

27 February 2018

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Individuals and Indirect Tax Division
Treasury, Australian Government
Langton Cres, PARKES, ACT, 2600

Attention: Mr Murray Crowe, Treasury
By email: acncreview@treasury.gov.au

Dear Mr Crowe

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

We write to you as individuals who are trustees / Directors of charitable organisations and part of the Charitable Alliance (**CA**). The submission is made as individuals, not on behalf of the organisations.

This submission requests the ACNC Review recommend that the ACNC powers / provisions provide the ACNC with the tools / framework to:

- A. Expand the annual reporting obligations (transparency) relating to the roles fulfilled and fees charged by Licensed Trustee Companies (**LTC**) that act as trustee of charitable organisations;
- B. Provide ACNC the powers and obligations to undertake the LTC Stewardship Audits recommended in the CMAC Report (*refer below*); and
- C. Report on the Stewardship Audits and provide on-going transparency to the public, philanthropic sector and government on the roles fulfilled and fees charged by LTCs.

By way of background:

1. The *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009 (CAFSMA)* changed the regulation of fees charged by LTCs to charitable trusts which came into effect in May 2010. CAFSMA states “*the government is committed to a review of the fee arrangements in relation to charitable trusts after two years of operation*”;
2. In September 2012, as a result of concerns expressed by CA and other organisations, the government requested that the Corporations and Markets Advisory Committee (**CAMAC**) review the CAFSMA (**CAFSMA Review**) - *refer Attachment 1*;
3. CA and numerous organisations made submissions to CAFSMA Review - *refer Attachment 2*;
4. In May 2013 CAMAC published a report (**CAMAC Report** - *refer Attachment 3*) recommending:
 - A. The ACNC, or some other independent party or parties appointed by the ACNC, initiate Stewardship audits of the administration by LTCs of a cross-section of charitable trusts ... (**LTC Stewardship Audits**);
 - B. Amendments be made to CAFSMA, including (in summary):
 - A ‘fair and reasonable’ requirement for all fees and costs;
 - Each LTC be required to provide an annual statement to the designated regulator that the fees and costs charged against the trust are fair and reasonable; and
 - Expand jurisdiction of the court in dealing with disputes alleging excessive fees; and
 - C. Adoption of a standardised approach to the disclosure of services and fee schedules, to make it easier for intending donors to compare the fee regimes of different LTCs and to better understand the fees that would be charged by each if appointed as trustee.
5. To date the government has not responded to CAMAC and the CAFSMA Review is incomplete. In April 2014 CA wrote to government confirming its policy position – *refer Attachment 4*.

The ACNC Review terms of reference refer to a range of areas that relate to issues relating to LTCs (refer to highlighted items in the ACNC Review terms of reference included as Attachment 5). Examples include:

- A. The objects of the principal of the ACNC Acts which include to “*Maintain, protect and enhance public trust & confidence in the Australian NFP Sector*”; and
- B. The public submissions are asked to consider questions such as “#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 excessive and multiple fees being charged by LTCs are reducing funding available for charitable trusts to distribute to the community. In short the ‘Charitable Purpose’ of charitable trusts are being compromised by ‘Corporate Profit’, due to:

- A lack of transparency, portability and independence of LTCs services; and
- Conflicts of interests in governance arrangements and other issues relating to LTCs.

As a minimum this ACNC Review provides the platform to achieve the transparency recommended by CAMAC. While not intended to be prescriptive, to follow are examples of information requiring transparency:

1. Roles fulfilled / services provided by LTC – trustee (governance), administration, grant making, investment administration and or managed investment funds (**Service Categories**);
2. Total fees incurred by charitable trusts for each Service Category; and
3. Declaration of all LTC and LTC related party services and fees charged by Service Category.

In closing, on the basis that this is a ‘substantive issue’ impacting public trust & confidence in the Australian NFP Sector we request a face-to-face consultation with the ACNC Review Panel.

We thank you for your attention to this very important issue on behalf of the community that relies on the funds distributed by charitable trusts.

Yours sincerely



Graeme Danks
Trustee
Danks Trust

Sandy Clark
Chairman
William Buckland
Foundation



Martin Carlson OAM
Chairman
Hugh Williamson
Foundation



Tim Costello AO
Chairman
Community Council
for Australia (CCA)

Attachments:

1. Charitable Alliance letter to federal government (June-2012)
2. Charitable Alliance submission to CAFSMA Review (Dec-2012)
3. CAMAC Report (May-2013)
4. Charitable Alliance policy position (Mar-2013) & letter to federal government (April-2014)
5. ACNC Review Terms of Reference (Dec-2017)