

28 February 2018

cohealth
365 Hoddle Street
Collingwood, Vic 3066

Individuals and Indirect Tax Division
The Treasury
Langton Crescent
Parkes, ACT 2600

By email: ACNCReview@treasury.gov.au

Dear Review Panel,

Re: Review of Australian Charities and Not-for-profit Commission (ACNC) legislation

Thank you for the opportunity to participate in the Review of Australian Charities and Not-for-profits Commission (ACNC) legislation.

cohealth is one of Australia's largest not-for-profit community health services, operating across 14 local government areas in Victoria. Our mission is to improve health and wellbeing for all, and to tackle inequality and inequity in partnership with people and their communities.

cohealth provides integrated medical, dental, allied health, mental health and community support services, and delivers programs to promote community health and wellbeing. Our service delivery model prioritises people who experience social disadvantage and are consequently marginalised from many mainstream health and other services – such as people who are experiencing homelessness or mental illness, Aboriginal and Torres Strait Islanders, refugees and asylum seekers, people who use alcohol and other drugs, recently released prisoners and LGBTIQ communities.

As a large not-for-profit organisation cohealth is keenly aware of the importance of ensuring that the community has confidence in the charitable sector. As such, we value the contribution the Australian Charities and Not-for-profit Commission (ACNC) has made as an independent, effective and responsive regulator to the charitable sector. The ACNC has developed a sound track record of meeting its purposes, as per the objects of the ACNC Act:

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



cohealth supports these objects, and believes that they provide the necessary direction to the ACNC to enable it to continue to provide a valuable service to the charitable sector and the community at large.

We note however that in their submission to this review the ACNC proposes two new, additional objects to the ACNC Act, one of them being “to promote the effective use of the resources of not-for-profit entities”.

While cohealth fully supports the effective use of resources, we have serious concerns about this proposed object being included in the Act. It is the role of a charity's governing body to oversee the use of resources to achieve their mission; and the communities they serve, and other stakeholders, will determine if this is done effectively. It is not the role of the ACNC, as regulator, to define and assess effectiveness.

While the ACNC argues that this object is similar to one in the UK Charities Act 2011, the UK act includes a specific provision (section 20[2]) preventing the regulator from interfering in the day-to-day operation of a charity. No such protection accompanies the ACNC's proposed change to the ACNC Act.

cohealth shares the concerns of others in the charitable sector that these proposed objects amount to “regulatory over-reach at its worst” that will “limit rather than enhance the role of charities in our communities”.¹ In doing so, this object will run counter to the existing objects of the Act. We do not support changing the objects of the ACNC Act.

cohealth is also deeply concerned about the way advocacy will be framed, and potentially limited, within this proposed new object, particularly as the newly appointed ACNC Commissioner Dr Gary Johns has previously argued that advocacy should not be considered a purpose of charities.

A key role of the ACNC should be to support and sustain the various functions of charities – including the critical role of advocacy.

This questioning of the legitimacy of advocacy has been repeated in a number of ongoing public debates about the appropriateness of advocacy as a valid charitable purpose. cohealth is profoundly concerned about these debates. Public comment and recent reviews, such as the Treasury review of *Tax Deductible Gift Recipient Reform Opportunities* and the *Electoral Legislation Amendment (Electoral Funding Disclosure Reform) Bill 2017* (to ban or limit the use of donations from overseas for advocacy in Australia)², attempt to question the legitimate role advocacy plays in civil society, even when this advocacy is directly related to

¹ <https://probonoaustralia.com.au/news/2018/01/acncs-review-submission-met-concern-charity-sector/>

²

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=1117



organisational mission. This is despite the legitimate role of advocacy having been confirmed by the High Court.³

Many of the problems society faces have their roots in the systems, structures, policies and laws within which we all live. Advocacy enables organisations that identify the negative repercussions of these on our economic, social, cultural and environmental circumstances to take action on them. Advocacy assists the voices of those with less access to power and decision making to be heard. In this way it is an integral part of a mature democracy.

Furthermore, cohealth believes that this regular scrutiny of a lawful activity – namely advocacy – has a secondary effect of casting doubt over the legitimacy of that activity, resulting in a potentially chilling effect on advocacy activities. Recent research has illustrated the constraints charitable organisations impose on themselves due to their concern about possible negative repercussions.⁴ This is highly undesirable.

Despite the minority views trying to limit the advocacy activities of charities, there is widespread community support for charities' advocacy function. Indeed, a survey commissioned by the Fred Hollows Foundation has found that less than one in five Australians believed charities took one-sided, political positions with their advocacy.⁵ Support for charities to advocate on social issues crossed the political spectrum.

In this light cohealth firmly believes it is critical that no changes are made to the ACNC objects or frameworks that would have the effect of curtailing the right of charities to advocate in line with their organisational mission, and on behalf of their constituents and clients.

As an organisation whose purpose is to improve health and wellbeing, we know that advocacy is essential to delivering on our mission. While we provide a broad range of health and medical services to the communities we operate in, as described above, we also recognise that health is affected by many factors including education, housing, employment, and social inclusion. We are committed to addressing these underlying causes of health inequality - the social determinants of health. To this end, we undertake an active program of advocacy activities designed to shift some of these underlying systemic drivers of poor health outcomes.

Our advocacy activities are as critical to achieving our purpose as are our service provision, health promotion, and community education activities.

³ Aid/Watch ruling: <http://www.abc.net.au/news/2010-12-06/charities-can-be-political/41852>

⁴ <https://civilvoices.com.au/>

⁵ https://probonoaustralia.com.au/news/2018/02/one-five-australians-favour-proposed-limits-charitable-advocacy/?utm_source=Pro+Bono+Australia+-+email+updates&utm_campaign=9d75817022-EMAIL_CAMPAIGN_2017_08_18&utm_medium=email&utm_term=0_5ee68172fb-9d75817022-147735377&mc_cid=9d75817022&mc_eid=83ca50ca54



From our own experience, and thinking of the experience of other organisations who are involved in similar purposeful work we cannot emphasise strongly enough the critical importance of advocacy as a legitimate form of charitable activity. Any proposals that restrict or limit advocacy by charities will be harmful to the Australian community, and to Australian democracy.

Yours sincerely



Lyn Morgain

Chief Executive

