



## Review of Australian Charities and Not-for-profits Commission (ACNC) Legislation

Submission by Association Executive Services a Division of Nick Koerbin & Associates Pty Ltd

Association Executive Services (AES) is a consulting and training organisation providing a broad range of services to the not for profit sector. AES is also provider of association and not for profit secretariat services and currently are managing over seven associations and not for profit organisations. Over the last 6 years AES has provided consulting and training services to over 500 associations and other not for profit organisation, including community organisations and sporting bodies.

We are often engaged to deliver governance and strategic planning workshops to NFP Boards to assist volunteer board members to manage change and the delivering of best practice services to their members or the general community.

We have perused the Terms of Reference which are very comprehensive. With our submission we would like to share with the review committee some of our observations and client feedback we received about the ACNC from the sector of not for profit community we are directly involved with on a daily basis, which we believe are a representative of the larger not for profit sector.

Our response is based on question relating to question 3 in the terms of reference documentation “Should the regulatory framework be extended beyond just registered charities to cover other classes of not for profits?” We believe the existing legislative framework and approach to registering charities has confused the not for profit sector and should be totally reviewed.

### **Confusion with the concept of Not for Profit and Registered Charities**

From our discussions with our clients, there is a definite confusion amongst the membership based not for profits regarding the concept or definition of not for profit and charity. The ACNC and other community bodies often refer to the not for profit sector in their rhetoric but those references of the not for profit sector seem to have a focus on charities. It is important to be very clear when referring to the not for profit sector as being organisations reliant on fundraising and donations to be financially sustainable.

A number of our client organisations that are not for profits but are predominantly associations seem to be unclear if they are a charity or if they should be registered as a charity with the ACNC as their main purpose is predominately for their members but are accepted by the ACNC

One of our clients a professional (predominantly academics) association with 900 members received legal advice that they should register as a charity with the ACNC. Yet 90% of their income was from member subscriptions, conference and royalties from publications. A small percentage of their activities

is involved in agricultural research. They do not raise funds through donations or received any form of philanthropic funding.

From legal advice they received, they were informed they would qualify as a charity because of their involvement in agricultural research and this would be a good idea as most not for profits would be eventually regulated by the ACNC. The volunteer board followed the legal advice and were successful in being registered as a charity with the ACNC. From our perspective there is no reason why they should have registered as a charity. Most of their activities were supporting the interests of their members and they had no intention of seeking DGR status.

They now need to comply with the reporting requirements of the ACNC which in our opinion is unnecessary, time consuming and no real benefit to the organisation. Each year they have an audit which is a requirement through their constitution and is very beneficial as the auditor provides feedback in relation to any risk issues.

The unfortunate outcome was the overall cost to be registered with the ACNC. It amounted to over \$10,000 of which most of expense was the legal advice and process of application to join the ACNC

We suggest the ACNC should be clear in defining the segment of the not for profit sector they intend to regulate which from our perspective should be only those charities and organisations that hold DGR status.

We also suggest the ACNC should also define the benefits for a not for profit being registered with the ACNC other than for regulatory purposes.

We submit for many not for profits who are not definite charities being registered with the ACNC is another layer of red tape and cost which is unnecessary and not adding value to outcomes these organisations are seeking to achieve.

### **Revoking of Registration as a Charity**

We also wanted to raise our observation of the difficult process for those registered charities who wish to self-revoke their registration for valid reasons.

From our experience many organisations that have been registered with the ACNC and in real terms are not charities and find no benefit belonging to be registered. Express how problematic it is when they want to revoke their registration.

One of our clients, a not for profit membership association in the food science industry with a membership of 400 members and a volunteer board and no staff was registered with the ACNC in 2014. and was required to lodge compliance documentation with the ACNC and other regulatory bodies. They had very limited resources and their major forms of income is from sponsorship, subscriptions and conference income.

Due to the lack of resources they found it very difficult to comply with the requirements of the ACNC. They were receiving non-compliance notices from the ACNC and after cordial discussions with the ACNC about their position, the board decided there was no value for being registered with the ACNC as they already complied with ASIC and the ATO. They wanted to “resign” as a registered charity but were told they would have to go through a revoking process. They advised the ACNC they would like to revoke their registration in a voluntary way and not suffer any retribution. The President contacted the ACNC requesting the association would like to revoke the registration. He indicated to us it was an extremely difficult and onerous process, but he thought they were able to revoke their registration without any penalty.

However, despite assurances from the ACNC there was a public notice that the registration of this association had been revoked by the ACNC along with many other not for profit organisations. The website was headed “XXX not for profits have their registration revoked” It was very embarrassing to the volunteer board and caused some concern amongst the membership as it placed doubts on their standard of governance although the board were acting in the interests of the members.

We submit that a registered charity that wishes to revoke their registration voluntarily with the ACNC should do so without prejudice. The naming and shaming of the ACNC of those organisations should be the last resort after proper consultation and mediation.

Nick Koerbin

Executive Director

Association Executive Services