



Review of the Australian Charities and Not-For-Profit Commission Legislation

Response of the Indigenous Remote Communications Association

February 2018



Indigenous Remote Communications Association
2/70 Elder Street, Alice Springs NT 0870
PO Box 2731, Alice Springs NT 0871
Ph 08 8952 6465
F 08 8992 9669
E manager@irca.net.au
W www.irca.net.au

1 About the Indigenous Remote Communications Association

The Indigenous Remote Communications Association (IRCA) is the peak body for Indigenous media and communications. It was founded in 2001 as the peak body for remote Indigenous media and communications. In late 2016 it transitioned to the national peak body for Aboriginal and Torres Strait Islander broadcasting, media and communications.

Up to 105 Remote Indigenous Broadcasting Services (RIBS), 33 additional licensed retransmission sites across Australia, 8 Remote Indigenous Media Organisations (RIMOs) and 28 urban and regional Aboriginal and Torres Strait Islander radio services are eligible for representation by IRCA.

2 About the Aboriginal and Torres Strait Islander broadcasting and media sector

Aboriginal and Torres Strait Islander broadcasters are not-for-profit community organisations providing a primary and essential service to their communities. They reach nearly 50% of the Australian Aboriginal and Torres Strait Islander population, but are prevented from providing a primary radio service to all Aboriginal and Torres Strait Islander peoples due to a lack of funding.

Aboriginal and Torres Strait Islander broadcasters and media producers also connect non-Indigenous communities with Aboriginal and Torres Strait Islander people and culture, developing greater understanding and building stronger relationships.

The sector:

- Comprises:
 - Radio services able to reach around 320,000 Aboriginal and Torres Strait Islander persons, including around 100,000 very hard to reach people in remote Indigenous communities, or approximately 47% of the Australian Aboriginal and Torres Strait Islander population.

-
- A regional satellite TV service reaching 240,000 remote households and a free to air national TV service.
 - Over 230 radio broadcast sites across Australia.
 - Is a multimillion dollar industry with over 35 Aboriginal and Torres Strait Islander community owned and managed not for profit media organisations.
 - Holds the capacity to be a preferred supplier for all government messaging to our communities.
 - Is the most relevant and appropriate service with the highest listenership, community engagement and local ownership of all media services.
 - Is delivered in the first language of many remote peoples.
 - In remote communities, is the most reliable and ubiquitous radio and media services.

3 Disclaimer

This submission is made by the Indigenous Remote Communications Association (IRCA) in its own right. It is expected that some radio services. RIBS and RIMOs will make individual submissions in which case the IRCA Submission should not be taken to displace those submissions.

4 Submission

4.1 Introductory remarks

The Indigenous Remote Communications Association (IRCA) welcomes the opportunity to respond to the Review of Australian Charities and Not-for-profits Commission Legislation. In August 2017, IRCA responded to the Discussion Paper on Tax Deductible Gift Recipient Reform Opportunities, which Discussion Paper canvassed some of the same areas as the current Review. Our position in relation to implementing any reforms that would stifle the legitimate advocacy role of charities and peak bodies has not changed since that time. IRCA remains concerned that the legitimate civil-society role of not-for-profits appears to be under threat.

4.2 Response

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

The objects remain contemporary and sufficient. The Objects are open enough to allow the Commission to undertake a range of activities to support the good governance of charities where there may be concerns. The Objects are well supported already by Division 45 of the Act.

In relation to First Nations charities and not-for-profits there is scope, consistent with Object 2, to cooperate with the Office of the Registrar of Indigenous Corporations. There may be benefit in adding wording to 2 (b) to indicate that the Commission should cooperate with relevant government agencies in the support for the robust and well-governed charities.

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?

No.

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

IRCA understands that research is showing a steady decline in the trust and confidence that the public has in Australian charities as indicated in the ACNC Public Trust and Confidence in Australian Charities 2017 report¹. It is clear that exposés such as that of Belle Gibson have a significant impact on public trust on giving in general, and the situation of Oxfam, and of the Shane Warne Foundation cited in the Report, gives specificity to issues of trust and distrust.

