

28 February 2018

Mr M Crowe
Individuals and Indirect Tax Division
The Treasury
Email: ACNCReview@treasury.gov.au

Dear Sir

SUBMISSION TO REVIEW OF THE AUSTRALIAN CHARITIES AND NOT FOR PROFITS COMMISSION LEGISLATION

Attached is my submission to The Treasury in relation to the current review of the Australian Charities and Not-for-profits Commission legislation.

HLB Mann Judd is a leading accounting practice with a significant investment in the not-for-profit sector. HLB Mann Judd has offices in all major Australian centres, and has been recognised in 4 of the last 5 years as the “Best Accounting practice in Australia” in our market in the Australian Financial Review Awards.

HLB Mann Judd has a very active not-for-profits group, operating in major Australian centres. We have made, and continue to make, a significant contribution to the not-for-profit sector.

1. ARE THE OBJECTS OF THE ACNC ACT STILL CONTEMPORARY?

I consider that the objects of the ACNC are still contemporary.

I consider that the ACNC has been a resounding success in its first 5 years in relation to these objects.

I consider that the ACNC is the right organisation to lead Australia in the future.

It might be that the ACNC Act needs to be amended to enable the ACNC to achieve the 3 objects.

In relation to the object of reducing unnecessary regulatory obligations for the not-for-profit sector, I see this as one of the major objects of the ACNC, and whatever powers are necessary to enable the ACNC to speed up their work in this area should be a priority. If additional resources are required, I encourage the Commonwealth Government to make these resources available.

The ACNC has made great strides in relation to charities, however there is an extremely large part of the sector that is not related to charities and it would add considerable benefit to the Australian people if the regulatory burden was reduced in the remainder of the not-for-profit sector.

2. ARE THERE GAPS IN THE CURRENT REGULATORY FRAMEWORK TO PREVENT THE OBJECTS OF THE ACT BEING MET?

Please refer to comment on transparency below, and comment on the Corporations Act below.

3. SHOULD THE REGULATORY FRAMEWORK BE EXTENDED BEYOND JUST REGISTERED CHARITIES TO COVER OTHER CLASSES OF NOT-FOR-PROFIT?

As noted above, I consider this to be one of the major, fundamental objectives of the Commonwealth Government, and that of State governments, and I consider that the ACNC is the appropriate body to lead this.

I also recommend that consideration be given to funding work in this area with contributions from the State governments, who will have cost savings by passing on regulatory responsibilities to the ACNC.

Having been in existence for 5 years, it is certainly time for inroads to be made in relation to other classes of not-for-profit organisations.

4. 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?

The ACNC has done significant work in relation to charities that are not doing the “right thing”. This work supports the vast majority of the sector, and gives confidence to the Australian people for their dealings with charities.

However, the lack of information available about why certain charities have had enforcement action or investigations results in conjecture that reduces confidence in the whole of the charity sector.

If the ACNC had the power to provide details about investigations, this would both enhance confidence in charities that are doing the right thing, and also provide information to charities on things that they should avoid, and therefore improve the governance and operations.

I suggest that the current provisions applying to secrecy of information in relation to ACNC investigations and enforcement activities should be reviewed.

5. WHAT ACTIVITIES OR BEHAVIOURS BY CHARITIES AND NOT-FOR-PROFIT'S HAVE THE GREATEST ABILITY TO IN ROAD PUBLIC TRUST AND CONFIDENCE IN THE SECTOR?

The ACNC has made all charities aware that they will take action where it can, and when needed. This has been a great step forward for the Australian people, and is it major factor in both increasing confidence in the sector and preventing inappropriate activities or behaviours.

I also consider that the ACNC approach to this area, being one of support rather than requiring absolute compliance, has been a major factor in the success of the ACNC in its first 5 years. The ACNC should continue with this attitude.

6. IS THERE SUFFICIENT TRANSPARENCY TO INFORM THE ACNC AND THE PUBLIC MORE BROADLY THAT FUNDS ARE BEING USED FOR THE PURPOSES THEY ARE BEING GIVEN?

The financial reporting requirements imposed on charities under the ACNC Act have been a great step forward in relation to transparency and accountability and in providing information to the Commonwealth Government and to the Australian people about the charity sector.

