



28 February 2018

Mr Patrick McClure AO
Chair
ACNC Act Review Panel
The Treasury
Langton Crescent
Parkes ACT 2600

Via Email: ACNCReview@treasury.gov.au

Dear Mr McClure,

**Re: Australian Charities and Not-for-profits Commission Act Review
Personal Submission**

Thank you for the opportunity to forward the following submission in which I provide my personal thoughts related to aspects of the current legislative and regulatory framework for charities in Australia.

Generally, in my view, the current framework has worked well and the suggestions offered below relate to areas where I see an opportunity for refinement as a result of our experience in the ACNC's development and operation over the past five years. I believe that the ACNC is now established, has well-deserved credibility within the charities sector, the broader Not-for-profit sector and the community, and has established an approach to regulation which is balanced and effective in the context of the three legislative objects set out in the above legislation. As such I do not believe there is a need or appetite for significant change of the legislative arrangements within the charities sector nor the broader community impacted by it.

However, the review of the ACNC Act does provide the opportunity to revisit the original intentions mooted during the establishment of the regulator in relation to the three legislated objectives, the need for continuing a regulatory and supervisory *modus operandi* that balances regulatory process with support, and the opportunity for establishing a charities one-stop-shop and report-once-use-often framework built on modern technology and aimed at reducing red tape for charities and their various government and philanthropic funders.

The experience gained to date may be applied to increase our collective opportunity for achieving these core aspirations upon which the ACNC was originally founded and which gained the support of the charities sector and the wider community.



I confirm that I am providing these comments and suggestions in my private capacity and that I am not speaking for the ACNC, the ACNC Advisory Board or any other organisation in which I hold an official capacity. I have provided comments below under topic headings but in no particular order.

The Legislated Objectives:

ACNC submission suggestion to create two additional objects: “To promote the effective use of resources of not-for-profit entities” or “To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public”

The current legislated objects of the ACNC provide a sound set of focus areas for the regulator and resulted from wide consultation when the original Bill was being developed. The current objects are well known and supported by the charities sector and the broader community, they are developed in such a way as to allow the ACNC the necessary flexibility in the application of its scarce resources, and they have been pursued by the ACNC although with varying success in terms of objects two and three. My suggestions below regarding tiers and reporting, and red tape reduction will go some way to resourcing the ACNC in terms of its focus on objects two and three I believe.

As such, I do not believe the establishment of additional objects as suggested in the ACNC submission to the Panel will result in better outcomes for the charities sector, those with a direct interest in it or the broader community. Indeed, the establishment of additional objects as included in the ACNC submission will:

- Increase the red tape burden of the sector in responding to information submission requirements which will necessarily be needed to be put in place in order to allow for some sort of quantification of resource usage;
- Increase the workload of the ACNC without adding to the regulator’s capacity to better supervise and support the sector; and
- Increase the opportunity for the development of misinformation and misunderstanding in the sector and wider stakeholder community, including in relation to the construction of misleading league tables.

Further, the prospects for successfully measuring the effective use of resources are very remote due to the complexity of the sector, the complexity of the work charities undertake, the longitudinal nature of much of the human services work in particular and the inherent difficulty in defining the phrase “effective use of resources”. Additionally, the measurement of non-financial information of the type used in assessing outcomes achieved and the like are expensive, requiring charities to expend their scarce resources on additional administrative process such as data collection and analysis. Finally, philanthropy is an important aspect of the charities sector. However, it is a relatively small element, representing less than 10% of the sector’s income, and its needs are encompassed in the current objects.

Tiers & Reporting

While there has been some discussion in the national discourse regarding the need to consider non-financial risks related to the charities sector, the arguments raised are not compelling as operational risks associated with the work of particular charities (such as in disability services for instance) are subject to particular funder quality standards and other oversight. Further, it is impossible for the ACNC to amass the necessary capacity to successfully oversee such elements as clinical governance. Rather, the ACNC should maintain its oversight role in the context of financial risk and the ongoing oversight of the implementation of the current principles-based governance framework. In other words, the ACNC regulatory and supervisory processes should be focused on risk to financial sustainability and risk to mission focus.

Reporting requirements for charities should be based on the relative risk those charities represent in the context of financial losses that may be visited upon stakeholders of these organisations and the prospects that a particular charity is not pursuing its mission in support of which an organisation's taxation status is granted. Economic activity levels remain a logical proxy for risk assessment as economic activity is:

- currently measured in some way by all charities;
- is timely;
- is relatively less complex than other measurement types;
- is readily understood by the regulator; and
- allows for the delineation of charities into sub-groups for more focused analysis and prioritisation.

