



Australian  
Not For Profit  
Accountants Network Inc.  
ABN: 58 728 133 062

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

22 February, 2018

Dear Mr Crowe

**Ref: Review of the ACNC**

We write in response to the request for public submissions in respect to the review of the ACNC on behalf of Australian Not For Profits Network Inc. We made significant representations in respect to the initial ACNC draft Bill and we have been actively involved in the Charities Sector and in the development of the ACNC since its implementation. Both the writer and four of our other members are members of the ACNC Professional User Advisory Group and have been since the establishment of that group.

As a general comment we state that in most respects the ACNC Act is an effective Act which substantially covers the needs of the Charity Sector and its regulatory body. The most significant frustrating issue has been the slowness in completing ACNC forms through the Internet process because they have been locked into using ATO software which is not designed for the ACNC purposes. However we understand that additional funding has recently been granted to enable ACNC to have specific software prepared which should alleviate that problem. The other operating problem has been the lack of adequate resources to attend promptly to requests for support from the Sector. In the initial stages of the ACNC operation, this support was prompt but now, we understand because of the heavy usage of this support, the process has been slowed down considerably. From our experience this substantially relates to the registration area where the heaviest workload would exist. We need to state along with that comment that we value the competence and courtesy of the registration staff

With regard to the financial reporting and auditing obligations established under the Act, we make the following comments:

1. The three tiers established under the Act were, we understand, set up to provide consistency with the provisions of the Corporations Act. This has never been a beneficial provision for the Charity Sector. The requirement for all charities to report in accordance with the provisions of whether they are small, medium or large makes no allowance for inflationary trends. Our expectation is that many small “charities” will soon move into the “medium” category and be faced with more reporting and audit obligations – stretching their capacity to comply with their regulatory obligations unnecessarily. Similarly, “medium” charities will gradually move into the “large” category. There needs to be a provision to allow for bracket creep.
2. The only recognised endorsement for an auditor is currently that of a Registered Company Auditor (RCA). Our member organisations recognise that a high quality audit is integral to the accuracy and reliability of the financial information ultimately made available to the public. However, in the absence of an alternative auditor registration or ACNC discretion, some of our member firms who have significant experience in the audit of charities, will be excluded from the audit of charities following the end of the transitional provisions. Given that there appears to be a general lack of awareness of the Not-For-Profit Sector accounting and auditing requirements within the wider accounting professions, this does not appear to be a helpful outcome.
3. The ACNC Annual Report for 2017 identified that 37% of all registered charities have a revenue below \$50,000 annually. This very small category deserves, in our view, some special consideration. We propose that they be freed from the obligations of the Governance Standards on a similar basis to a Basic Religious Charity.
4. Section 205-35(2) provides that an entity that is an incorporated entity under Federal or State laws cannot be a Basic Religious Charity. No exclusion is made for an entity that operates as a trust, or is operating under a private act of a parliament, or as a corporation sole. As a consequence some of the largest religious institutions in our country are not subject to the governance standards and are not obligated to lodge any financial information. We consider these exclusions are not beneficial to the best interest of the community.
5. We consider the Australian public would be well served by expanding the role of ACNC Act to include all not-for-profit entities, as was the original intention after this initial period. This would encourage good governance and accountability.
6. There appears to be no protection under State or Federal laws to ensure accountability for money solicited to be used for its nominated purpose, other than Section 13 of the WA Charitable Collections Act 1946. There may well be scope for making such a provision in the review.

