



National Roundtable of Nonprofit
Organisations

Submission to:

Parliamentary Joint Committee on Corporations and
Financial Services and the Senate Standing
Committees on Community Affairs

30 August 2012

Inquiries:

Australian Charities and Not-for-profits Commission Bill 2012;

Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012;

Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012

Together for the common good

The National Roundtable of Nonprofit Organisations Ltd (“NRNO”) is an independent, non-partisan organisation with a diverse membership of peak bodies and national NFP organisations and was formed in 2002. Based on the active engagement of member agencies representing more than 20,000 NFP organisations across Australia, the NRNO facilitates consideration of regulatory, taxation and sustainable financing issues and coordinates member engagement with the Australian community and public policy processes.

Together with many other NFP organisations, the NRNO has contributed actively to government inquiries and reviews on not-for-profit regulatory reform, including the numerous consultations which have taken place over the past 2 years following the government’s announcement of its intention to undertake major reforms of regulation of the not-for-profit sector and its interactions with government. The NRNO has advocated better and smarter regulation of the sector for many years and published a comprehensive proposal and rationale for a reform program in May 2004 (Attachment A).

Before the establishment of the Roundtable, the late Professor Mark Lyons, in his 2001 book, **Third Sector: the contribution of nonprofit and cooperative enterprises in Australia**, (the first comprehensive study of Australia’s not-for-profit sector), observed:

“The ignorance of the third sector within government is nowhere more striking than in the variety of arrangements available for creating a legal identity for a third sector organisation. At present, excepting cooperatives, large third sector organisations and small organisations that operate across state borders must incorporate (now merely ‘register’) with the Australian Securities and Investment Commission. This body has no concern with the special character of third sector organisations and seeks as far as possible to treat them in the same way as public companies. The information that third sector organisations incorporated in this way are required to report and the form in which it is presented may be helpful to investors in for-profit firms but is of little use to donors or potential donors. Most nonprofits are incorporated under state legislation that does not always require them to report and when it does, such reports are not publicly available. Other state legislation seeks to control fundraising by nonprofits. This legislation, and its consequent regulations, fails to recognise the fundraising techniques employed by large nonprofits. In addition, regulation varies from state to state.

A strong case can be made for creating a single national authority to regulate the activities of nonprofits in a coherent, consistent and appropriate way. Such an authority could ensure that nonprofits were accountable to the public, while at the same time providing a body of knowledge within government to better inform the policy process.”¹

¹ Lyons, Allen & Unwin (2001)

As pointed out in the Explanatory Memorandum for the ACNC Bills, there have been numerous inquiries and reviews into not-for-profit regulation in Australia over the past 17 years:

- “The 1995 Industry Commission Inquiry Report, *Charitable Organisations in Australia*, recommended a sector wide focus on best practice to strengthen the contribution the charitable sector makes to Australian society.
- The 2001 Report of the *Inquiry into the Definition of Charities and Related Organisations* recommended that establishing a comprehensive national administrative framework for the charitable and related sector and an independent administrative body for charities and related entities, be considered.
- The 2008 Senate Economics Committee *Inquiry into Disclosure Regimes for Charities and Not-for-profit Organisations* recommended the establishment of a single independent national regulator for NFP organisations. The Committee recommended a broad role for the regulator, including registering NFP organisations, educating the sector and encouraging compliance and developing and maintaining an accessible, searchable public information portal.
- The 2010 *Review into Australia’s Future Tax System* (The 2010 AFTS Review) recommended that a national charities commission should be established to monitor, regulate and provide advice to all NFP organisations.
- The 2010 Productivity Commission *Report on the Contribution of the Not-for-profit Sector* (2010 PC Report), recommended the establishment of a ‘one-stop shop’ for Commonwealth regulation by consolidating various regulatory functions into a new national registrar. The report recommended that the regulator undertake a variety of functions, including assessing organisations for Commonwealth tax concession status, providing a single reporting portal for corporate and financial information, and investigating compliance with regulatory requirements.
- The 2010 Senate Economic Legislation Committee in its *Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010* recommended the establishment of a single independent national commission for NFP organisations.”

The Explanatory Memorandum accurately observes that “*a consistent theme that emerged from these reviews is that the regulation of the NFP sector would be significantly improved by establishing a national regulator and harmonising and simplifying regulatory and taxation arrangements.*”

The Memorandum correctly reports that consultations undertaken since the May 2010 Budget announcement “*demonstrated significant support for a national regulator and national regulation, and for NFP reform to be undertaken as a matter of priority.*” Significant appetite for reform has been demonstrated by the sector itself and by other interested parties over the long 17 years of the quest for major reform. In just 4 of the above major inquiries there were:

- 12,920 pages of public submissions;
- 56 days of hearings;
- 45 site visits;
- 1,344 pages of official reports; and
- 150 recommendations.

Despite all of the time, energy and resources invested by the sector itself and others in all of that review and inquiry effort, all that was achieved was meagre 7 pages of new legislation in only one jurisdiction (the Commonwealth).

Following the last year and more of consultations and inquiries there are now more than 12 million words on 39,000 pages on the public record on the case for and the nature of necessary and desirable not-for profit regulatory reform in Australia. **Once again, we are at the altar of the reforms we want and need and we ask for the support of our national parliament and of the states and territories to deliver for us better and smarter regulation. We don't want to be jilted yet again.**

The ACNC Bills and the related Tax Laws Amendment Bill represent a significant, historic and positive step in the quest for regulatory reform. The major concerns we and others identified in relation to earlier drafts of the ACNC Bills have been addressed through the adoption by the government of the recommendations of the House of Representatives Standing Committee on economics and by the decision to further consult with the sector and others on governance and financial requirements.

There will be much more to be done to achieve world's best practice regulation in Australia (see, for example, the Roundtable's 2007 paper on the assessment of charitable status in Australia – Attachment B). The establishment of the ACNC under the terms of the Bills represents a very good start down a better and smarter regulatory road.

We are also very heartened by the approach to regulation set out in the Bills and being taken in practice by the Interim Commissioner, Susan Pascoe AM, and her Implementation Taskforce team – this augurs very well for a bright and sound regulatory future.

In 2004 we observed:

“Ensuring the effectiveness of Australia’s nonprofit organisations in delivering the social and economic benefits of their missions is of vital importance. Driving nonprofit organisation growth and facilitating social and economic development are national priorities.”

It's for the common good and it's in the national interest.



David Thompson AM

Director

30 August 2012