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**Submission to the Parliament of Australia  
Senate Economics Legislation Committee**

**on the**

**Australian Charities and Not-for-profits Commission  
(Repeal) (No. 1) Bill 2014**

**April 2014**

## Introduction

The Australian Women's Health Network welcomes the inquiry by the Senate Economics Legislation Committee into the proposed repeal of the legislation governing the Australian Charities and Not-for-profits Commission and the first formal opportunity that this provides to comment on this matter.

## The Australian Women's Health Network (AWHN)

The Australian Women's Health Network is a health promotion advocacy organisation that provides a national voice on women's health, based on informed consultation with members. Through the application of a social view of health, it provides a woman-centred analysis of all models of health and medical care and research. It maintains that women's health is a key social and political issue and must be allocated adequate resources to make a real difference.

It aims to foster the development not only of women's health services but of stronger community-based primary health care services generally, which it sees as essential to improve population health outcomes. It advocates collaboration and partnership between relevant agencies on all issues affecting health. To this end, AWHN coordinates the sharing of information, skills and resources to empower members and maximise their effectiveness. The coalition of groups that comprises the organisation aims to promote equity within the health system and equitable access to services for all women, in particular those women disadvantaged by race, class, education, age, poverty, sexuality, disability, geographical location, cultural isolation and language.

AWHN has representatives from across Australia in all States and Territories with a membership base of 150 comprising 67 organisations and 83 individuals.

## AWHN's position on the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014

The Australian Women's Health Network (AWHN) believes the proposed repeal of the legislation governing the Australian Charities and Not-for-profits Commission (ACNC) is very regrettable and would result in a lost opportunity to continue the reforms in the charities and not-for-profits sector at a national level.

We are aware of the work over many years by the charities and not-for-profits sector to achieve real reform in the regulation and governance of the sector. This culminated in the Productivity Commission Research Report into the Contribution of the Not-for-profit sector released in 2010.

The primary recommendation of the Report (see Attachment A) was for the establishment of 'A *national one-stop-shop to consolidate Commonwealth regulatory oversight and tax endorsement*'. This was to address the problem of, '*The current regulatory framework [which] is complex and imposes a considerable compliance burden on NFPs —especially those operating across jurisdictions.*'

The proposed response was to establish a national Registrar to:

- consolidate Commonwealth regulation for incorporation of NFP companies (including Indigenous corporations)

- register and endorse NFPs for tax concessional status
- register national fundraising organisations and/or activities
- provide a single portal for corporate and financial reporting

The Report described the main benefits of establishing a national registrar would be to provide a 'one stop shop' for NFP regulation to reduce compliance costs and to provide for more accessible information to improve trust and confidence in NFP's.

The majority of the charities and not-for-profits organisations who participated in the advocacy for reform welcomed enthusiastically the opportunity for the establishment of a national Registrar, which was viewed as logical and needed for the continued development of the sector.

As a national organisation, we were excited by the prospect of a national regulator and reform organisation, as represented by the ACNC when it was recently established in December 2012, given the advocacy of our organisation and others was reflected in the primary recommendation.

As with any major change to regulatory systems, there was always going to be an 'overlap' of regulatory requirements by the Commonwealth and the States and Territories. The ACNC has been working hard to achieve a minimum of 'overlap' in its establishment phase and most organisations were aware that it would take time to implement the regulatory reforms.

The ACNC, in a short space of time, has achieved much and engendered trust and goodwill in implementing its objects and functions in terms of the ACNC Act. Included in these achievements is the excellent 'one-stop' website that is 'user friendly' for organisations and members of the public. For the first time, people can view on a single website platform information and data on all registered charities in Australia. This is a very important component in building the Australian community's trust in the work and use of funds in the charities and not-for-profits sector.

The development of forms, resources and tools for charities and assistance provided in working towards compliance with the requirements of the Act, for example Annual Information Statements, has been very impressive given its timeframe of operations to date.

In our view, to put in place measures to repeal the ACNC would be premature, and an extremely disappointing and untimely end to a very important reform process. We have described below the situation of our own organisation to highlight the need for ongoing reform.

## **AWHN as a case example**

AWHN is an incorporated association established in the Australian Capital Territory (ACT) under the Associations Incorporation Act 1991. It is a requirement of the Act that the Public Officer must reside in the ACT. If there was a Commonwealth regulation for the incorporation of organisations such as ours then there would be greater flexibility and opportunity for other members across Australia to hold office such as the Public Officer.

