

ACNC Legislation Review

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This submission is based on major themes that Matt sees, both positive and negative, in his daily work. It does not represent a legal analysis or a political commentary. Just a layperson's stream of conscience of matters deemed contextual to the ACNC by someone who has worked in the sector and run NFPs for over a decade.

Charitable Collections Licence

Issued by States and Territories, separate to the ACNC, with separate accountabilities in place. Surely this legislation can be harmonised throughout the country and assimilated with the ACNC legislation, with the ACNC having oversight of regulation. Some providers have to be licensed eight times. No doubt public confidence would rise if there was one source of truth.

Tax concessions and exemptions

The Deductible Gift Recipient (DGR) status is the holy grail of tax assessments, but in many ways this relies on self-assessment and is open to both charities and NFPs. Below the full DGR status are differing levels of exemptions (eg FBT) and concessions (eg GST).

The treatment of these exemptions and concessions is convoluted and unnecessary. Its application can also be inconsistent, depending on the level of profitable trade an organisation undertakes. This in itself erodes public confidence as perceptions of unfair advantage in the marketplace develop. This is compounded by the endless stories of unscrupulous individuals who rort the system.

Streamline all tax considerations and only provide them for true charities doing charitable work. Other NFPs that are doing contracted service delivery (usually for government) should be funded at true cost rates that cover the true cost of delivering those contracted services. Over-reliance on the tax provisions leads to poorer service outcomes which is not acceptable in such prominent areas as human services (eg care for disabled).

Red tape reduction

The mantra of "report once, use often" was widely espoused in the early days. It is not heard as often today. Possibly the uncertainty over the ACNC's future in the early days played some role in this. The concept however was good and the framework sound. The charity passport should include these provisions and should be accepted by all tiers of government.

Calendar Year / Financial Year

The ACNC has the provision to enable reporting entities to choose the annual reporting cycle that best suits them, with most choosing either financial or calendar year. This enablement for choice can be superficial when the operating context demands otherwise. For example minimum data sets for human service delivery are required to be lodged on a financial year basis. Government contract reports are usually required on a financial year basis. So for all the goodwill to empower charities and not-for-profits to report on a basis that suits them – unless other reporting regimes are brought in line and offer the same flexibility, it may be a somewhat superficial gesture.

Supplementary reporting

There remains confusion about who to lodge reports with. Obviously the ACNC is complied with in the first instance, but then there are legacy reports for associations to comply with State legislation, and always a worry that ASIC still “needs to know” for those NFP’s registered as companies. There are further requirements supplementary to this core reporting. For example any employer with over 100 employees is also required to report to the Workplace Gender Equity Agency. The requirement for reporting is as an employer, not as a charitable or not-for-profit entity. However it means that the NFP entities must report broader and the “lodge once, use often” and “single point of reporting” mantras become somewhat diluted.

Regulation and Best Practice

The ACNC is in a wonderful position to extol the virtues of a giving society. Building on the evidence garnered by the Productivity Commission in the 2009 review, the ACNC could play a more active role in advocating for best practice in benevolence and for highlighting to the public the work done by charities and NFPs, as well as the staff and volunteers. Many people who read the ACNC broadcasts, whether in print or blog or tweet, are already involved in the NFP sector. It would be good for the ACNC to take a more active role in mainstream messaging so that the public of Australia have an understanding of the extent of the sector (8% GDP) as well as the health of the sector. The ACNC can be much more than a regulator and is in a position to nurture best practice both in and out of the sector. It is a missed opportunity to just regulate.

Accounting standards

As many NFPs approach a size where they consider becoming companies, they also consider the maturity of their financial reporting. Many decide to adopt the general purpose financial reporting framework and thereby adopt the full accounting standard treatment, albeit with access to reduced disclosure. With such consideration already given to the NFP sector, and in recognition of the size of the contribution to the economy, then surely the ACNC can be doing more to influence the treatment of funds in an NFP context. The ACNC has Board members who are specialists in this field, yet the ACNC tends to message only through the Commissioner. Better use of the full Board may see positive movement in some of these areas.

On a specific matter, the collection of donations can often take the form of coin collecting at public events. Where revenue raised in this manner reaches a substantial level, or a “material” amount, the auditor may qualify the accounts on the basis there is no fool proof way of determining if the

amount declared is the true amount raised. This qualification can be detrimental to a NFP when seeking grants or other supports. It is an example of a thematic issue that the ACNC could pursue with the Accounting Standards Board if it were empowered to conduct such business.

Waivers and exemptions specific to religious bodies

Whatever they may be and in whatever form they may come, the will for the public to accept that religious bodies are held above the law is now well diminished. Given the high profile censures that have been effected of late, of both religious persons and institutions, the government would do well to distance itself from the special treatment that church groups have had in the past. Accountability has caught up with the divinity and the two will be reconciling their differences for some time. No need for a regulatory body like the ACNC to play an arbitrator's role. Remove any ambiguous and inconsistent treatment of religious bodies and allow them to operate as any other charity. Also allow them to be accountable to the people and answerable to the law as with any other charity. This will garner public faith in the ACNC as an impartial institution.

Register of disqualified persons

A recurring theme when working with NFPs is the desire to remove undesirable, or unethical, persons from the reach of NFPs, which is often to those people who find themselves society's most vulnerable. Whilst it is mandatory to check a responsible person has not been previously disqualified from being a director of a company (eg for bankruptcy or embezzlement or other such financial misconduct reason), it does not go so far as to disqualify those who may have perpetrated sexual misconduct or assault of a person for example.

Emotions run high on this topic and the charges are often unproven. To list someone as unsavoury of character may result in a defamation of character suit and a resultant claim for loss of earnings. However this is a good example of an area the ACNC could have a role in nurturing best practice. Some actions that are available to NFPs include police checks, working with children checks, referee checks, ongoing supervision and support, ongoing customer feedback etc. Being an active employer and ensuring all protections are in place will do much to deter people with ulterior motives from the sector. The ACNC could reinforce this best practice with simple guides and other online resources.

Star ratings

Whether we like it or not, the public like the model of instant public feedback – both positive and negative. Trip Advisor and Urban Spoon are both examples from the hospitality sector. The education and aged care sectors are probably the most advanced in the human service sector. Fact is, this model of public rating is becoming more prevalent. It is not the role of the ACNC to provide a platform for this type of rating. But the ACNC could have input to the design thinking as these platforms emerge. It could suggest elements of quality that members of the public should look out for. It could outline the constraints that some providers may have to work under. And it could give some guidance to expectations of impartiality of the platform. Whilst it seems Trip Advisor has achieved this, Urban Spoon is often criticised for its susceptibility to manipulation by vendors.