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### **Submission to the Review of Australian Charities and Not-for-Profits Commission (ACNC) Legislation**

Camp Quality Ltd (Camp Quality) welcomes the opportunity to provide a submission to the Australian Government into the *Australian Charities and Not-for-Profits Commission Act 2012* (the ACNC Legislation). This submission focuses on the impact of the ACNC on the not-for-profit sector generally and on Camp Quality specifically, the performance of the ACNC to date in terms of meeting its Objectives and addresses questions raised in the Terms of Reference.

#### **A. Camp Quality's General Submission**

In providing this submission it is Camp Quality's overarching view that the ACNC legislation should not be amended without wide sector and community consultation on any proposed amendments.

We understand that the ACNC itself has recommended the addition of a further two objectives to the ACNC Act (Proposed New Objectives):

- To promote the effective use of the resources of not-for-profit entities; and
- To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public.

We note that the ACNC Advisory Board, appointed by the Minister to support and advise the ACNC Commissioner, has opposed this recommendation in a separate submission.

Camp Quality also opposes the addition of the Proposed New Objectives and amendment of the current legislation generally, for the following reasons:

- the legislation, in its current form, is sufficiently broad giving the ACNC power to pursue the Proposed New Objectives without specifically including them in the legislation;
- the addition of the Proposed New Objectives:
  - negates the current balance in the legislation between enhancing public trust and supporting charities; and

*laughter is the best medicine.*

- o would impose a further layer of regulation on charities and not-for-profit organisations in direct contravention of Object 3 in the current legislation aiming to reduce regulation in the sector, before it has been fully achieved;
- the ACNC already has clearly enunciated Objects and the ACNC Commissioner has sufficient specific powers to improve and grow its regulatory and administrative role. These Objects and the Commissioners powers as outlined in the legislation, have and continue to:
  - o ensure donor expectations are met;
  - o expand and improve the way the ACNC supports charities and not-for-profit organisations; and
  - o ensure high ethical standards and effective use of resources by charities and not-for-profit organisations.
- An unreasonable and unwieldy amount of regulation on charities and not-for-profit organisations still exists in the most populous states and territories:
  - o These states and territories are already enabled to refer regulatory powers to the ACNC without amendment to the Act, although this has not yet occurred in the case of NSW, Victoria, Western Australia and Queensland;
  - o Such referral would reduce red tape and increase transparency for donors, while reducing administrative costs for charities and not-for-profit organisations.

Further work needs to be done by the ACNC to ensure that this occurs and to meet its current Objects, rather than changing the focus of the legislation to further regulate charities and not-for profit organisations; and

- it is a question of budget appropriation rather than legislative enablement that impedes the work of the ACNC in supporting and sustaining charities and not-for-profit organisations.

## B. Specific responses to the Terms of reference

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

#### a. Object 1:

**To maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector;**

Camp Quality is of the view that the ACNC has made significant steps to achieve this aim although the work is ongoing. The ability of the ACNC to continue to meet this Object is enabled by the broadly drafted terms of the Object.

To date the Object has been advanced through the establishment of a publicly accessible database of charities and not-for-profit organisations and publication of annual financial reports through that database.

Within the scope of Object 1 as it is currently drafted, further measures can be taken to continue and improve the ACNC's best practice towards achieving this Object on an on-going basis:

- Upon the imposition of sanctions for serious breaches, full details of the circumstances of the breach and the ACNC reasons for imposing sanctions, should be published. Camp Quality agrees with the Australian Charities and Not-for-profits Commission's independent advisory board submission that the current restrictions on publication of these details

“materially inhibit the capacity of the ACNC to meet its objectives and reduces the opportunity for the sector to learn from real cases and outcomes”<sup>1</sup>;

- A greater role in advocacy on behalf of charities and not-for-profit organisations subjected to criticism in the broader context of fundraising in Australia; and
- Assisting charities and not-for-profit organisations in a mentoring role through a telephone and/or email enquiry service. Such a service would provide charities and not-for-profit organisations with certainty as to their obligations and responsibilities in any given scenario. Publication of both the queries and responses provided would also act to enhance public confidence that the sector continues to strive towards excellence.
- There remains an opportunity for the ACNC to play an increased role in public education around what it means to run a charity, such as:
  - o The cost of fundraising;
  - o The concept of outsourcing fundraising costs or fundraising activities; and
  - o The need for investment in fundraising tools etc.

**b. Object 2:**

**To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector;**

This Object remains an important part of the ACNC’s work. By striving to support and assist charities and not for profit organisations in a positive way the ACNC will also enhance public trust and confidence and benefit the community at large. Again, the terms of this Object are sufficiently broad in the current legislation to enable the ACNC’s work and allow for further expansion of the ability of the ACNC to support charities and not for profit organisations.

Further work can be done within the scope of Object 2 to achieve this:

- Improving the online material provided by the ACNC in a time where there is increasing competition for funds by a growing number of charities and not for profit organisations and prevent confusion among donors. For example, grouping of charities and not for profit organisations into subject areas with details of charitable objects and current works so the public can make more informed decisions as to the application of the charitable dollar.
- The training offered by the ACNC currently is helpful but quite basic thus favoring the smaller, less professional charities and not for profit organisations. It would be helpful to have different levels of education in training modules offered.

