

Submission to Treasury Review of Australian Charities and Not-for-profits Commission Act 2012 and Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012.

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

Yes, but they can be improved to meet current trends and expectations.

I support retention of the three objects set out in s 15-5 of the ACNC Act and as well the inclusion of the two additional objects proposed in Recommendation 2 of the ACNC submission to the Review. I consider these two new objects can help to lift the performance of the sector towards standards of effectiveness and accountability expected by the Australian community.

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

Yes. The resources of the ACNC during its first five years were used predominantly to identify its regulatory catchment, to educate charities and not-for-profits about their obligations under the Act, to streamline and reduce their reporting obligations, to articulate community expectations of them, and to develop knowledge of the sector and a greater sense of common purpose among its member organisations. The ACNC has been successful in all these endeavours.

I consider that the next phase of its operation should give greater emphasis to expanding and improving public knowledge and discernment about the sector, and to an increased emphasis on compliance and enforcement. I support all the ACNC recommendations that will refine and strengthen its regulatory framework, particularly nos. 3, 4, 8, and 9.

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

Yes. The objects of the ACNC Act state they apply to the "Australian not-for-profit sector." However Section 45.10; s 60.60; s 60.95; and s 205.35 exempt a group of NFPs, "basic religious charities", from key aspects of its regulatory framework. Under current ACNC legislation basic religious charities are exempt from reporting and governance standards applied to lay charities and other NFPs. I believe these exemptions run counter to contemporary public expectations, undermine the accountability of religious charities, contribute to the erosion public confidence in them and diminish the probity and principles of the ACNC legislation itself.

These are not new problems, in the past very radical reforms were used to deal with them. In the sixteenth century, Henry VIII used the *Acts of Supremacy* of 1536 and 1539 to address excessive monastic wealth, vice and impropriety, disbanding nearly a thousand religious institutions, disposing of their assets, appropriating their incomes and making alternative arrangements for their functions. Numerous governments in Scandinavia and Europe followed suit. In the eighteenth century, during the French Revolution, the State advised by Talleyrand, then Catholic Bishop of Autun, appropriated church property, passed the *Civil Constitution of the Clergy* nationalising the Catholic Church, and instituted a secular education system.

In Australia, attempts by our early governors Brisbane (1821-1825) and Bourke (1831-1837) to establish a public, secular education system failed, stymied by an outcry from the colony's Anglican and Catholic churches to the Colonial Office and its Ministers in London.

The decision in 2013 by the State of Victoria to apply a Fire Services Property Levy to all property holders including churches, is widely applauded as an equitable though modest advance on the myriad of exemptions from taxes and duties that allow established churches to accumulate immense financial and social capital, and the mistaken view they may operate above and outside the law. One could quote many examples drawn from evidence to the Royal Commission into Child Abuse, or refer to the million dollars a Sydney diocese directed to a campaign against marriage equality.

While religious membership in Australia is rapidly diminishing, public funding and concessions to established religions continue to grow disproportionately. Established religions maintain their power and maximise their benefits through lobbying Government and parliaments, and by exerting influence through members of their faiths within the bureaucracy. These faithful not required to declare a conflict of interest when they make administrative, funding or regulatory decisions that favour their own church. Much of the public funding and concessions provided to religious institutions are used for their commercial enterprises and in my view should be taxed accordingly.

At present established religious organisations are attempting to re-establish public confidence in their integrity and their honest participation in civil society. They cannot halt the current disintegration of their reputations on their own. I believe governments could assist by starting on the long road to reforming their own practice.

I recommend the Review remove the exemptions the current ACNC Act extends to basic religious charities, and sets a firm timetable for them to comply with the same reporting and governance requirements as other charities and NFPs regulated by the ACNC.

I am conscious as well of a growing number of entities identifying themselves as basic religious charities that are appearing in country towns and in suburbs around the country. Glancing at their websites, many appear unconcerned with any faith, religion or its advancement. Many are engaged primarily in commercial activities, managing government funded programs. A question for the ACNC is, to what extent, if any, is their self-identification as a basic religious charity a vehicle to game the Australian tax system.

I endorse and applaud ACNC Recommendations 37 and 38 regarding potential conflicts of interest within the management of NFPs.

