also undermines performance and ongoing investment in improving outcomes. For the sector to be more effective, these issues must be addressed.

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 our communities and our NFPs by improving the way it regulates the sector and measures performance, and by relying less on superficial analysis of activities including input and output measures.

Creating increased regulatory uncertainty about the future and imposing a new form of scrutiny on charitable status and DGR eligibility will not enhance the productivity and effectiveness of charities and not-for-profit sector. Nor will it provide increased public benefit.

Overview of key issues

The Australian Charities and Not-for-profits Commission – a fit for purpose regulator

The determination of charitable status is now clearly the legal responsibility of the Australian Charities and Not-for-profits Commission (ACNC). Charities that are deemed to have satisfied the requirements of the ACNC, including annual reporting of activities and finances, have achieved their status based on the current legal definition of charity including the test of providing a public, as opposed to private, benefit.

The present system of determining Deductible Gift Recipient (DGR) status through the Australian Taxation Office (ATO) favors larger charities that can afford lawyers and lobbyists to assist the progression of their applications. Many smaller NFP and charities do not have the capacity to apply for DGR status, and hence they cannot access the community support that comes when donations are tax deductible. It is a complex, costly and inequitable system – with only half of all charities having DGR status. It is difficult to justify the distribution of DGR eligibility given the arbitrary and ad hoc manner in which it has developed.

CCA believes that all donations made to registered, complying charities should be tax deductible. Modelling of this approach by Treasury to inform the report of the Not-for-profit Tax Concessions Working Group report (2013) suggests the total cost to government would be equivalent to the savings recently achieved through capping the meals and entertainment Fringe Benefit Tax concessions.

Within this context it is important to note that environmental groups are not the only area of charitable activity where separate process make an already complex process for obtaining DGR status much more onerous. In the arts, international development and harm prevention, charities also have to comply with three separate national regulators – the ACNC, the responsible department, the ATO, and gain approval from the relevant portfolio Minister and the Assistant Treasurer. How this serves the community is unclear, but it is very clear that these overly complex processes ensure many charities spend significant resources in duplicated compliance activities that can be shown to have little or no real benefit. The cost in terms of time, legal advice and other activities is prohibitive for smaller charities.

Why just environmental groups?

Australian communities are built on the back of charities and not-for-profits working to achieve community benefit. Any suggestion that charities and not-for-profits advocating to reduce the degradation of the environment offer no benefit to the community is an absurdity.

Clearly there are strong vested interests that profit by exploiting the environment. While such groups are free to pursue their economic interests, the attacks on those who are operating as charities and not-for-profits is about economic gain, not long term sustainability and community benefit.

CCA believes any reform of these concessions needs to be systemic and based on considered policy across the whole not-for-profit sector. To identify one sector (protecting and enhancing the sustainability of our environment) and raise the possibility of withdrawing concessions that will continue to apply across other not-for-profit sectors is, at best, a retrograde step. Such a measure will only exacerbate an already inconsistent set of rules, requirements and concessions while achieving no net benefit for our community.

Purpose not activity

It has long been established that the activity of a charity is not what matters in determining charitable status. The High Court of Australia has repeatedly ruled that it is the purpose that remains the touchstone for determining charitable status and public benefit.

A local charity in a rural city may run a car wash or car park for the weekend football game as a way of underwriting their charitable purpose. If the organisation engages in promotion of their car park it does not make them an advertising agency, nor does running a car park make them a for-profit business if all the money they raise is directed to their charitable purpose.

Advocacy versus ‘on-ground environmental works’

It is widely accepted in most fields of endeavour that prevention is much better than cure. Waiting for a problem to get to the stage of needing remediation is the most ineffectual way of addressing emerging issues. In key areas of human endeavour, solutions are driven by preventing death, disease and other harms. In environmental terms, it is clearly a false economy to wait until an area is polluted to the point of needing costly remediation rather than seeking to prevent the pollution in the first place.

The ‘on the ground’ clean-up crew washing spilled oil off fish and water birds are doing wonderful work and deserve to be supported and commended. At the same time, the environmentalists who have sought to establish regulatory requirements for oil tankers to have more fail-safe measures built into their structures are also saving the environment. Many would argue that the preventative measures achieved through advocacy are much more effective and efficient than the work of those seeking to remediate the problem. This is why systems change is now an accepted approach to delivering public benefit. Both groups in this example are seeking to protect and maintain a sustainable environment. This example again underlines that it is the purpose that matters much more than the individual activity being undertaken by a particular organisation.

The illegal activities of some charities

There have been some suggestions from opponents of environmental groups that a very small minority of Australia’s charities engage in illegal activities. CCA does not support illegal activities. A small minority of businesses also engage in illegal activity. Again CCA does not support illegal activities.

Where businesses or charities, or any individuals within an organisation have engaged in illegal activities, the full force of the law should be applied. This includes deregistration by ASIC or the ACNC as appropriate, including seeking whatever remedies are considered necessary by these regulators.

Ministerial involvement in DGR status

CCA does not believe it is appropriate for individual Commonwealth government ministers to have the final say in determining charitable status or eligibility for DGR. Increasing Ministerial involvement in these processes creates inconsistency and uncertainty, and undermines the credibility of all charities.