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<sup>1</sup> Australian Charities and Not-for-profits Commission’s independent advisory board Submission to the Review of Australian Charities and Not-for-Profits Commission (ACNC) Legislation, 8 February 2018 as quoted in *Pro Bono News* 9 February 2018.

c. **Object 3:**

**To promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.**

Object 3 as drafted remains an important aim for the ACNC. The introduction of a single unified statutory regime for the regulation of charities and not-for-profit organizations, is should be the goal of the ACNC. This involves the repeal of the fragmented state and territory fundraising laws, the clarification of the Australian Consumer Law to ensure application to fundraising activities and ongoing guidance by the ACNC to fundraisers to continue to improve the sector

Unfortunately, the lack of participation by the more populous states in reducing regulatory compliance and obligations on charities and not for profit organisations, specifically concerning fundraising licencing, the running of events and fundraising activities, means that this Object has not been achieved in any meaningful sense. (We note that although that the Australian Capital Territory and South Australia have moved to not having specific fundraising legislation and oversight but rather are governed by the more general ACNC standards, South Australia's lotteries legislation still applies to fundraising and impacts charities and not for profit organisations activities.)

Efficiency, transparency and public trust could be greatly improved if charities and not for profit organisations who operate Australia wide, as is the case with Camp Quality, were subject to uniform and clear obligations, and procedures rather than different fundraising rules and strictures in each of the Australian jurisdictions.

No amendment of this Object will assist the ACNC in making this happen any earlier.

It is possible within the current framework for the ACNC to assess constraints in advancing both Objects 2 and 3 and recommend Commonwealth Government action to empower the ACNC to achieve its objectives. This is in the government's interests given the implementation of government policy relating to many areas of public interest including the Hospital and Health sector which Camp Quality's work impacts, depends upon charitable funds.

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

Camp Quality does not support the extension of the ACNC's regulatory framework.

Given the large number of charities and not for profit organisations in Australia, such an extension of the ACNC's powers and Objects to cover smaller non-registered charities and fundraisers will be too administratively cumbersome and require a huge bureaucracy to administer, without significant gain in terms of the ACNC achieving its Objects.

**3. What activities or behaviours by charities and not-for-profits have the greatest ability to erode public trust and confidence in the sector?**

Misuse of funds raised for charitable purposes.

**4. 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?**

Camp Quality believes the framework provided by the ACNC legislation and the establishment of the ACNC to ensure that risks of misconduct are minimised, is sufficient for its purpose. It is the administration of the ACNC within the framework provided, limited by its funding, which can be improved.

Camp Quality recognises that amendment of accounting standard AASB 1058 and the deferral of AASB 15, for charities and not-for-profit organisation will be in force from 1 January 2019. Camp Quality would welcome further and ongoing guidance for charities and not for profit organisations, from the ACNC, on what constitutes reasonable administration costs, to ensure transparency and uniformity in reporting in the sector.

**5. 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?**

As currently drafted, the powers of the ACNC Commissioner under the ACNC legislation are broad and sufficient for purpose. The powers adequately explain the factors the ACNC Commissioner must have regard to in performing the functions and exercising the powers under the Act whilst explaining and enhancing the ability of the ACNC to pursue its specific Objects.

Camp Quality recognises that the work of the Commissioner is ongoing but believes that the ACNC Commissioner has not utilised several of its powers under the legislation sufficiently, particularly the following:

- The principles of:
  - Regulatory necessity;
  - Reflecting risk;
  - Proportionate regulation;
- The need for the ACNC to minimise procedural requirements and procedural duplication, including through co-operation between the ACNC Commissioner and other Australian government agencies; and
- The benefit of producing guidance and education for registered charities about how to comply with the ACNC Act.

**Is greater transparency required and would additional powers be appropriate?**

In this context Camp Quality would assert that the current powers are broad enough. Please see comment around greater transparency for those charities and not-for-profit organisations that have been found to breach the ACNC Governance standards in paragraph 1(a) above.

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

The establishment of the ACNC and its operations within its current legislative framework has led to significant progress in terms of reducing the duplicative reporting burden on charities and not-for-profit organisations. Again, this work is ongoing and much more can be done.

A uniform and transparent regulatory and legislative environment is vital for charities and not-for-profit organisations to operate more effectively and minimise administration costs while maintaining public trust and confidence.

Simple measures involving co-operation between Government agencies constitute an opportunity to reduce the regulatory burden. For example, incorporated charities should be removed from the ASIC register and the record replaced with a reference to the current record on the ACNC website. Historical records dating from the time prior to the ACNC legislation remain on the ASIC register (in out of date form). The public find this confusing and Camp Quality has many queries each month on this specific point.

Also, there is the overarching need to eliminate the requirement to report to both State authorities and the ACNC. For example, Camp Quality is required to report separately to some States such as Western Australia concerning their income and fundraising activities.

#### **C. Further Information**

Camp Quality can provide further information on any of the above. Contact Information is provided below

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