4. **What activities or behaviours by charities and not-for-profits have the greatest ability to erode public trust and confidence in the sector?**
 - a. Evidence, rumour or suspicion that particular entities or their senior personnel have broken or are breaking the law or acting dishonestly or unethically. Most recently there has been a series of revelations of sexual exploitation and misconduct by the staff of charities who raise money in Australia, including Oxfam, Médecins Sans Frontières, Save the Children, World Vision and Christian Aid. Others, including Care International have refused to give details of such behaviour within their charities. The International Red Cross has described the problem as "sector wide." Reuters (February 13, 2018) reported industry experts warning that *backlash against Oxfam could drive charities to cover up cases of sex abuse for fear of losing support and funding from the public, donors and governments.*

These revelations raise the question of the extent of the ACNC's regulatory authority over overseas charities operating within Australia, and how its legislation might be strengthened in order to maintain, protect and enhance public trust in the not-for-profit sector in Australia. I support ACNC recommendations 7 and 13 to the Review panel that could assist in its work in this area, but consider it is limited in its ability to deal with corrupt conduct of this type.

b. Charities that break an implicit contract with their donors, by raising money for a particular cause and expending funds on something to benefit its own interests. A very public example of this was disclosed seven months after the 2002 Bali bombing by *The Age*, that only \$4m of the \$14.3m donated to the Australian Red Cross for victims of the bombing had been distributed to victims. *The Age* also revealed a Red Cross claim it had spent public donations on three new ambulances for Bali to be a sham. It had held a media event in Bali to showcase the arrival of an ambulance, then promptly reclaimed and removed it after television cameras departed.

c. The fashion for charities to contract sub-agents to send groups of enthusiastic young people, often tourists or backpackers, to assail passer-byes in shopping malls, outside railway or bus stations, to collect money, sign people up to donate regularly to their cause or to sign a petition (providing their phone number and email address) to support a political campaign aligned to the charity's objectives. I find these strategies offensive and demeaning to the particular charity involved. Using agents in this way can also open charities to unanticipated risks. As a rule sub-agents do not screen their casual employees and in some instances have attracted paedophiles to raise funds for charities that work for children.

d. On television at prime time, one often sees a series of slick, expensively produced emotional advertisements designed to arouse sympathy, guilt and the desire to pay money immediately. Other than hollows.org, the advertisers are mainly charities managed and operated overseas. Their advertisements give little or no factual information, make sweeping generalisations and arouse as much suspicion about their ethics as they do sympathy.

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?

No. The ACNC proposes several amendments, including nos. 5, 6, 10, 16, 21 that should improve transparency from a regulatory perspective, but I consider it unlikely they can address the capacity of, in particular, large established charities to operate in secret and do as they choose with funds received. As described above in section 4b, charities can use general statements of goodwill and intent to attract funds, then expend the money received to bolster their own internal priorities, and put their own spin on the expenditure, however conflicted. The ACNC is currently ill equipped to investigate and prosecute corrupt behaviour of this kind.

The most effective investigations are those undertaken by the media, but public access to information about charities on the ACNC website and about the sector as a whole is still very limited. You can only search for one single charity at a time, after entering its name and ABN.

I recommend the ACNC improve access to information on its website, enabling the public to view sets of data about Australian charities and NFPs: to view them by sector; by income; by the source of their income (eg public or private, commercial activities, etc); by their activity in Australia, by State, Territory and region; with the capacity to view the top ten by income, by expenditure on charity, administration and marketing and other useful criteria to assist scrutiny by the public and educate them about the scope, scale and diversity of the sector.

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?

Yes, but more can be done. ACNC Annual Reports and its website give useful detail about its compliance initiatives, they are a good start. I support ACNC recommendations to the Review that should improve compliance, such as nos.11, 12, 13, 24, 37 and 38, but as discussed above their authority is weakened by exemptions and by the lack of knowledge among the general public about charities, NFPs and the role and responsibilities of the ACNC.

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?

No, not under the present ACNC legislation, I believe the Act should be revised to give the Commissioner additional enforcement powers, in line with other Commonwealth regulators, including the power to prosecute serious and recalcitrant offenders. Yes, greater transparency is required.

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

Yes it has, but more needs to be done to engage State, Territory and local government to accept the ACNC Charity Passport, relevant information available on the ACNC website and to modify their reporting requirements accordingly. I support the ACNC's recommendation 20 regarding Commonwealth promotion of the Charity Passport.

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 and no. The efforts of the ACNC in this period have certainly given charities a greater awareness and sensitivity to public oversight and community expectations. More still needs to be done to deter and deal with misconduct, conflict of interest, corrupt conduct and the capacity for charities and NFPs to game the Australian tax system.

P.S. Kindly do not include my address on your website

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