AWHN is also a registered charity and more recently a Deductible Gift Recipient as a Health Promotion Charity. We used the processes of the newly formed ACNC in 2013-2014 in a number of ways and were

impressed by the information provided, the response times and access to data provided on the ACNC website.

We have recently been investigating the requirements for online fundraising in Australia. As a national organisation we are required to complete the registration forms for a fundraising license in all states. This is an onerous and time-consuming process involving several people in the organisation and must be completed before we are able to seek donations in an online format.

If there was a national register for fundraising organisations, the process would be much simpler and far less onerous than is currently the case. By retaining the ACNC and allowing it to continue its work this could be achieved, and 'red tape' would be significantly reduced over time, in line with the Commonwealth Government's intentions.

AWHN is also required to complete various financial reports for funding bodies and current regulatory bodies. We were aware that the ACNC was working towards harmonisation, including streamlining and simplification of the reporting processes, and that some of the States and Territories had already started to change their processes to accept data that had been provided to the ACNC and vice versa. These processes would still ensure robust reporting externally, and at the same time, save time on the provision of multiple reports requiring differing formats, that could be better spent on service delivery.

In considering the above in respect to organisations such as AWHN, there are obvious productivity benefits in having a national Registrar in being able to undertake and perform our work more efficiently and effectively.

## Alternatives to the ACNC

To date, there has not been an alternative regulatory system promulgated by the Minister for Social Services on which to provide formal public comment. Therefore we can only surmise on possible alternatives at this stage which is creating considerable uncertainty and concern in the charities and not-for-profits sector.

It has been reported that the Australian Taxation Office would be requested to 'take back' the role of assessing applications for charitable status, for example. If this was the case, then we would be reverting back to the unsatisfactory situation that was in place prior to the establishment of the ACNC. Namely, that a body charged with protecting the taxation revenue base was required to make decisions on applications for income tax exemptions and charitable status. This conflict of interest scenario was one reason for the advocacy around the need for an independent regulatory body to make these decisions.

The Minister for Social Services in the Second Reading speech on 19 March 2014 mentioned 'establishing the National Centre for Excellence for civil society.'

We are unsure what is envisaged for this proposal, but would respectfully suggest that the sector already has access to a type of Centre of Excellence at the Queensland University of Technology's (QUT) Australian Centre for Philanthropic and Nonprofit Studies. For a number of years the Centre has provided models of best practice in a range of areas of interest including governance, policy development and fundraising.

In our view, it would be more productive and cost effective to ensure the future sustainability of the Centre located at QUT. It is well known in the sector for the leadership it provides and its commitment to the continued development of the charities and not-for-profits sector.

## Concluding comments

The proposed repeal of the ACNC means further uncertainty for the sector at a time when there was much to look forward to with improved regulatory processes over time. It is very disheartening that the hard work by many in the sector over the years and the resources invested in the ACNC will be viewed as 'being wasted' and we believe it would represent a lost opportunity to achieve real reform in the sector.

AWHN strongly recommends the following:

- that the ACNC be retained and appropriately funded to continue to implement its objects in terms of the Act, particularly in relation to harmonisation of current regulation and reporting systems, and public access to charities information
- that the Queensland University of Technology's (QUT) Australian Centre for Philanthropic and Nonprofit Studies be recognised and supported to be developed as a Centre of Excellence for the charities and not-for-profit sector



