



HSING YUN
EDUCATION FOUNDATION
星雲大師教育基金會

28 February 2018

Mr Murray Crowe
Principal Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ACNCReview@treasury.gov.au

Dear Mr Murray

SUBMISSION IN RESPONSE TO 'REVIEW OF AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION (ACNC) LEGISLATION' TERMS OF REFERENCE PAPER

Thank you for the opportunity to make a submission in response to the 'Terms of Reference' discussion paper on the Review of Australian Charities and Not-for-Profits Commission Legislation' released on 20 December 2017.

About the Hsing Yun Education Foundation

The Hsing Yun Education Foundation (the **Foundation**) is a new charity in Australia. The Foundation was established in 2016 as a company limited by guarantee to advance:

- the religion of Buddhism by equipping people with an understanding of the knowledge, culture and ethics of Humanistic Buddhism;
- education by:
 - supporting and facilitating the teaching of courses and curricula informed by Buddhist wisdom and values; and
 - providing financial support to current and potential students;
- community and social welfare by contributing to the furtherance and integration of knowledge, culture and ethical understanding for the benefit of humanity; and
- culture by facilitating the exchange of culture and arts between Australia's diverse communities, cultures and religions.

The Foundation has also established and is trustee of a public ancillary fund, the Hsing Yun Public Fund (the **Fund**), the objective being to build a large corpus that will produce enough income to provide substantial financial support to further the charitable purposes of the Foundation and the Fund each year. The Foundation and the Fund are both registered charities with the ACNC.

Consultation Questions

1. Are the objects of the ACNC Act still contemporary?

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Yes, in the Foundation's view, the objects remain contemporary and relevant to the assurance of a well-intended and well-functioning charity and not-for-profit (**NFP**) sector and critical to trust and confidence inherent in the relationship between the sector and the public.

2. Are there any gaps in the current regulatory framework that prevent the objects of the Act being met?

Yes, as follows:

- a) Presently a company limited by guarantee which is a registered charity is largely regulated by the ACNC Act and the Corporations Act 2001 (Cth) with certain provisions of the latter legislation being 'switched off'. By the ACNC's own admission in the early days of its establishment, there are some legislative oversights in the 'switching off' of certain provisions including absence of the recognition of the roles of officers and company secretary in the ACNC Act and, in particular, with reference to the Governance Standards.
- b) Better guidance on achieving compliance with ACNC Governance Standard 2 for entities with a sole member would be welcomed. The Foundation understands that the ACNC adopts a broad interpretation to the term 'members' which includes stakeholders of a charity (which the Foundation agrees) but the Foundation submits that this interpretation should be reflected in the ACNC Act, at a minimum, as an example.
- c) The use of the term "Responsible Persons" is confusing as the term is also used in other charity and NFP contexts such as public funds.

3. Should the regulatory framework be extended beyond just registered charities to cover other classes of not-for-profits?

Yes. The extension of the regulatory framework to provide coverage to other not-for-profits would streamline compliance for NFPs even further. It is the Foundation's understanding that this is the intention with reference to the name of ACNC.

4. What activities or behaviours by charities and not-for-profits have the greatest ability to erode public trust and confidence in the sector?

The Foundation's charitable purpose and activities are advanced through Buddhism values and wisdom. Accountability in finance and governance is most important.

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?



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Yes. The Foundation believes that the Annual Information Statement and the information available through the ACNC Register achieves this.

6. **Have the risks of misconduct by charities and not-for-profits, or those that work with them, been appropriately addressed by the ACNC legislation and the establishment of the ACNC?**

The Foundation is not in a position to comment.

7. **Are the powers of the ACNC Commissioner the right powers to address the risk of misconduct by charities and not-for-profits, or those that work with them, so as to maintain the public's trust and confidence? Is greater transparency required and would additional powers be appropriate?**

The Foundation is not in a position to comment.

8. **Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further reduce regulatory burden?**

Yes. The Foundation notes the streamlining of returns/statements for public ancillary funds which are registered charities.

9. **Has the ACNC legislation and efforts of the ACNC over the first five years struck the right balance between supporting charities to do the right thing and deterring or dealing with misconduct.**

Yes. We are of the view that the ACNC's 'fair and proportionate' approach to non-compliance is appropriate for the sector in light of the variance of charities and NFPs in size, resources and impact. As a new charity, we have been appreciative of the guides, templates and explanatory notes offered on the ACNC website. We note the ACNC will often also provide warnings of non-compliance before investigating a matter further.

Thank you for the opportunity to provide our comments. The Foundation would be pleased to provide any further comments and welcomes further opportunities to be engaged on this consultation.

We look forward to the next stage of this reform.

If you have any questions, please feel free to contact me on 0402961252.

Yours faithfully

Venerable Jue Fang
General Manager