Considerably more work needs to be done in this area, and I make further comments on this below.

In my view the requirement for charities to show where money is spent can be incorporated into the financial reporting requirements. This will increase the transparency and increase confidence in the sector.

The Australian market, if it has this information, will make better informed choices about where to invest their charity spend. This in itself will lead to greater efficiencies by charities, and might result in some charities not continuing to operate where they are not as effective as others.

In addition to the financial reporting for charities that is similar to that required for “for-profit” entities, I recommend that a review be made to determine requirements for charities to disclose not only their historical use of funds, but also the impact that they are having on the community that they serve. Reporting of impact can be financial, and can also be used as a strategic driver for charities to make them more likely to achieve their goals.

A national requirement for all charities to disclose their impact will provide much more meaningful information for the Australian people, and lead to both increase confidence and greater efficiencies in the sector.

7. 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?

My comments above are that a review should be made, and if necessary additional powers given to the ACNC to improve outcomes in this area.

8. ARE THE POWERS OF THE ACNC COMMISSION THE RIGHT POWERS TO ADDRESS THE RISK OF MISCONDUCT BY CHARITIES AND NOT FOR PROFITS, OR THOSE THAT WORK WITH HIM, SO AS TO MAINTAIN THE PUBLIC’S TRUST AND CONFIDENCE? IS GREATER TRANSPARENCY REQUIRED AND WOULD ADDITIONAL POWERS BE APPROPRIATE?

Refer 6 above.

9. HAS THE ACNC LEGISLATION BEEN SUCCESSFUL IN REDUCING ANY DUPLICATIVE REPORTING BURDEN ON CHARITIES? WHAT OPPORTUNITIES EXIST TO FURTHER REDUCE REGULATORY BURDEN?

The introduction of the charity passport has been a great step.

More work needs to be done to have the charity passport accepted by all levels of government in Australia, and the regulators that they operate.

In relation to financial reporting, please see my comments below.

The area of regulatory burden in relation to fundraising is a major issue for charities. A priority of the Commonwealth Government should be to nationalise fundraising legislation so that Australia has one set of laws across the country.

10. HAS THE ACNC LEGISLATION AND EFFORTS OF THE ACNC OVER THE PAST 5 YEARS STRUCK THE RIGHT BALANCE BETWEEN SUPPORTING CHARITIES TO DO THE RIGHT THING AND DETERRING OR DEALING WITH MISCONDUCT?

One of the major successes of the ACNC has been their culture in this area. When first introduced, there was considerable fear that the ACNC would be “just another layer of regulation”. The attitude, culture and approach of the ACNC, led by its Commissioner and its Assistant Commissioners, has been a major factor in the success of the ACNC, and the support it has received from the sector.

Whatever is required to continue this should be a priority.

As noted above, the ability of the ACNC to be more transparent in relation to investigations and enforcement action will increase the confidence in the sector, and create more education for the sector in what is not acceptable.

11. FINANCIAL REPORTING REFORM

The ACNC has done considerable work to standardise financial reporting for charities across Australia. It is to be commended for its work in this area.

It is now time for real changes to be made to improve financial reporting by charities and other not-for-profits.

Key Issues

The major issues that are thought to exist within this area are as follows:

- Complex, duplicated and inconsistent reporting requirements across jurisdictions, i.e. States and the Commonwealth.
- Charities using different bases of reporting i.e. special purpose, making comparison difficult.
- Some entities are preparing and lodging financial statements and others are not.
- Is not clear why criteria and thresholds for reporting have been chosen, and on what basis the thresholds have been set or when they should be revised.
- Fundraising and administrative costs are not clearly disclosed.
- Charities do not value financial reports as a communication tool – this is linked to the perceived misalignment of reporting requirements to the size and significance of a charity. There is a perceived lack of consideration of user needs in financial reporting requirements.
- Assurance requirements on financial reporting are inconsistent.

4 Key Areas

- Eliminate duplicate reporting between States/Territories and the Commonwealth.
- Regulators to set transparent and objective criteria and thresholds, and assurance requirements
- The Australian Accounting Standards Board or the ACNC specifying financial reporting requirements for those who publicly lodge financial statements
- The Australian Auditing Standards Board to work with regulators to specify appropriate levels of assurance, and the skill sets required. The ACNC to make compliance with AASB Standards a requirement for charities.