## Attachment A

# Summary of Recommendations

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
<b>Smarter regulation of the not-for-profit sector</b>		
<i>A national one-stop-shop to consolidate Commonwealth regulatory oversight and tax endorsement</i>		
The current regulatory framework is complex and imposes a considerable compliance burden on NFPs — especially those operating across jurisdictions.	<p>Establish a national Registrar to:</p> <ul style="list-style-type: none"> <li>consolidate Commonwealth regulation for incorporation of NFP companies (including Indigenous corporations)</li> <li>register and endorse NFPs for tax concessional status</li> <li>register national fundraising organisations and/or activities</li> <li>provide a single portal for corporate and financial reporting.</li> </ul>	'One-stop-shop' for NFP regulation will reduce compliance costs. More accessible information should improve trust and confidence in NFPs.
Complexity and inconsistency in endorsement processes for tax concessions.	<p>Registrar to endorse Commonwealth tax concession status for NFPs.</p> <p>Annual community-purpose statement to be required.</p> <p>Australian Commissioner for Taxation to have power to require dis-endorsement for breach of taxation compliance.</p> <p>State and territory governments should recognise Commonwealth tax concession status endorsement, and explore scope to harmonise legislation in this area.</p>	<p>Transfer of responsibility from ATO removing current tension, and promoting greater transparency.</p> <p>Greater integrity and consistency in tax concession status.</p> <p>Simpler process and more consistent tax treatment.</p>
<i>Enhancing legal options for NFPs</i>		
Compliance burdens associated with companies limited by guarantee discourage national incorporation.	Establish a separate chapter in the <i>Corporations Act 2001</i> dealing with NFP companies limited by guarantee. Provide a plain English guide. Support changes to the <i>Corporations Act</i> to reduce compliance burdens on NFP companies limited by guarantee.	Addressing current impediments will encourage more NFPs to incorporate at national level.
Legislation on disposal of assets is not strong enough to prevent potential roting.	Reforms to rules on disposal of assets in <i>Corporations Act</i> and <i>Incorporated Associations</i> legislation	Stronger community trust in the NFP sector.



<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
<i>Reduce compliance costs and improve effectiveness</i>		
The states and territories impose different and disproportionate reporting requirements on incorporated NFPs. It is hard for NFPs to migrate from one legal form to another or one jurisdiction to another.	States and territories to harmonise Incorporated Associations legislation and reduce impediments to changing legal form.	Greater clarity and lower compliance costs for NFPs and improved public accountability.
Lack of consistent fundraising laws across jurisdictions. And, laws which do not cover internet fundraising activities.	Registrar to establish a register for cross-jurisdictional fundraising organisations and/or activities.  Commonwealth legislation may be needed to cover web and telephonic fundraising.  Fast track harmonisation of fundraising legislation through adoption of a model Act	Reduced fundraising costs, and greater for public scrutiny, resulting in a more efficient use of resources
Lack of consistency and comparability in financial reporting requirements for NFPs and governments.	Australian governments to fast track introduction of Standard Chart of Accounts, expand Standard Business Reporting to NFPs, and encourage agencies to use the information available through the Registrar to undertake organisational 'health checks'.	Improved comparability of NFP financial performance information. Lower compliance costs for NFPs.
<b>Building knowledge systems</b>		
<i>Promoting national data systems on the NFP sector</i>		
Lack of timely, quality data on the economic contribution, scale and scope, and impacts of sector.	Develop an Information Development Plan to provide more frequent satellite accounts, build databases for assessing the contribution of the sector over time, and establish a process for collating information on the sector's contribution.	Better data will improve understanding of how NFPs enhance community wellbeing and facilitate macro level analysis of policy effectiveness.
<i>Building a better evidence base for social policy</i>		
Lack of a common approach to measuring and evaluating NFP contribution leads to lack of comparability.	Australian governments to adopt a common framework for measuring the contribution of NFPs.	Enhanced comparability of evaluation results and support of meta-analysis. An agreed measurement framework may encourage greater evaluation within the sector and facilitate the standardisation of reporting requirements.

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Current evaluation requirements for NFPs funded by governments can be complex and provide little meaningful information.	Australian governments to ensure that reporting and evaluation processes are consistent with 'best practice' principles.  Governments should fund the reporting and evaluation it requires of NFPs and consolidate and report this information back to the sector.	Improved relevance of information collected and the quality of evaluation undertaken to inform change.
There is no central repository for the collation, analysis and dissemination of the learning from program evaluations.	Australian Government to establish, through tender, a Centre for Community Service Effectiveness. This will provide a portal for gathering and disseminating evaluations, providing guidance for impact evaluation, and support meta-analysis of the effectiveness of government funded services.	Dissemination of material should improve quality of evaluations, and encourage adoption of best practice. Meta-analysis of evaluations will assist in developing an evidence-base to inform program design and resource allocation decisions.

### **Improving arrangements for effective sector development**

#### *Improving equity and effectiveness of tax concessions for philanthropy*

NFPs need to diversify their revenue sources to improve sustainability including through encouraging higher levels of philanthropy (giving).	Australian governments should take the lead in the adoption of payroll giving.  Building the capacity of NFPs to undertake evaluations and demonstrate impact will also assist to attract public and business support.	Increased participation in planned giving may stimulate the overall level of giving.  Leveraging the goodwill of community and business resources to ensure greater financial independence. This may support more innovation in the sector.  Imposes disciplines on NFPs to demonstrate that funds are being used efficiently and effectively.
Current DGR arrangements are distortionary and out of date.	Progressively expand DGR status to all charitable institutions and funds endorsed by the Registrar.  Provide a Commonwealth statutory definition of charitable purpose broadening scope to reflect contemporary practices.	Expanded scope to provide indirect public support to a wider range of NFPs that have potential to contribute to reducing social exclusion and enhancing community wellbeing.