Currently the charities existing on the Charities Register are delineated according to their annual revenue into the following tiers:

| Charity Type / Tier | Annual Revenue Range | Number on Register at 2016 |
|---------------------|----------------------|----------------------------|
| Small | < \$250,000 | 33,813 |
| Medium | \$250,000 to < \$1m | 6,742 |
| Large | \$1 m and over | 8,119 |
| | Total Charities 2016 | 48,674 |

The current tiers are inadequate for delineation according to financial risk and the tier into which a charity falls does not impact its responsibilities with regard to the governance principles.

Defining a large charity as one with revenue equal to or exceeding \$1m ensures that low risk charities are carrying a higher and unnecessary burden of financial reporting and assurance. This problem extends to the reporting requirements of Medium and Small charities. The introduction of a more nuanced tier system would allow the ACNC to target its supervision and regulatory processes more effectively and allow charities to meet reporting requirements more appropriate to the risk they represent.

For instance, the introduction of a fourth tier (Extra Small) combined with a more risk-centric delineation of reporting requirements as suggested in the following table would see a reweighting of reporting requirements to higher risk entities and would also allow the ACNC to focus its attention in a more nuanced way by developing a supervisory regime that focuses on the higher risk areas in the first instance. A more risk-focused tier system may look like the following:

| Charity Type / Tier | Annual Revenue Range | Number of Charities (2016) |
|----------------------------|-----------------------------|-----------------------------------|
| Extra Small | < \$1m | 40,425 |
| Small | \$1m to < \$5m | 4,976 |
| Medium | \$5m to < \$10m | 1,268 |
| Large | \$10m and over | 1,870 |
| | Total | 48,674 |

While the above is an arbitrary delineation (as is the current delineation), it serves to identify that the development of a more nuanced tier range will allow for more targeted and effective reporting while reducing reporting requirements of organisations that represent low financial risk.

In the above formulation, Extra Small charities would provide a simple Annual Information Statement confirming that it is still pursuing its mission and communicating the office bearers' details to the ACNC. This will also help to ensure the register remains up to date.

Small, Medium and Large charities would continue to provide the same Annual Information Statement data that these delineations are required to provide under the current arrangements.

Clearly, such a tier system would significantly reduce the reporting requirements of over 80% of charities and allow the ACNC to focus its supervisory and regulatory activities where higher risk, as determined by the level of economic activity, would help to ensure scarce resources where applied where they are likely to have most impact. Additionally, the ACNC could create a strategic plan associated with the longitudinal oversight of the charities sector such that it can prioritise and then re-prioritise over time and against a planned supervisory approach that is based on experience gathered via such elements as review findings, levels of complaints received and likely impact resulting from poorly managed charities.



Red Tape Reduction

The opportunity for red tape reduction, via the establishment of a report-once-use-often system and a one-stop-shop charities portal, was a significant driver of original support for the creation of the ACNC. Combined with the tiers adjustment suggested above, these two initiatives should be identified as key strategic objectives. The successful achievement of these goals will be a significant challenge as reporting in this area is inherently complex and different Commonwealth agencies and state/territory governments would need to be involved. However, the rewards for achieving a successful outcome here are substantial—both for the charities sector and for government agencies at all tiers of government.

Since its inception, the ACNC has worked toward this goal. The establishment of the National Standard Chart of Accounts Advisory Body and the continuing negotiations with state governments pertaining to opportunities for red tape reduction (including in relation to charitable collections) are two examples.

Additionally, red tape reduction and a reduction in regulatory complexity would be achieved if the one-stop-shop portal could be established including a facility for disseminating lodged information—both when applying for registration as a charity and in subsequent lodgement of information—such that the different Commonwealth agencies involved in the registration and regulation processes (such as the Australian Taxation Office and the Australian Securities and Investments Commission) would receive the information they need without necessarily making those submitting applications or lodging data being aware of the regulatory nuances of shared responsibility that currently makes this area so complex.

However, red tape reduction is not the sole responsibility of the ACNC. As such, there needs to be greater transparency relating to progress in these areas including with respect to regular reporting regarding the progress of negotiations with states regarding the establishment of a report-once-use-often reporting system and a one-stop-shop portal for charities. If a strategic plan was developed outlining the objectives and broad processes needed to achieve them, together with an appropriate timeline, the ACNC could report on an annual or semi-annual basis to the community with respect to progress against the plan, including in relation to progress with the establishment of arrangements with other tiers of government. This would ensure that both the ACNC and other government agencies—at all levels of government—would be accountable for ensuring real red tape reduction is achieved.



I would be pleased to provide further information or respond to any queries or comments related to the above at the Panel's convenience. Thank you once again for the opportunity to submit my thoughts.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'D. Gilchrist', written over a faint rectangular box.

**Professor David Gilchrist
School of Accounting and Finance
UWA Business School**

E: david.gilchrist@uwa.edu.au

T: 08 6488 2876

A: M250, 35 Stirling Highway, Crawley WA 6009