



PLAN INTERNATIONAL AUSTRALIA SUBMISSION

REVIEW OF THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION (ACNC) LEGISLATION

1. About Plan International

Founded in 1937, Plan International is one of the world's oldest and largest development and humanitarian organisations that advances children's rights and equality for girls. We strive for a just world, working together with children, young people, our supporters and partners to tackle the root causes of poverty, inequality and injustice. Plan International is independent, with no religious affiliation.

2. Context and focus of this submission

This submission is intended to inform and guide the review of the Australian Charities and Not-for-profits Commission Act 2012 (Cth) and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth).

3. 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 Act sets out three objects. These are:

- (a) To maintain, protect and enhance public trusts and confidence in the Australian not-for-profit sector; and
- (b) To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- (c) To promote the reduction of unnecessary regulatory obligations in the Australian not-for-profit sector

Both the Commissioner and the Commission are established pursuant to these objects, and the Commissioner's powers and functions accord to these objects.

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. Regarding the first proposed object, new objects to the Act are not required to achieve this purpose. It is not the core role of a regulator to promote the effective use of resources – this is something which is the core responsibility of the boards, staff, beneficiaries and donors of charities.

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.

The wording of suggested object (b) seems to imply that charities are not presently accountable to donors, beneficiaries and the public, which is demonstrably untrue. The Australian charity sector is highly regulated in this regard. Australian charities take their responsibility to be accountable to the Australian public seriously, and the ACNC recommendation sets out no case to support this recommendation. Further, its inclusion would seem superfluous given that the first existing object of the Act, which focuses on 'maintaining, enhancing and protecting public trust and confidence...' already implies a focus on supporting charities in their accountability.

Recommendation 1: 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

Recommendation 2: That the Australian Government work with the ACNC to assess the adequacy of resourcing to fulfil the second and third objects of the Australian Charities and Not-for-profits Commission Act 2012.

4. The ACNC legislation should make clear that there are a variety of approaches and methods that charities use to achieve their purposes.

Section 15.10 of the ACNC Act currently sets out certain matters which the Commissioner of the ACNC is to have regard to in exercising powers and functions. As currently articulated in the Act, this includes things such as maintaining confidence in the sector; principles of regulatory necessity and proportionate regulation; the need for the Commissioner to facilitate cooperation with other Government agencies; and others.

Further, it has been seen through a number of Bills and Legislative reviews put forward in recent months that there remains a tendency of regulators whose primary regulatory concerns fall outside the charitable sector to conflate the ideas of charitable activities and charitable purposes. The definition of a charitable purpose is made clear in Section 12 of the Charities Act (2013). It would further strengthen the definition set out in the Charities Act if the ACNC Act emboldened and clarified this further by acknowledging that charities achieve their purposes using many valid approaches and methods.

Recommendation 3: That the following additional sub-section be added to Section 15.10 of the Act:

The diverse approaches and methods not-for-profit entities use to achieve their purposes, including but not limited to delivering services, undertaking trading activities, making grants, conducting research and undertaking advocacy.

5. 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 to be carried out in the appointment of a Commissioner to the position. The current system thus is inappropriate to meet the expectations of a transparent recruitment process. Given that the tenure of this position is 5 years and has important implications for the sector, a commensurate process should be undertaken to ensure this appointment is appropriate.

This could be achieved through the implementation of a process similar to that currently used for equivalent appointments in the UK, which requires appointments to be vetted through public pre-appointment hearings, and recommended through a bi-partisan Committee.

Recommendation 4: 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.

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

The ACNC's submissions sets out a number of simple measures that would result in red tape reduction for the sector which, should these recommendations be incorporated into the Act, would be a positive outcome of this review. The recommendations that suggest genuine red tape reduction in the ACNC's submission which Plan International supports include:

19. Amend the Corporations Act to turn off the requirement to appoint an auditor in SS 327A and 327B for charitable companies, or at least for charitable companies that are small or medium registered companies.
20. That the Commonwealth Government promote the use of the ACNC's charity passport by Commonwealth, State and Territory agencies so as to reduce the regulatory burden on charities
22. Consider whether registered charities should be able to self-assess their size for reporting purposes in a particular reporting period taking into account the immediately previous reporting period, or in the case of newly established charities, the projected revenue for the following reporting period
25. Amend the ACNC Act to give the Commissioner the discretion to permit a person who is taken to be a company auditor under the Corporations Act to undertake an audit of a large registered charity if the Commissioner reasonably believes that the requirement to have an audit undertaken by an entity as specified in the Act will impose an unreasonable burden on the charity

Recommendation 5: That the recommendations of the ACNC's submission to this review that will result in red tape reduction for the sector are taken up in by this review. These include recommendations 19, 20, 22 and 25 of the submission.

Recommendation 6: 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:

7. 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 regulate themselves above and beyond the regulatory standards set out for the charity sector through their commitment to the ACFID Code of Conduct, which governs the work of all full members of ACFID. Compliance with the Code requires members to report periodically to ACFID and be able to provide evidence of compliance with identified areas of the Code as requested. Compliance with the Code and complaints under the Code are governed by an independent Code of Conduct Committee. This demonstrates ACFID members' commitment to the accountability, transparency and effectiveness of the work they undertake both domestically and internationally. Following a significant review process, a revised Code took effect for ACFID's members on 1 June 2017. The revised Code of Conduct is deliberately aligned to be consistent with the terminology and reporting requirements of other regulators including DFAT and the ACNC. ACFID's Code is aligned to the ACNC's governance standards, as shown in the mapping available on the [ACNC website](#). Registration with the ACNC is also a requirement of ACFID membership.

Recommendation 7: 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.

Conclusion

We wish you well in finalising your review. Please do not hesitate to contact Pasanna Mutha-Merrenge, Government Relations Manager on (03) 9672 3659 if you have any questions.