<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
<i>Developing a sustainable market for NFP debt</i>		
<p>Some NFP organisations have difficulties accessing finance for start-up and capital expansion.</p> <p>Social enterprise activities, which adopt a business model, are not yet well understood in financial markets.</p>	<p>Develop a more sustainable market for NFP debt through improved business planning by NFPs, providing greater certainty on future funding for those NFPs involved in the delivery of government funded services, strengthening the CDFI sector, and removing constraints on philanthropic trusts and foundations to providing debt financing.</p>	<p>NFPs able to prepare comprehensive accounts and business plans necessary to attract capital.</p> <p>CDFIs develop financial products that attract philanthropic investment. Improved accountability and transparency.</p>
<i>Building sector capabilities to improve governance and enhance productivity</i>		
<p>NFPs are constrained in improving productivity. Areas of most concern are inadequate governance skills, low uptake of information technology and lack of capacity in evaluation.</p>	<p>State and territory governments take a more strategic approach to the development support they provide to NFPs with a focus on improving the uptake of information technology and addressing skills shortfalls.</p> <p>Explore selective sharing of client information, having due regard for privacy considerations.</p>	<p>Improved capabilities of NFPs in relation to governance, client management, evaluation and risk management.</p>
<p>There are relatively few intermediaries offering support services to the NFP sector. This limits small NFPs' ability to access economies of scale.</p>	<p>State and territory governments should consider how best to support the development of intermediary services as part of their strategy for sector development.</p>	<p>Improved access by NFPs to a wide range of intermediary services.</p>
<i>Addressing workforce issues</i>		
<p>Workforce planning is disproportionately focussed on education and health services. This is affecting long-term investment decision-making in the broader NFP sector.</p>	<p>Long-term workforce planning for community services to be undertaken by Community Services and Health Industry Skills Council and Skills Australia.</p>	<p>Improved analysis of future workforce needs will facilitate better service delivery and policy development.</p>
<p>The regulation of volunteers (such as police checks) is imposing a growing compliance burden.</p>	<p>Mandatory vetting requirements for working with children and vulnerable people should be streamlined and police checks should be portable within jurisdictions. Portability across jurisdictions should also be explored.</p>	<p>Removing impediments to maximising the contribution of volunteers.</p>

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
<b>Stimulating social innovation</b>		
NFPs lack adequate funding to support research and experimentation.	Government agencies funding community services should establish 'social innovation funds' in significant program areas to support trials and demonstration programs for innovative solutions to identified problems. Funding should be allocated on a competitive basis.  Philanthropic foundations and businesses should be invited to contribute to these innovation funds.	Additional funding to support the development of solutions to existing and emerging social issues.
<i>Building sector capabilities to support innovation</i>		
NFPs can have difficulty collaborating and lack skills in developing robust research proposals.	The CRC program should facilitate collaborations involving NFPs.	Improved access by NFPs to the CRC stream of funding.
Many NFPs lack the business and financial skills required to harness resources or to improve their internal processes.	Australian governments should explore options to expand their business support programs to NFPs engaging in social enterprise activities.  The Commonwealth Enterprise Connect program should establish a specialist centre for social enterprise.	Improved long-term viability of NFPs.
<b>Improving the effectiveness of direct government funding</b>		
<i>Providing clarity over funding obligations</i>		
There is often uncertainty as to whether governments intend to fully fund the delivery of a service or only make a contribution.	Australian governments to determine and explicitly state in any tender or negotiated contracts whether they intend to fully fund a service or only make a contribution. If the latter, the extent of the contribution should be made explicit.	This is essential to restore trust in the contracting process and ensure that all parties have a clear understanding of the funding relationship.
Partial government funding is undermining the viability of some NFPs including by making it difficult for NFPs to plan invest in developing their capabilities and attract and retain staff.	Government funding decisions should take into consideration the long-term viability of the organisations delivering services on behalf of government. Cost assessments should be comprehensive in accounting for all costs, including market wages, but should allow for specified co-contributions by clients and providers.	Better clarity about funding will enhance the long-term viability of the NFP sector.

