

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

28 February 2018

Dear Mr Crowe,

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

Social Ventures Australia (SVA) welcomes the opportunity to provide a submission to the Review of Australian Charities and Not-for-profits Commission (ACNC) legislation.

SVA works to improve the lives of people in need. We focus on keys to overcoming disadvantage in Australia, including great education, sustainable jobs, stable housing and appropriate health, disability and community services. By offering funding, investment, and advice we support partners across sectors to increase their social impact. We are an ACNC-registered charity with Deductible Gift Recipient status, and a public company limited by guarantee.

SVA strongly supports the current role and activities to date of the ACNC. The ACNC is recognised, both within the non-profit sector and internationally, as an effective and efficient regulator. In its first five years, the ACNC has materially improved the regulatory environment for charities, and shown a commitment to best practice regulation. Any changes that are made because of this review should preserve these strengths. That said, there are opportunities to improve the functioning of the regulatory framework, via a small number of targeted changes.

In general, SVA supports the policy positions of the Community Council of Australia (CCA) and Philanthropy Australia (PA) in relation to this Review. In this submission, we provide further input on several areas in which SVA has particular expertise or concerns.

Objects of the ACNC Act

We note that the submission to the Review from the ACNC (the ACNC Submission) calls for the addition of two new objects to the *Australian Charities and Not-for-profits Commission Act 2012* (the Act). We believe that the existing objects continue to provide an appropriate framing for the role and responsibilities of the ACNC, and should not be changed.

SVA does not believe the first proposed new object, “to promote the effective use of the resources of not-for-profit entities” is necessary or appropriate. Assessing the effective use of resources is not the role of a regulator, and to extend the ACNC’s role in this way would be poor public policy. The role of a regulator is to assess regulatory compliance, not effectiveness. Such an extension implies a series of interventions into areas that are properly the responsibilities of the boards, staff, beneficiaries and donors of charities.

SVA is a leading proponent of encouraging charities and others in the not-for-profit sector to consider their effectiveness in pursuing their charitable purpose, and to report on their progress to their funders, beneficiaries and communities. We provide consulting services to not-for-profits and

governments seeking to measure outcomes across a range of policy areas. As part of this work we have developed the *SVA Fundamentals for Impact* (<https://www.socialventures.com.au/sva-fundamentals-impact>), which is a framework that supports social sector organisations to consider their effectiveness across fifteen organisational characteristics. Based on three sources of knowledge - theoretical, empirical, and experiential, the *SVA Fundamentals for Impact* framework recognises that effectiveness for social services organisations cannot only consider internal capability. Effectiveness also requires organisations to be client-centred, and engaged with the ecosystem in which they operate.

From this work, we have learned that successful efforts to measure effectiveness require a nuanced consideration of the purpose and operating environment of an organisation, and an intensive process working with multiple stakeholders across the organisation. These are not matters which can properly be assessed by a national regulator overseeing a broad sector comprising organisations with vastly different charitable purposes and activities. Attempting to use one-size-fits-all measures is likely to result in additional compliance activity at best, and the redirection of the organisation away from worthwhile activity at worst.

For example, measures such as the percentage of donor funds spent on administration do not provide good indicators of an organisation's efficiency. Such measures are easily manipulated by organisations who are able to redefine necessary administrative activity as program activity. Furthermore, using such measures to benchmark charities can deter them from investing in their organisational capacity, thus reducing their effectiveness in achieving their charitable purpose in the long term.

In our experience with the *SVA Fundamentals for Impact*, consideration of an organisation's effectiveness is an involved process that includes:

- Obtaining an understanding of an organisation;
- Engaging numerous stakeholders across the breadth of an organisation, both individually and collectively;
- Potentially engaging external stakeholders;
- Considering results in the context of relative effectiveness i.e. acceptable effectiveness for a start-up organisation in one industry may be different to acceptable effectiveness for a mature organisation in another industry.

