

28 February 2018

Mr Patrick McClure AO
Chair, ACNC Review
The Treasury
Langton Crescent
PARKES ACT 2600

Sent via email: ACNCReview@treasury.gov.au

Dear Mr McClure

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

Opportunity International Australia welcomes this opportunity to make a submission to the ACNC Review.

Opportunity International Australia provides the most marginalised families in developing countries with the tools to lift themselves out of poverty. We provide small loans to help families build businesses, earn regular incomes, put food on the table and send their children to school. We provide health leader training to women in India and Indonesia so they can teach families in their local community how to prevent common illnesses and live healthier lives, and we provide small loans to help families build toilets and access clean water. Opportunity provides loans to school leaders so they can improve the quality of their schools, and small loans to parents to help them pay school fees. We also have a domestic violence program in India to help families live peaceful lives, free of the violence that impacts one in two women in that country.

Following are Opportunity's recommendations:

Recommendation 1: Any changes to the ACNC governance standards recommended through this review should consider important implications for impact and alignment with other regulations affecting the sector, such as the ACFID Code of Conduct.

Opportunity is a member of the Australian Council for International Development (ACFID). ACFID's members work to the standards set out in the ACFID Code of Conduct, which is aligned to the ACNC governance standards. Changes to these standards should consider the impact on other aligned regulatory standards, such as the ACFID Code.

ACFID's members choose to be accountable to and compliant with the ACFID Code of Conduct, as well as meeting their reporting obligations to the ACNC. This demonstrates ACFID members' commitment to transparency, accountability and effectiveness.

ACFID's Code is aligned to other regulatory standards, including the ACNC governance standards. This alignment is deliberate. Any changes to the governance standards should take into account their impact on the high degree of alignment with standards such as the ACFID Code.

Recommendation 2: That the existing Objects set out in Division 15 of the Australian Charities and Not-for-profits Commission Act 2012 be retained. No new objects should be added.

The powers and objects of the ACNC and the ACNC Commissioner as currently articulated in the Act should be retained. No new objects should be added.

The ACNC's submission to the review has suggested two new objects be added to the Act, being:

- a) To promote the effective use of the resources of not-for-profit entities; and
- b) To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public.

The suggested additions are a source of concern. Both objects are unclear in scope and application, and could be used in a number of ways that would result in an increasing regulatory burden on the not-for-profit sector, and an undermining of public confidence and trust in the sector.

The not-for-profit sector's use of already limited resources to achieve their charitable purpose ensures a high degree of efficiency. All charities registered with the ACNC operate under the ACNC's Governance Standards. A charity's compliance with these standards, and its accountability to donors, beneficiaries and the public is ensured through the charity's governing body, which is established specifically to perform this oversight function. This is not a required function of a charity regulator, and would result in duplication.

Recommendation 3: Section 115-5 of the ACNC Act (2012) should be amended to set out that a due process must be undertaken in the appointment of a Commissioner. At a minimum, this process should include: a) appointment through a Joint Parliamentary Committee; b) candidate vetting processes; c) public hearings prior to confirmation of an appointment; and d) merit-based selection decisions.

The appointment of a Commissioner should be made on merit following a fair, open and transparent process.

The present process of appointing a Commissioner is set out at Section 115-5 of the ACNC Act. It states that the Commissioner is to be appointed by the Governor-General by written instrument, and that the Commissioner is to be appointed on a full-time basis. The current Act does not set out a due process under which such an appointment should be made, nor require key considerations or vetting processes

The ACNC Act does not currently provide sufficient provisions to ensure a fair, open and transparent process for the appointment of a Commissioner.

ACNC Commissioner is a highly important position for the Charity sector and appointment to the position should be through a commensurate process, which should be set out in the Act.

Recommendation 4: That the review consider methods for enhancing the usability of the ACNC register, such as through its interface with the ASIC register, and the inclusion of information held by the ATO. This could include:

- i. A historical record of responsible persons;**
- ii. Whether a charity has deductible gift recipient (DGR) status; and**
- iii. Whether a charity has an income tax exemption.**

The charity sector supports the red tape reduction measures set out in the ACNC's submission to this review.

Wherever possible, steps should be taken to ensure the ASIC register reflects the ACNC register and points searchers to the ACNC register where appropriate. To enhance its usability, the ACNC register should also record historical data such as a responsible person's term on a charity, and information sourced from the Australian Taxation Office (ATO), such as whether a charity has deductible gift recipient (DGR) status, and whether a charity has an income tax exemption.

Thank you for this opportunity to comment on the ACNC Review.

Yours sincerely



Robert Dunn
Chief Executive Officer