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
There is a perception that current procurement and grant making processes do not adequately take account of the wider benefits (or spillovers) NFPs may be able to offer.	Models of engagement underpinning service delivery should be consistent with the principle of achieving best value for money for the community (including any relevant spillover benefits that providers generate). An evidence based approach should be used to assess the nature, extent and relevance of these types of benefits on a case-by-case basis.	Better allocation of public resources from a community wellbeing perspective.
There are concerns about the extent to which the treatment of tax concessions and subsidies in government funding and procurement decision-making violates the principle of competitive neutrality.	Detailed examination by the Australian Government of treatment of tax concessions in assessment of value for money in procurement guidelines.	Improved assessment of 'value for money' in government funding and procurement decision-making.
<i>Ensuring appropriate independence</i>		
In some cases governments are using service agreements and contracts to inappropriately micro-manage the internal processes and broader activities of NFPs.	Agency independence must be respected, and contractual requirements limited to those needed to ensure the funded service is delivered appropriately and agreed outcomes are met.	Removes unnecessary tensions between an NFP's pursuit of their community purpose and engaging in delivery of government services or accepting grants.
<b>Removing impediments to better value government funded services</b>		
<i>Getting the model right</i>		
There is an over-reliance on the purchase of service contracting model and it is being applied in situations where other models of engagement would be more appropriate.	Australian governments to better match the model for engagement with the characteristics and circumstances of the service being delivered.	Improved relationships between governments and NFPs to the benefit of more effective service delivery.
Some problems that government engages with NFPs to address require extensive collaboration, extended life contracts and ongoing collaborative evaluation to inform and modify approaches.	Greater consideration of use of the joint venture model to address multi-dimensional problems.	Better suited approaches to addressing multi-dimensional social problems.

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
<b>Improving procurement and management processes</b>		
<p>In some cases the purchase of service model is being poorly applied thereby eroding the 'natural' advantages of NFPs in delivering services. Issues include:</p> <ul style="list-style-type: none"> <li>• poor consultation with the sector</li> <li>• excessively short-term contracts given the nature of the problems being addressed</li> <li>• tendering, contractual and reporting requirements that impose significant compliance costs</li> <li>• overly prescriptive contracts resulting in micromanagement.</li> </ul>	<p>Australian governments should continue to work to improve the quality of their engagement processes with the NFP sector. In addition, they should:</p> <ul style="list-style-type: none"> <li>• adopt a flexible approach to the lead agency model, assessing its relative merits on a case-by-case basis.</li> <li>• ensure that the length of service agreements reflect the length of the period required to achieve agreed outcomes</li> <li>• consider master agreements and prequalifying suppliers, at least at whole of agency level.</li> </ul>	<p>Lower compliance and other transaction costs, including for government and greater financial certainty.</p> <p>Removal of many deep-seated impediments to improving government and NFP engagement.</p>
<p>Poor risk management leads to inappropriate cost shifting and overly prescriptive compliance requirements.</p>	<p>An explicit risk management framework should be prepared by government agencies as part of the contracting process in collaboration with the service providers to determine the nature of risk, who should bear such risks and associated costs.</p>	<p>Improved risk management.</p>
<p>Studies have shown that contracting practices are often poor and undermine efficient and effective service delivery.</p>	<p>A common set of core principles should be developed to underpin all government contracts in human services.</p>	<p>Better and fairer contracts will improve the effectiveness of service delivery.</p>
<b>Implementation of the proposed package of reforms</b>		
<p>Experience in Australia and overseas suggests that sector compacts may have little affect unless they are supported by complementary measures (such as detailed implementation plans and accountability frameworks).</p>	<p>Any compacts entered into with governments and the sector need robust mechanisms for the implementation, monitoring and evaluation.</p>	<p>Ensure that compacts influence the attitudes and decision-making of program managers.</p>

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Over the last 14 years there have been five major reviews of the NFP sector, yet many worthwhile recommendations remain unimplemented.	<p>An Office for NFP Sector Engagement within a central Commonwealth agency should be established to drive the reform agenda.</p> <p>Each state and territory level also needs to build the capacity of their agencies to implement long overdue reforms.</p>	Implementation of the reform agenda will strengthen the NFP sector and its capacity to engage with government, business and the community.