



the green
institute

greeninstitute.org.au

GPO Box 557
Canberra ACT 2601
Australia

Ph. +(61) 0419 877 325

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

Submission by the Green Institute
31 August 2012

Contact

Margaret Blakers

GPO Box 557

Canberra ACT 2601

office@greeninstitute.org.au

02 6253 4926

Introduction

The Green Institute is a not-for-profit organization supporting green politics, one of the thousands that will be affected by these bills. We appreciate the opportunity to make this short submission to the two Senate Committee inquiries.

While it is evident that there has been lengthy consultation about the proposed Australian Charities and Not-for-profits Commission (ACNC) we are concerned that it has not been broad based. Just 73 groups (some peak groups) made submissions to the House of Representatives Inquiry, including only two from the environment movement. This represents far less than 1% of the 60,000 organisations affected. It is likely that the vast majority of affected organizations have little or no idea about the impending regulatory changes and their ramifications. For many, it is not at all clear that the new regime will be beneficial rather than burdensome, especially for advocacy organizations and those with overseas activities. A small number of key issues are outlined below.

Issues

1. Risks to the independence of charities and not-for-profit organizations

The bill automatically transfers Australia's 60,000 charities to the Australian Charities and Not-for-profits Register. Organisations on the Register will be required to meet 'governance standards' (all groups) and 'external conducts standards' (groups with activities outside Australia). These standards are to be specified in regulation and failure to comply may result in the loss of registration and therefore access to tax concessions. The risk, especially for advocacy groups, is that the governance and external conduct standards may be used to reduce their independence or impose onerous conditions on their operations. Over time it could effectively narrow the definition of 'charities' by eliminating organizations that fail to meet the standards.

2. Red tape

The bill has the object of reducing red tape. Despite this, initially at least, it operates in addition to existing state and other regulatory requirements. Because the governance and external conduct standards have yet to be published, there is no clarity about the regulatory burden they will entail. The narrow band of size classifications adds to the concern: 'small' groups are those with revenue up to \$250,000 in a year; 'medium' up to \$1 million in a financial year; all other groups are 'large'. Groups with revenue between \$1 million and hundreds of millions have the same compliance burden despite having vastly differing capacity to meet it.

3. ACNC not independent

The ACNC Commissioner's role is the 'general administration' of the Act. Policy remains the domain of the Treasurer through the ATO. Furthermore, the ACNC Advisory Board can only provide advice at the request of the Commissioner. The concern is that the ATO's focus on regulation and revenue-protection will overwhelm the ACNC's aim of supporting and sustaining the sector.

4. Objects of the Bill not consistent with its content

The objects of the Bill are:

(a) to maintain, protect and enhance public trust 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 on the Australian not-for-profit sector.

However the detail of the bill is almost entirely focused on (a). In particular there is no specific mechanism for supporting and sustaining the sector, and no safeguard for its independence.

Recommendations

Implementation of the following proposals would help alleviate some of the issues and concerns raised by the legislation.

1. Independence safeguard

The legislation should include a guarantee that the independence of individual charities and the sector as a whole will be protected, in particular their right to act as advocates.

2. Governance and external conduct standards

The governance and external conduct standards are the crucial implementation mechanism for the ACNC. They should be legislated as schedules to the Act, not regulations, and required to be consistent with all three objects of the Act.

3. Reduce red tape

To avoid duplication, the ACNC regulatory requirements should only become operative when the equivalent state requirements are removed.

4. ACNC independence

The ACNC Commissioner should be given specific responsibility for upholding the objects of the Act and advising the Minister on its implementation, not merely for 'general administration'.

The ACNC Advisory Board should have the power to provide advice and make recommendations on its own initiative, not only when requested by the Commissioner.

5. Review

The legislation should provide for a public review before it is extended to any not-for-profit groups not covered in the first phase (a five-year review is provided for in the Consequential Amendments Bill).