



AUSTRALIAN CONSERVATION FOUNDATION

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Submission on Review of Australian Charities and Not-for-profits Commission legislation

Thank you for the opportunity to provide a submission in relation to this review of Australian Charities and Not-for-profits Commission (ACNC) legislation.

The Australian Conservation Foundation (ACF) is Australia's oldest national environmental organisation, founded in the mid-1960s with the support of eminent Australians, the Australian community and the Australian government. Since that time, ACF has committed itself to promoting conservation causes throughout Australia and to the promotion of sustainable living, and has been honoured and privileged to be supported in its activities by eminent persons such as HRH Prince Philip, Malcolm Fraser, Gough Whitlam and Sir Garfield Barwick.

ACF has been, since its creation some 50 years ago, the leading national advocate for the environment. ACF protects, restores and sustains Australia's environment through research, consultation, education, partnerships and advocacy. ACF is strictly non-partisan and we are proud of our political independence. Over the past 50 years our independent advocacy has helped drive extraordinary commitments from governments of all political persuasions as well as from business and communities.

ACF is a charity registered with the Australian Charities and Not-for-profits Commission (ACNC) and has been a deductible gift recipient (DGR) since 1966. ACF is governed by a Board and guided by a group of democratically elected Councillors. ACF is supported by approximately 12,000 members, 54,000 donors and nearly 500,000 active supporters.

General comments on the review

The first five years of the ACNC have been remarkably successful. The review should note these achievements. This is especially notable given that the initial lack of support from the Federal government and the barriers created by government policy over that time has presented challenges to the ability of the ACNC to get on and pursue its objectives. Despite this, the ACNC has achieved positive steps towards red tape reductions, increased transparency and enhancing trust in the community. The national charities register has also provided invaluable information to millions of Australians, including potential donors.

For many decades there was no consistent regulation of charities in Australia other than the one-off requirement for those seeking any form of taxation concession to register with the Australian Taxation



Office (ATO). For many organisations, the process of working with the Australian Taxation Office to gain charitable status and as a regulator was a negative experience.

The establishment of the ACNC is the first time the NFP sector has had an independent regulator dedicated to providing a one stop shop approach to charity regulation and enhancing the capacity of the sector. Significant time and effort and careful consultation went into the establishment of the ACNC and the objectives referred to in the ACNC Act were formed through extensive consultation with the not-for-profit sector. Given the numerous barriers and uncertainty about the future of the ACNC over its first five years, ACF submits that the Federal Government should exercise caution in any moves to change the role of the ACNC or its enabling legislation.

Accordingly, ACF only proposes to make brief comment on the questions set out in the Terms of Reference.

Comments on Questions in Terms of Reference

Question 1: Are the objects of the ACNC Act still contemporary?

ACF believes the objects of the ACNC Act remain contemporary, however, the ACNC has had mixed results in its pursuit of these objects in its first five years.

With regard to object 3: Reduction of Regulatory Obligations, while the ACNC has had some success in achieving a reduction in reporting requirements, there has been little progress in reducing duplicative fundraising licensing and permit paperwork.

The ACNC's own research has identified fundraising regulation as the most onerous area for charities, and over the past five years both the number of fundraising regulators and the level and inconsistency of fundraising regulation has increased. There is scope to expand the ACNC's Charity Passport program to make it a one-stop-shop for licensing and permits to fundraise across all jurisdictions.

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

It is ACF's view that it is not gaps in the ACNC regulatory framework that inhibit the objects of the Act from being met but instead inconsistency across the regulatory landscape, especially at the State and Territory level. The issue is a failure in harmonisation of regulation across all levels of government and the proliferation of regulation.

There is a significant opportunity for the ACNC to play a leadership role in streamlining the processes for obtaining fundraising approvals for national campaigns by leveraging the existing "report once, use often" platform that the ACNC has developed through the Charity Passport program. All governments should be urged to commit to a harmonisation effort via the Charity Passport platform.



Question 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?

Yes. With the information NFPs provide via the ACNC, plus information provided by charities themselves directly to supporters, donors are very capable of making assessments about the use of resources, its efficiency, effectiveness and outcomes achieved. It is not the role of the regulator to oversee this.

Question 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.

We note the seemingly disproportionate focus on the ‘misconduct’ of charities in the Terms of Reference (specifically in questions 6, 7 and 9, and insinuated in questions 4 and 5), without any evidence being provided justifying this focus.

By contrast, stakeholders are not specifically asked how the ACNC has been successful in supporting and sustaining a robust, vibrant, independent and innovative Australian not-for-profit sector. This is not mentioned at all in the Terms of Reference.

ACF believes this review would benefit from an impartial approach with balanced focus on the three existing purposes of the ACNC.

Question 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?

The current powers of the ACNC are adequate.

In the ACNC’s Submission, the ACNC made a recommendation that two new objects be added to the ACNC Act: (1) “to promote the effective use of the resources of not-for-profit entities” and (2) “to enhance the accountability of not-for-profit entities to donors, beneficiaries and the public”.

ACF is concerned with the ACNC’s recommendation to consider these two new objects.

What is effective use of resources by an NFP is for its board, funders, members and donors to decide. It is not the role of the regulator to oversee this. Further, the ACNC’s Submission does not set out any justification for such additional powers. The ACNC has not identified in its submission what it lacks currently or how it is being held back by the absence of such powers. There is no need for an additional object about accountability.

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

While there has been some progress in reducing duplicative reporting, by far the greatest source of red tape for charities relates to permits to fundraise which must be sourced State by State, campaign



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by campaign. There has been little progress towards reducing these administrative costs. A February 2016 Report by Deloitte Access Economics commissioned by the ACNC concluded: “Overwhelmingly, fundraising is the source of the greatest amount of regulatory burden for charitable organisations. Fundraising legislation differs significantly between jurisdictions which very quickly escalates the administrative costs a charity incurs.”

For more information:

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*The Australian Conservation Foundation is Australia's national environment organisation. We stand up, speak out
and act for a world where reefs, rivers, forests and wildlife thrive.*

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