



Submission: Review of the Australian Charities and Not-for-profits Commission Act 2012

The Australian Charities and Not-for-profits Commission (ACNC) has made substantial advances in the regulation of charities over the past five years. Despite facing early uncertainty about its long-term future, the ACNC has developed into a regulator that has improved the transparency of those it regulates, supported charities to govern themselves with more rigour and professionalism, and it has begun the important work to reduce unnecessary regulatory obligations.

An impressive feature of the ACNC is the strong support it receives from those it regulates. Many charities appreciate the stronger regulatory arrangements it has implemented and acknowledge the improvements to the professionalism of the sector. A substantial contributor to the trust and respect that has developed was Ms Susan Pascoe AM through her strong commitment to the sector. It is hoped that the review of the ACNC Act and the appointment of new Commissioner, Dr Gary Johns, assists the ACNC to continue to support a transparent, vibrant and innovative sector which has strong public support.

Objects

The current objects of the principal Act are:

- to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector
- to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector
- to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector

These objects have enabled the ACNC to promote the development of a strong and trusted sector. They are working as intended and focus the ACNC on ensuring there is an appropriate level of public information about charities and transparent reporting. With the introduction of the ACNC, there are more substantial requirements to make information about charities public (particularly when compared with requirements of state-based regulators). Both the public and the sector itself have benefitted.

The ACNC's own submission to this review proposes two new objects be added to the Act:

National Disability Services

Submission: Review of the Australian Charities and Not-for-profits Commission Act 2012

- to promote the effective use of the resources of not-for-profit entities to donors
- to enhance the accountability of not-for-profit entities to donors, beneficiaries and the public

NDS does not support the inclusion of these additional objects which, potentially, would give the Commissioner substantially more power to interfere in the operations of charities.

Firstly, the proposed new objects are likely to be in conflict with the object 'to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector'. The ACNC has made significant progress on reducing the reporting obligations on charities—through negotiating reciprocal arrangements with state-based regulators—which has actually increased the access the public has to information about the work and finances of charities. If adopted, the new objects are very likely to increase reporting obligations.

Secondly, the proposed objects duplicate, at least in part, the object to 'maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector'. The ACNC's right and proper role is to regulate the operation of charities at a macro level. If concerns arise it should seek assurance that the use of a charity's resources aligns with its purpose. This is a regulatory role. It should not, however, generally be involved in decisions about how a charity uses its resources, a role which more appropriately sits with the governing body of the charity.

Secrecy Provisions

The current secrecy provisions within the Act unnecessarily limit the ACNC from making public information about its decisions on:

- registration
- compliance investigations
- revocation

The work of the ACNC would be enhanced by giving the Commissioner discretion to publish information on these matters where it is deemed to be in the public interest, would benefit the reputation of the sector (showing that it was well-regulated), or would inform charities about expected behaviours or operations.

Duties of Responsible Persons

The review of the ACNC Act provides the opportunity to consider aligning the duties of responsible persons to that of directors' duties under the Corporations Act. If adopted, this would remove unnecessary complexity from this aspect of governance.

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National Disability Services is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes about 1000 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.