We now comment briefly on the questions posed in the request for submissions: -

1. **Are the objects of the ACNC Act still contemporary?** Yes. The Charity Sector has welcomed the introduction of the ACNC and strongly supports its activities. There is strong support for its role as a regulator even when a particular charity experiences some frustrations with some of the obligations. We have a useful piece of legislation and a very effective regulatory body.
2. **Are there gaps in the current regulatory framework that prevent the Objects of the Act being met?** No.
3. **Should the regulatory framework be extended beyond just registered charities to cover other classes of Not for profits?** Yes. The original intention of the legislation was to gradually introduce other Not for profit categories so that there would be standard regulatory arrangements across the whole of community organisations that are operating on a Not for profit basis. Now that ACNC has come very effectively through the initial transition stage, the intent of extending to other Not for profit entities should be introduced. We note that Parents and Citizens Associations nationally have initially registered with ACNC and have in quite recent times been withdrawing from registration. The reason appears to be inexperienced treasurers changing office on a regular basis. However they should come within the ambit of the ACNC, and the community is the poorer for not having some reasonable regulatory control over such organisations. A similar comment relates to volunteer fire brigades. Again many have withdrawn their ACNC registration voluntarily. They have, at least in Western Australia, virtually no governmental support in respect to reporting and governance matters because, it appears, of fragmented obligations split between various regulators. They would be better assisted by coming under the ACNC umbrella. The community and social organisations currently operate in a very haphazard manner with no regulatory control in place. While the majority of them operate in a responsible manner there are many evidences of inadequate financial recording and inadequate governance in that sector.
4. **What activities or behaviours by charities or Not for profits have the greatest ability to erode public trust and confidence in the Sector?** Poor governance – primarily due to lack of experience in managing an organisation, would be the primary concern. Inadequate financial reporting to the members of the organisation would be the next item. There are far too few persons with adequate bookkeeping understanding to prepare financial reports for small charities. Medium and large charities most commonly have reasonable financial reporting arrangements in place but governance continues to be an issue.

- 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?** In Western Australia where a charity is raising money from the public they are required to have a licence under the Charitable Collections Act. This is irrespective of size so many very small charities have an audit obligation and a reporting obligation to the WA Charitable Collections Committee. This is in addition to their obligations with ACNC. This provides public accountability access from an external regulator to ACNC. The question posed by your office refers to funds raised from the general public through donations or from grants by government or other organisations. However there are many small organisations that are internally funded from fundraising activities by the organisation itself and also donations from the members of that organisation solely, such as religious institutions. They have their own internal accountability arrangements which are normally quite adequate for their needs. There are therefore other accountability arrangements in place which provide good transparency to those who seek access to it. Subject to that qualification our answer is ‘Yes’. There has been an enormous step forward in public accountability with the advent of the ACNC.
- 6. Have the risks of misconduct by charities and Not for profits or those that work with them been adequately addressed by the ACNC legislation and the establishment of the ACNC?** Yes. The investigative role of ACNC is, in our view, operating effectively in accordance with its charter. There is however restrictions imposed because of State legislation where the Commonwealth has no jurisdiction.
- 7. Are the powers of the ACNC Commissioner the right powers to address the risk of misconduct?** Yes. There is a healthy balance here. The access to the ACNC portal by the whole community is a significant benefit. There should be no change to widen those powers or to change the reporting obligation.
- 8. Has the ACNC legislation been successful in reducing any duplication of reporting burden on charities? What opportunities exist to further reduce regulatory burden.** The simple answer is “not yet”. There have been some significant steps forward with ACNC working actively with State regulatory bodies to achieve working co-operation. ACT, South Australia and Tasmania have already introduced complimentary legislation to establish a one-stop reporting structure. It is anticipated the other States will gradually bring in the required legislation to achieve such a purpose. Very recent moves to bring within the auspices of ACNC of the Registry of Cultural Organisations and similar organisations are a very welcome step. Further work needs to be done with the Federal Department of Education and also with ORIC.

9. **Has the ACNC legislation and the efforts of the ACNC over the first five years struck the right balance between supporting charities and dealing with misconduct?** Yes. ACNC have struck the right balance between the provision of initial gentle support and also being an effective regulator. It has taken some time during this transition period for them to gather adequate information from some charities that are “boundary pushers” or just plain negligent, however many charities have already been deregistered for non-compliance or for more serious reasons. The ACNC involvement in investigating misconduct is increasing and is, in fact, a significant usage of their current resources.

We trust these comments be of some assistance in the review process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lance Staer', with a stylized flourish at the end.

**Lance Staer**  
**Chair**