This experience demonstrates the complexities inherent in measuring effectiveness. Generic measures cannot meaningfully determine whether a charity is using its resources effectively.

We are further concerned that this proposed additional object of the Act would have a 'chilling effect' on the important advocacy work that charities do. Although advocacy can be a key tool for effective organisations to more fully pursue their charitable purpose, there is significant concern within the sector that a regulatory approach to considerations of effectiveness may call advocacy activity into question. This would ultimately result in poorer public policy and service delivery in Australia.

Under existing legislation, charities are permitted to advocate for public policy in the pursuit of their charitable purpose. SVA believes that this is an important role for charities. For example, SVA has provided governments with specific expertise via various advocacy channels in areas such as social impact investing, financing social and affordable housing, and efforts to improve the adoption of evidence-informed teaching practices. This information, along with advice from other organisations across the charity sector, has supported Australian governments to design and implement better public policy and service delivery systems.

We are concerned that changes to the ACNC’s regulatory framework, in concert with other activities such as the draft legislation on foreign donations currently being considered by Parliament, could restrict the willingness and ability of charities to support government with specialist knowledge and engage in public discourse for the public good. The existing legislative framework under the Charities Act, together with the ACNC guidance on advocacy by charities, already works to appropriately regulate these activities by charities. Regulatory oversight should not be extended, either explicitly or by introducing new objects in the Act.

SVA does not believe that the second proposed new object in the ACNC Submission, “to enhance the accountability of not-for-profit entities to donors, beneficiaries and the public”, is necessary. It is already implied in the first current object “*To maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector*”, and covered by Section 15.10 of the Act, which states:

In performing his or her functions and exercising his or her powers, the Commissioner must have regard to the following:

...

b. the need for transparency and accountability of the not-for-profit sector to the public (including donors, members and volunteers of registered entities) by ensuring the public has access to information about not-for-profit entities;

...

Rather than introduce new objects, SVA would prefer to see the Australian Government focus on providing adequate resourcing to fulfil the ACNC’s existing objects, particularly the second and third objects: “*To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector*” and “*To promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector*”. It is our understanding that to date the ACNC has only been resourced to fulfil the first existing object.

Reducing the regulatory burden on charities

SVA appreciates the work that has been done to date by the ACNC to reduce the regulatory burden on charities, and hopes to see it progress further in future.

In the longer term, we would be interested in seeing further harmonisation of regulations and processes for not-for-profits under the ACNC, as was originally envisaged by the Productivity Commission. This could include extending the ACNC’s remit to:

- regulate incorporated associations, via the referral of state and territory powers;
- determine Deductible Gift Recipient status; and
- co-ordinate a national approach to fundraising regulation issues.

In the short term, we support the following recommendations in the ACNC Submission:

- *Recommendation 23: Discretion to accept reports submitted to other regulators.* SVA is in an unusual position as both a registered charity and an Australian Financial Services licensee. In the latter capacity, SVA must submit its audited financial statements to ASIC and is subject to a comprehensive compliance regime which is designed to protect the users of its financial services. Accordingly, an amendment to the legislation that allowed the ACNC Commissioner to permit a charity to submit a report already made to another regulator instead of an Annual Information Statement would reduce the regulatory burden for organisations in this or similar positions, without substantively reducing oversight.

- *Recommendations 16 to 19, and 25 re interaction between the ACNC Act and the Corporations Act.* These changes would clarify the operation (and intersection) of the different regulatory regimes for charities that are also companies limited by guarantee.

Maintaining public trust and confidence in charities

SVA believes that public trust and confidence in charities would be improved if the ACNC was able to communicate its reasons for decisions about the registration of particular charities, or provide information about the existence and outcomes of investigations. We support the Act being amended in accordance with *Recommendations 10, 11 and 12* of the ACNC Submission.

Yours sincerely

Patrick Flynn
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Social Ventures Australia