

Submission to the review of the Australian Charities and Not for Profits Commission prepared by the Royal Flying Doctor Service of Australia

The Royal Flying Doctor Service provides health services to rural regional and remote Australia. These services are delivered through a group of charities within geographic areas coordinated through a Federal office based in Canberra.

Terms used

RFDS – Royal Flying Doctor Service group of entities

NFP – not for profits

Comments by RFDS using the suggested questions for submissions:

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

In 2009 the Productivity Commission undertook a review of the NFP Sector with the final report released in January 2010 when it was estimated that there were approx. 60,000 charities and approx 600,000 not for profits.

When the ACNC was proposed, the stated plan was that the ACNC would initially regulate charities and at a later date extend to cover all not for profits.

Initial administration of the charity sector by the ACNC identified over 7,000 of the estimated 60,000 charities had ceased to exist.

It is submitted that as part of this review of the ACNC, the question of the broader regulation of the NFP sector should be reconsidered - should the ACNC ultimately regulate all NFP's?

The NFP sector should be given a clear direction.

Either the ACNC should be ultimately empowered to be responsible for all NFP's or another body such as the ATO should be the responsible regulator.

The RFDS would support the ACNC taking on the administration of all NFP's and being appropriately resourced.

**2. *Are there gaps in the current regulatory framework that prevent the objects of the Act being met?***

The current regulatory framework focuses on charities. Following the recent review of DGR registers NFP's that are registered to have DGR status on the other registers such as environmental are to be migrated to charity status.

The current regulatory framework is appropriate to the management of those entities that seek registration as a charity or DGR status.

**3. *Should the regulatory framework be extended beyond just registered charities to cover other classes of not-for-profits?***

The ACNC has the object to remove reporting duplication between government agencies.

At the time that the ACNC was proposed the stated plan was that the ACNC would ultimately regulate all not for profits, starting with charities.

In terms of numbers of charities, a large percentage are unincorporated groups. Many charities are state regulated incorporated associations, and so bound by both the State and the Commonwealth legislation.

In terms of NFP's that are not charities, such as sporting groups, substantial numbers operate as incorporated associations, regulated under individual state legislation.

If the ACNC is to regulate all not for profits, there will be a need for all States to hand over the role of regulating incorporated associations to the ACNC.

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

Public trust and confidence in the sector is the aggregate of public trust and confidence in individual charities.

Commentary in the public domain on issues of concern include:

- (a) Payments or distribution of monies raised by a charity to purposes inconsistent with the purpose of the organisation;
- (b) Payments to associates of those in charge of the charity where those payments are in excess of an arm's length value;
- (c) Costs of fundraising and / or administration costs eroding amounts received as donations or otherwise generated through fundraising activities.

The Charity standards focus on categories (a) and (b) above and the ACNC is publicly stating its intention to increase scrutiny of the demonstration of application of arm's length principles.

Administration / fundraising costs referred to in (c) have been collated by media personnel from time to time with the goal to measure and compare charities. The reality is that comparing fundraising activities and costs between charities is similar to comparing apples and oranges in a fruit basket.

Each charity seeks to generate income to allow the charity to pursue their objects and does so using methods that are often unique to the charity. By way of example, the Red Shield Appeal doorknock by the Salvation Army is a fundraising method suitable to the Salvos that draws on the broad community support for the work in the community.

Similarly, the collection tins that sit on the counters of so many businesses in regional Australia to raise funds to "keep the Flying Doctor flying".

Where there is an attempt to establish a table fundraising costs, there is a risk to compare the results superficially and not to analyse the activities behind the numbers; this generally results in inappropriate conclusions.

Unpaid volunteer labour can also distort these fundraising percentages.

The RFDS submits that the ACNC should continue to take the stance that fundraising cost tables and comparisons are fundamentally flawed.

Where any concerns arise the ACNC should liaise with the particular charity in order to understand the strategies and numbers.

**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?***

This is primarily the responsibility of the charity to ensure that the charity is operating in accordance with its constituent documents. The role for the ACNC is to be able to investigate charities (and NFP's) based on concerns raised by members of the public or from its own observations.

The ACNC is the representative of society on the conduct of charities (and NFP's if included) and is charged with the powers to make investigations on behalf of society in general.

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

#### Financial information reporting

The requirement regarding the lodgement of financial statements remains for those charities in states where the state government has not agreed to accept the documents lodged with ACNC as meeting the state based lodgement

This duplication will generally arise where the legal structure of the charity is an incorporated association, namely an entity established under state based legislation rather than the Corporations Law managed at Commonwealth level.