Major Matters Discussed

(1) Who should report?

Consideration should be given as to which charities should report financial information to the ACNC. I consider that, as all charities obtain tax concessions and receive funding either from the general public or from government, they should be required to be accountable for their finances.

Consideration should be given as to whether very small charities should have no financial reporting, and as they get funds from the public I consider that they should have financial reporting requirements.

(2) What information should be reported?

Another question is what type of financial reporting should be required for different charities.

I consider that for small charities, a cash flow statement or cash basis of accounting should be required.

I consider that the special purpose framework that is currently allowed under Australian Accounting Standards is not appropriate, and should not be allowed. Such a framework goes against ASIC policy that general purpose financial reports should be required for any entity that lodges financial reports that go on the public record, and probably more importantly for the Australian public comparability is lost between charities where different accounting standards and different ways of measuring financial matters are followed.

I consider that all charities other than small charities should be required to prepare general purpose financial reports, including those prepared under the Reduced Disclosure Regime for the medium level of charities.

(3) What measures should be used to determine who reports?

The ACNC has thresholds for financial reporting based on revenue.

I consider that this is not a sufficient measure, as in some years a charity might have low revenue, but still be significant in terms of public interest.

I consider that a mix of revenue, expenses and assets should be used to determine levels of reporting.

The Corporations Act 2001 includes the number of employees in its thresholds for financial reporting. I do not consider this to be an appropriate measure as opposed to those noted above.

(4) *How many tiers of reporting should there be?*

I consider that 3 levels of reporting is the optimum number. Any more than that creates too much complexity, and any less than that might impose more burdens than necessary.

(5) *What should the thresholds be?*

The AASB has noted that 53% of charities by number have revenue of less than \$100,000 per annum, and 71% of charities have revenue of less than \$250,000 per annum; 3% of charities have revenue of more than \$10,000,000 per annum.

I consider that the lowest tier should be those with revenue up to \$250,000 per annum. This might be referred to as “small” charities.

I consider that the revenue threshold for “large” charities should be \$10,000,000 per annum.

Thresholds based on expenses and total assets should also be developed, based on similar considerations.

(6) *Basis for thresholds*

The AASB noted that they had attempted to obtain from ASIC the science behind the selection of thresholds for For-Profit company reporting, and no information was available.

The AASB has stated that it is very keen to have a basis for the thresholds, so that the thresholds can be adjusted over time to cover such things as inflation; for example, if the lowest tier threshold is set at amounts which cover 70% of charities by number, and the highest tier is set to cover the top 5% of charities, these bases can remain, and be used to adjust thresholds in the future for inflation etc.

I support this approach.

(7) *What financial reporting is required?*

I consider that:

- the lowest tier should do cash-based financial reporting
- the middle tier should do general purpose – RDR financial reporting, possibly modified to reduce disclosures in some areas.

- the largest tier should do full general purpose financial reports.

I also consider that additional disclosures should be required for charities, and that this might be the subject of a separate AASB Standard.

These disclosures would cover:

- Transactions with related parties
- Fundraising information, possibly similar that required by some State regulators
- e.g. amount from each event raised, and how it was spent.

The ACNC should be involved with the AASB in these determinations.

12. THE CORPORATIONS ACT 2001 AND THE ACNC ACT

There is significant difficulty for the sector in determining which parts of the Corporations Act 2001 apply to charities that are also regulated by the ACNC Act.

A review should be made to determine how to remove or reduce these difficulties.

Also, in moving certain requirements from the Corporations Act to the ACNC Act, some things are either not covered the way they should be or the legislation is unclear as to which Act applies.

A review should be made to ensure that both Acts cover all the matters that they should, with no duplication.

13. CONCLUSION

The ACNC has been a resounding success in its first 5 years. I consider that it has generated more goodwill within the sector that it oversees than possibly any other regulator at any level of government in Australia.

The Commissioner during that time and the Assistant Commissioners are to be highly commended for their results, and it should be a priority of the Commonwealth Government to do whatever it takes for this to continue.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D K Swindells'.

D K Swindells
Head of Not-for-profits - Australasia