However in strengthening the compliance needed around governance, it is vital that any legislative changes do not undermine the vital role that charities with an advocacy role play in a democratic society. Charities when working properly have a vital role in civil society. Not only do they do “good works” and raise awareness of issues, they are important for the exercise of actions consistent with a democratic society and in the promotion of debate and advocacy on marginalised issues and peoples.

It is IRCA’s position that issues of trust arise when charities raise money that is not used for the purpose for which a charity raises the funds and/or where the the funds raised is significantly more than that actually provided for the charitable purpose. In this context, the United States Give.Now group² has a standard that a minimum 65% of funds raised must be used for the charitable purpose for which funds are raised. Such standards may be useful guiding principles for governance.

As noted above, Division 45 of the current ACNC Act already has strong compliance requirements for good governance. The role of the ACNC in ensuring compliance is

¹ <https://www.acnc.gov.au/CMDownload.aspx?ContentKey=fb9be8d0-01ff-4125-bc45-fb6260704f8b&ContentItemKey=46ba1f33-8ef2-4010-88fb-fc25eabd02b0>

² <https://give.org/for-charities/How-We-Accredit-Charities>

already well-spelled out on the ACNC website³ as follow:

“Where charities do not respond to [guidance, education and support] and still fail to meet their obligations, the ACNC may use formal powers to:

- warn charities that they are not meeting their obligations and explain what action the ACNC may take (warnings)*
- direct charities to do or not do something (directions)*
- make arrangements with charities about what they need to do to meet their obligations - these arrangements can be enforced by a court (enforceable undertakings)*
- ask a court to make charities to do or not do something (injunctions)*
- suspend or remove a 'responsible person' such as a board or committee member (suspension and removal)*
- disqualify a responsible person (such as a committee or board member, or trustee) who has previously been suspended or removed for 12 months. During that time, the person is not allowed to be a responsible person of any charity (disqualification) and will be listed on the disqualified persons register*
- in exceptional circumstances, revoke (cancel) a charity's registration (which may affect a charity's eligibility for tax concessions and other government benefits, concessions or exemptions), and*
- apply administrative penalties if a charity makes false or misleading statements or fails to lodge documents (such as reports, notices, returns or statements) on time”.*

IRCA sees these compliance powers as sufficient. Furthermore, the list of revocations on the ACNC website is indicative of the capacity of the ACNC to take action as needed against these criteria.

IRCA suggests that a better question for the Review would be the question – *“What can the ACNC do to raise awareness of its role as a regulator and enhance its capacity to manage complaints.”* The ACNC Report cited above indicates that on average only 50% of Australians are aware of a regulatory body, with young people only having a 27% awareness rate.

There is a need to raise awareness of the regulatory role of the ACNC, as opposed to the action of restricting the purposes for which charitable fund raising can be undertaken (mindful that the purposes must be legal).

3

https://www.acnc.gov.au/ACNC/About_ACNC/Regulatory_app/Regulatory_powers/ACNC/Regulatory/Reg_powers.aspx

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?

IRCA suggests that the ACNC should further develop its Governance Standards⁴ in consultation with charitable sector representatives to identify:

- Areas where governance standards could be further developed, and
- The key governance standards that would be useful for the purposes of public trust and to include reporting against those in AIS 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?

Yes.

7. 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?

Yes. However, see also our response to Questions 4 and 5.

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

Yes.

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?

Yes.

Conclusion

Thank you again for the opportunity to respond to the ACNC Legislation Review. It is IRCA's contention that the ACNC legislation is acceptable in its current form. There is scope for addressing, in consultation with the charity sector, governance standards for transparency in

⁴ https://www.acnc.gov.au/ACNC/Manage/Governance/ACNC/Edu/GovStds_overview.aspx?hkey=456b1d22-8869-4ad0-a0cd-48607244216e

accounting for the use of charitable funds raised against the purposes for which they are raised. This should be associated with identifying, again in consultation with the charity sector, appropriate balances for the cost of fund raising to total funds raised expended.

IRCA position statement

Whilst there is scope for raising awareness of the regulatory role of the ACNC and working collaboratively with the charity sector on further developing good governance principles, there is no legitimate scope in a democratic society, for the ACNC legislation to be reformed to set the purposes for which charitable giving is allowed, except for purposes which are otherwise illegal.

Daniel Featherstone

General Manager

Indigenous Remote Communications Association