



Refugee Council
of Australia

SUBMISSION ON ACNC REVIEW

The Refugee Council of Australia (RCOA) is the national peak body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 190 organisations. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback on the review of the *Australian Charities and Not-for-Profits Commission Act* (ACNC Act). As other submissions have stated, the first five years of the ACNC Act have been very successful in many ways.

RCOA endorses in general the submission of the Community Council of Australia on the ACNC review. We focus our submission on the following issues:

- Suggested changes to the objects of the ACNC Act
- Risks in relation to advocacy
- Appointment of the ACNC Commissioner and ACNC Advisory Board, and
- Thresholds for disclosure.

1 Objects of the Act

- 1.1 We note the proposal by the ACNC to include two new objects in the ACNC Act:
 - To promote the effective use of resources in the sector, and to
 - Enhance the accountability of charities to donors, beneficiaries and the public.
- 1.2 We endorse the view of the Community Council of Australia and others that there is no need to change the objects of the Act. We note that there is tension between these proposed objects and the existing object of reducing regulatory burden on charities. More importantly, we see dangers in including these proposed objects.
- 1.3 The two objects would appear to suggest that the ACNC has a role in determining whether a charity has made 'effective' use of its resources. Both objects seem to reflect suggestions made when the ACNC was originally established that it should act similarly to a 'Charity Navigator'-style model by ranking the efficiency of charities. Such a model was rejected at the time, in our view rightly, on grounds of both principle and practice.
- 1.4 As a matter of principle, a government regulator should not be in the position of deciding when a charity is using its resources 'effectively', as long as it is using those resources for its charitable purposes and with the transparency required under the ACNC Act. A fundamental part of being a charity is that charities are independent of government and it is the role of the governing body to determine the most effective application of its resources. Ultimately, it is for members of a charity and donors to hold the charity to account for those decisions, not the regulator.
- 1.5 Further, there is a practical problem in a government regulator determining what constitutes effectiveness. In making that determination, a governing body of a charity must reconcile many competing demands on what are often limited resources. In many cases, what is likely to be

Sydney office:

Suite 4A6, 410 Elizabeth Street
Surry Hills NSW 2010 Australia
Phone: (02) 9211 9333 • Fax: (02) 9211 9288
admin@refugeecouncil.org.au
Web: www.refugeecouncil.org.au • Twitter: @OzRefugeeCounc

Melbourne office:

Level 6, 20 Otter Street
Collingwood VIC 3066 Australia
Phone: (03) 9600 3302
admin@refugeecouncil.org.au
Incorporated in ACT • ABN 87 956 673 083

effective will be unknown, unpredictable and unquantifiable. There is no single neutral metric for determining effectiveness across the diverse range of charities.

Recommendation 1

There should be no change to the existing objects in the ACNC Act.

2 Advocacy

- 2.1 This last point is especially true in the case of resources spent on advocacy. While service delivery is often quantifiable and concrete, many of the problems facing refugees in Australia are caused by, or can only be remedied or mitigated by, policy and legislation. A charity may legitimately take the view that an effective way of achieving refugee protection would be to argue for a different policy or law. Yet it is difficult to identify the cause and effect of any advocacy, let alone to quantify its effectiveness.
- 2.2 This concern raises a broader issue in relation to the protection of advocacy under the ACNC Act. We endorse the concerns raised in the Community Council of Australia's submissions in this regard.
- 2.3 We note that the promotion of advocacy as a charitable purpose arises under the *Charities Act* and not the ACNC Act. Nonetheless, this review is taking place at a time in a climate of fear in relation to advocacy. The Bill currently before Parliament regulating the political expenditure of charities and the recent appointment of a new ACNC Commissioner who has publicly stated his views that charities should not be involved in advocacy come just before a federal election.
- 2.4 Even if the legislation does not pass and the new ACNC Commissioner continues to apply the established view of the ACNC on the advocacy of charities, there is a real 'chilling effect' already occurring in the sector. The Refugee Council of Australia has already heard from its members that they are fielding enquiries from supporters and donors as to the impact of these changes. We have also heard from members that there is a lack of clarity around the existing guidelines on permissible advocacy of charities.
- 2.5 In the light of these concerns, we would recommend that the Review reaffirm the view expressed in the Community Council of Australia's submission that the voices of charities in public policy should be encouraged and facilitated.

Recommendation 2

This Review should reaffirm the view that the voices of charities in public policy should be encouraged and facilitated.

3 Appointment of the ACNC Commissioner and ACNC Advisory Board

- 3.1 We also endorse the Community Council of Australia's view that there should be reform to the appointment of the ACNC Commissioner and the ACNC Advisory Board. The recent appointment of a new Commissioner as well as recent appointments to the Advisory Board have raised real anxieties among charities that the appointments are designed to change the nature and direction of the ACNC quite considerably from that originally intended.

Recommendation 3

The ACNC Commissioner should be appointed through a merit-based transparent process, such as by appearing before a Parliamentary Committee, and the ACNC Advisory Board should be appointed through an open, merit-based process with clearly defined selection criteria.

4 Thresholds for disclosure

4.1 Finally, we note that now is an opportune time to re-examine the appropriateness of the existing size thresholds that trigger disclosure obligations under the ACNC Act. Those thresholds were set five years ago to align with the *Corporations Act* provisions. Given the passage of time (and inflation), and the development of data on the size of charities, it may be appropriate to consider whether the thresholds should be increased. This would be consistent with the ACNC's object of reducing the regulatory burden on charities.

Recommendation 4

This Review should consider the appropriateness of the existing thresholds in the ACNC Act for disclosure, given the passage of time and the development of data on charity sizes.

February 2018