DGR as a seal of government endorsement / popularity

It has never been the case that all people support all charities or all DGR eligible organisations. Many of us as tax payers support religious charities and others that we may or may not disagree with. We generally accept that as they have established their charitable purpose and DGR eligibility showing that they are focused on delivering community benefit, they should be entitled to gain some concessions. Perhaps more importantly, citizens who choose to support DGR eligible organisations rather than use their own funds for personal gain should be entitled to gain a concession from the government.

Increased popularity of a particular group may increase the level of support they are able to attract from the communities they serve, but popularity is rightly not a test of charitable purpose. It is important to emphasise that having DGR status bestows no direct benefits on an organisation.

Similarly, the particular government may or may not support a particular charity or religious group. Thankfully charitable status is determined independently as should DGR status. The extent of government support provided to DGR eligible organisations depends entirely on the level to which the community engage with the charity and seek concessions for making their DGR eligible donations.

There is an argument that the more we can embrace difference, the stronger our communities. The more we can encourage civil society to own and support charitable endeavour with their own resources, the stronger civil society. Providing DGR status enables citizens to have their contributions recognised.

Under CCA's proposal that the ACNC determine charitable status and make recommendations to the ATO regarding DGR eligibility, the whole process would be much more transparent, accountable and credible. This would also build public trust and confidence while holding all charities to higher standards of governance and reporting than currently applies.

Conclusion

CCA strongly supports the need for reform, particularly with the ongoing engagement between not-for-profit organisations and Commonwealth agencies. The level of counter-productive regulatory and compliance activity, and lack of consistent independent application of tax concessions is having a very negative impact on the productivity and effectiveness of not-for-profit organisations.

Many environmental organisations have been through an extensive process to obtain DGR status based on a review of public benefit and the purpose of their work. Second, third or even fourth guessing these decisions based on ill-conceived commentary about practical interventions versus advocacy serves no-one's interests, other than those seeking to obtain economic benefits from environmental exploitation.

The charities and not-for-profit sector wants to work with government to reduce red tape while improving transparency and accountability. One way to achieve these outcomes is to accept the recommendations of many inquiries and reports by streamlining requirements for all charities in gaining DGR status. The best, most efficient, transparent and effective means of doing this is to empower the ACNC to determine charitable status as well as making recommendations to the ATO on DGR eligibility. This would not only make the ACNC a truly one stop shop for charities, but also end duplication and costly reliance on a range of disparate departmentally based bodies that are often under-resourced and ill-equipped for the roles they are enacting.

Current Membership – Community Council for Australia *Attachment A*

Organisation	CEO/Director
2realise	Rowena Stulajter
Access Australia’s National Infertility Network	Sandra Dill
Australian Charities Fund	Jenny Geddes
Australian Council for International Development	Marc Purcell
Australian Healthcare and Hospitals Association	Alison Verhoeven
Australian Indigenous Leadership Centre	Rachelle Towart
Australian Institute of Superannuation Trustees	Tom Garcia
Australian Major Performing Arts Group	Bethwyn Serow
Australian Women Donors Network	Julie Reilly
Canberra Men’s Centre Inc	Greg Aldridge
beyondblue	Georgie Harman
Charities Aid Foundation	Lisa Grinham
Church Communities Australia	Chris Voll
Churches of Christ Community Care VIC & TAS	Paul Arnott
Community Broadcasting Association of Australia	Jon Bisset
Community Colleges Australia	Kate Davidson
Compass Housing Co Ltd	Greg Budworth
Connecting Up Australia	Anne Gawen
Drug Arm Australasia	Dr Dennis Young (Director)
e.motion21	Cate Sayers
ethicaljobs.com.au	Michael Cebon (Associate Member)
Family Life Services Australia	Jo Cavanagh
Foresters Community Finance	Ashley Hood
Foundation for Alcohol Research and Education	Michael Thorn
Foundation for Young Australians	Jan Owen
Fundraising Institute of Australia	Rob Edwards
Good Beginnings Australia	Jayne Meyer-Tucker (Director)
HammondCare	Stephen Judd

Hillsong Church

Justice Connect

Lifeline Australia

Life Without Barriers

Maroba Lodge Ltd

Missions Interlink

Mission Australia

Musica Viva Australia

Opportunity International Australia

Our Community

Philanthropy Australia

Port Phillip Housing Association

PowerHousing Australia

Pro Bono Australia

Relationships Australia

RSPCA Australia

SANE

SARRAH

Save the Children

St John Ambulance Australia

Social Ventures Australia

The Benevolent Society

The Centre for Social Impact

The Reach Foundation

The Smith Family

The Ted Noffs Foundation

Variety Australia

Volunteering Australia

Wesley Mission

World Vision Australia

YMCA Australia

Youth Off The Streets

YWCA Australia

George Aghajanian (Director)

Fiona McLeay

Jane Hayden (Director)

Claire Robbs (Director)

Viv Allanson

Pam Thyer

Catherine Yeomans

Mary Jo Capps (Director)

Robert Dunn

Denis Moriarty (Associate Member)

Chris Wootton

Karen Barnett

Lisa Grinham

Karen Mahlab (Associate Member)

Alison Brook

Heather Neil (Director)

Jack Heath

Rod Wellington

Paul Ronalds (Director)

Peter LeCornu

Michael Traill

Joanne Toohey

Andrew Young

Sarah Davies

Lisa O'Brien (Director)

Wesley Noffs

Neil Wykes

Brett Williamson (Director)

Rev Keith Garner (Director)

Rev Tim Costello (Chair)

Ron Mell

Fr Chris Riley

Dr Caroline Lambert