Many of the charities that are established under state based legislation are smaller in nature and consequently may have a lower reporting / audit requirement under the ACNC rules than the reporting / audit requirement imposed by the State legislation.

Consideration should be given to alignment of the requirements. This may result in audits of organisations that would otherwise not be required. The benefit of an audit is the external scrutiny of the organisation and its activities

#### Fundraising regulation

At present fundraising is regulated by legislation controlled by each state with the outcome that are different rules in each state.

The interpretation is that if a charity is willing to accept a donation from a person in a particular state the charity is required to hold a licence to fundraise in the state of the donor as well as the state of operation.

Each state has variations in the fundraising legislative and administrative requirements as these have generally been developed in isolation of other states.

The diversity of these requirements impose administrative burdens on charities to satisfy the competing requirements, adding additional overheads that increase the cost of fundraising

Without these administrative burdens more funds raised will be directed into the purpose of the charity.

Fundraising includes a wide range of activities from seeking donations to art unions and public events / activities. The particular beneficiary of the fundraising may or may not be involved in the conduct of the activity.

The RFDS group of charities has a wide ranging series of activities to generate the funds that are essential to the ongoing delivery of health services.

There are three options (developed in conjunction with others) that can be considered

- No change

If no change to fundraising regulation is achieved, existing inefficiencies remain;

A proportion of administration and fundraising costs is directly attributable to government accepted /endorsed duplication on fundraising.

- Transfer of powers

The Commonwealth could encourage the States to transfer the power to regulate fundraising to the Commonwealth and the ACNC administers the regulation of fundraising.

The challenge is that at present the ACNC regulates only charities and those who undertake fundraising are charities and other NFP's.

This format would be appropriate if the ACNC is confirmed to oversee all NFP's and is appropriately resourced.

- Universal legislation, single state registration

In 1981 the Australian National Companies and Securities legislation was introduced which has matured into the Corporations Act regulating all companies. From 1961 to 1981, companies were regulated under state legislation where uniform legislation was introduced into each state so there existed a single set of rules for companies. Prior to 1961, each state had various rules, not dissimilar to the current laws relating to regulation of fundraising.

- The Commonwealth could encourage the States to adopt universal legislation so the rules are identical across Australia (Similar to the Companies Act 1961 adopted by all states as uniform legislation with registration in the state in incorporation)
- For each entity to be required to register in the State that is the location of their registered office
- For that registration to satisfy all states
- The ABN to be used as the identifier

If the ACNC assumes regulatory responsibility for all NFP's at a future date, the ACNC could assume responsibility for fundraising regulation with state based offices migrating to be under the control of the ACNC in a similar manner to the establishment of state offices of ASIC.

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?*

Education role

The ACNC has been promoting its education role but has been prepared to act to appropriately regulate any entities that are clearly in breach of the legislation, as is evidenced by the former charities that have been deregistered for breaches of the rules.

This balance has been an appropriate balance. The charity sector has a large number of small charities. The nature of the charity sector is a constant change of personnel leading the charities.

A good example is community based kindergartens advancing education where the management committee may change annually and the entity continues to operate.

The ACNC needs to maintain its education role to recognise the newly appointed Responsible Persons and the new charities.

Responsible persons, entities, and Corporations Law

Entities established under the Corporations Law migrate to control under the ACNC Act whilst registered as a charity by the ACNC.

A person who is treated as a director under the Corporations Law ceases to be controlled by the Corporations Law and becomes a Responsible Person under the ACNC Act.

The transition between these two acts for both the entity and those responsible would appear to warrant further review to ensure all fiduciary responsibilities are maintained, particularly in circumstances where the ACNC removes the registration of a charity that is an entity that would otherwise be managed under the Corporations Law.

For example, where the ACNC backdates the cancellation of an entity's registration as a charity, as it has done, what are the legal responsibilities of the directors / responsible persons for the period of time that the entity is then deemed to no longer be a charity and back under the control of the Corporations Law.

**NOTES**

The Royal Flying Doctor Service operates as a federated structure mirroring the manner in which health services are delivered in Australia.

Our Federation CEO, Dr Martin Lavery, is also member of the ACNC Advisory Board. Given his dual roles, he did not participate in the drafting of this submission

Submitted on behalf of the RFDS Australia by Mark Gray Chair of the Finance & Audit Committee RFDS Federation Board assisted by Russell Postle Chair of the Finance & Audit Committee RFDS Queensland

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