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Submission the Review of Australian Charities and Not-for-profits Commission (ACNC) legislation

The Centre for Social Impact (CSI) welcomes the opportunity to submit its views on the Review of the ACNC legislation.

WHO WE ARE

CSI is a national research and education centre dedicated to catalysing social change for a better world. CSI is built on the foundation of three of Australia's leading universities: UNSW Sydney, The University of Western Australia, and Swinburne University of Technology. Our research develops and brings together knowledge to understand current social challenges and opportunities; our postgraduate and undergraduate education develops social impact leaders; and we aim to catalyse change by drawing on these foundations and translating knowledge, creating leaders, developing usable resources, and reaching across traditional divides to facilitate collaborations.

In recent years our work has included a number of relevant projects on the charity and not-for-profit sector. These include:

- PwC Community Index
- Analysis of Annual Information Statements 2014, 2015, 2016 for the ACNC
- Giving Australia 2016 (co-delivered with the Australian Centre for Philanthropy and Nonprofit Studies at Queensland University of Technology)
- Finding Australia's Social Enterprise Sector, 2016
- Community Sector Outcomes Measurement in Western Australia (2015-2019)
- Map for Impact (Victorian social enterprise mapping project), 2017

BACKGROUND

The charities and not-for-profit sector in Australia is a critical player in our social fabric and the Australian economy. Not-for-profits provide key social services to our population, as well as supporting health,

education, development, housing, culture, recreation, environment, international aid, research and philanthropy.

Our research for the ACNC, analysing annual information statements, shows the sector is significant economically and socially. It has revenue over \$142 billion, employs 1.3 million and engages 2.9 million volunteers. Ranked against other industries in Australia, it is 9/18 in regard to its incomes, and the second biggest employer next to the retail industry (see australiancharities.acnc.gov.au). Our social enterprise mapping research for the Victorian government also suggests that social enterprises, of which more than 90% are incorporated as not-for-profits, are at least as efficient and marginally more productive than their small to medium business counterparts.

SUBMISSION

In this submission, we respond to a number of key questions set out in the terms of reference. Specifically:

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

Under the ACNC, the Australian not-for-profit sector is one of the best regulated in the world. For a sector with such a large social and economic remit, public trust, transparency and accountability, support for a sustainable, independent and innovative sector and decreasing administrative burden on the sector is critical. Since its establishment, the ACNC has achieved:

- A better understanding of the size and scope of charities
- International leadership in the transparency, availability and accessibility of digital data on the sector (e.g. the charities register has been searched over two million times)
- The removal or revoking of over 19,000 organisations as ‘charities’, which increases confidence that the other, more than 50,000, charities are complying with the ACNC Act and governance standard required of them
- Increased public trust in charities for the first time in six years (Charity Reputation Index, Dec 2016)
- Reduction in the red tape charities deal with because of the different fundraising legislations across jurisdictions (e.g. the ACNC have already overseen changes across five states/territories)
- Support for increased public knowledge of the sector by enabling research within the bounds of its legislative responsibilities.

The functions and operations of the ACNC have also been widely accepted by charities. Both the outcomes of implementing the ACNC legislation and the cultural acceptance developed within the sector suggest that the objects of the act are fulfilling current needs.

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

Australian charities and not-for-profits historically command greater levels of public trust than either the public or private for profit sectors. As with other sectors, corruption and misuse of funds are likely to erode public trust. We note – as per our response above – that the ACNC has played a substantial role in minimising such behaviour within the Australian sector. While efficiency and transparency are critical factors, the effectiveness of the not for profit sector is also important in ensuring public confidence in the sector. Australian not-for-profit organisations exist to fulfil a very wide range of collective human aspirations. Recent polling data suggest the Australian public supports this diversity and regulatory

conditions should enable, rather than constrain, the effectiveness of not-for-profits to fulfil the purposes that they exist to meet.

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?

While charities should not be using funds beyond their charitable purpose, we acknowledge that public perceptions on the reasonable use of funds may not directly align with this definition. Evidence suggests for example, that the public would like 100% of their charitable donations to go directly to ‘the cause’, but defining ‘the cause’ is challenging. It is critical that charities have ‘reasonable overheads’ to support their cause and enable them to deliver the best services possible. Such an approach is consistent with the increased professionalization demanded by governments of those charities and not-for-profits that deliver publicly funded services. Our research suggests that reasonable overheads include funding for various activities that enhance the sector including, capacity building/staff training, marketing, collaboration, evaluation and outcomes measurement.

We also note that since the introduction of financial information to the Annual Information Statement in 2014, the ACNC has played an important role in ensuring the accuracy and integrity of reported data. In 2014, for example, \$3.4 billion worth of reported charity income was corrected. Since this time the ACNC has also improved the software used for reporting, building in a number of check points, to help charities improve the accuracy of their reporting.

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? 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?

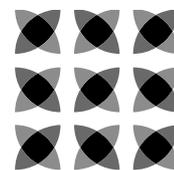
As noted above, since its establishment, the ACNC has removed or revoked over 19,000 charities from the register for non-compliance with the ACNC Act. This would suggest that the ACNC is addressing misconduct where it occurs. Our interaction with international research and policy networks also suggests that the strong performance of the ACNC is well-known and regarded by people and institutions in other jurisdictions. Accordingly, we do not perceive there is a need for additional powers beyond the current powers of the ACNC Commissioner to redress misconduct.

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

As detailed above, the ACNC has been successful in reducing the duplicative reporting burden on many charities, with the 2017 Annual Information Statement combining reporting to the ACNC, ATO and a number of states and territories. Our federated system at times forces duplication, some of which the work of the ACNC has resolved. Fundraising regulation remains an outstanding problem in this regard.

9. Has the ACNC legislation and efforts of the ACNC over the first five years struck the right balance between supporting charities to do the right thing and deterring or dealing with misconduct?

Under the founding Commissioner, the start-up and work of the ACNC has been credible, and highly respected by regulators and not for profit organisations alike. The ACNC has, in our view, met the terms of



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its legislation with integrity and has achieved a constructive balance between overseeing and, with its remit, developing the capabilities of charities and the not-for-profit sector. In a federated system with regulatory oversight and data sources held at multiple levels of government, the ACNC has also played a substantial coordinative role in harnessing knowledge about the sector to reinvest in both its development and regulation.

With regards,

p.p. Professor Jo Barraket, Deputy CEO

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