

Submission to the Inquiry of the House of Representatives Standing Committee on Economics into the Australian Charities and Not-for-profits Commission Bill

About Research Australia

Research Australia is the peak body representing the health and medical research sector in Australia. Independent of government, Research Australia's activities are funded by its members, donors and supporters from leading research organisations, academic institutions, philanthropy, community special interest groups, peak industry bodies, biotechnology and pharmaceutical companies, small businesses and corporate Australia.

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Introduction

Australian health and medical research receives significant support from both private and public philanthropy. Research Australia is the peak body representing the Health and Medical Research sector in Australia. Independent of government, Research Australia's activities are funded by its members, many of which are not for profit (NFP) entities that undertake research and/or fundraising activities.

Research Australia notes that the objects of the Australian Charities and Not-for-profit Commission Bill are:

- to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.

Research Australia is broadly supportive of these aims. One of the roles of Research Australia is to encourage and facilitate charitable funding of health and medical research. Promoting the exchange of information between donors and the health and medical research sector is key. Research Australia acknowledges the value of a comprehensive register of charities which can be used to make clear and consistent information about charities available to the public.

The following comments on specific aspects of the Bill are provided within the context of the views expressed above.

Comments on specific provisions of the ACNC Bill

Minimising regulatory duplication and simplifying interactions with governments

The Government has undertaken a significant consultation process in the development of this Bill, and an exposure draft was previously released for discussion, which differs significantly from the Bill that is the subject of the Committee's inquiry.

In particular, one of the aims of the previous Bill was to *minimise regulatory duplication and simplify such (registered) entities' interactions with governments*. This is now not included in the Bill that is being considered by the Committee.

The importance of this aim was emphasised repeatedly by the not for profit sector in submissions on the earlier exposure draft of the Bill, and in the consultations undertaken by the ACNC Implementation Task Force. Of particular concern for not for profit entities was the risk that the creation of the ACNC and its registration and reporting requirements would simply impose an additional burden and layer of regulation upon the not for profit sector. Assurances were provided that every effort would be made to reduce the regulatory burden imposed on the not for profit sector, and the Bill was presented as the means by which this would be achieved. Much of the support from the not for profit sector for the ACNC has been based on this objective.

The removal of this aim from the Bill that is before the Committee is therefore a very significant development. It would appear that the Government is no longer prepared to commit to minimising regulatory duplication for the sector, despite the fact that this is a central tenet upon which the creation of the ACNC has been promoted to the sector throughout the consultation process.

The Bill provides for a range of reporting and other requirements to be imposed on registered entities, and the creation of governance standards by regulation. These activities have a very real potential to increase the regulatory burden imposed on the sector. It is critical that in the creation of these requirements and standards, attention is paid to the need to minimise the regulatory burden and reduce duplication. Ensuring that the Bill retains *minimising regulatory duplication and simplifying registered entities' interactions with governments* as one of its objects or aims is the best means of achieving this.

Research Australia acknowledges that the Bill before the Committee requires the Commissioner to have regard to 'the benefits gained from minimising procedural requirements and procedural duplication (Clause 15-10(f)). Such a requirement has none of the potency that is achieved by making this an aim of the Bill.

Research Australia submits that the objects of the Bill should be amended to include minimising regulatory duplication and simplifying registered entities interactions with governments in Clause 15-5(1).

60-80 Additional Reporting Requirements

Clause 60-80 refers to classes of registered entities. It is not clear whether this is meant to be a 'type or sub-type' of entities, in which case these expressions should be used, or whether it allows the Commissioner to determine the entities to which it will apply a determination without reference to a particular type or sub-types. Clarification of the intended meaning of 'class' would be useful.

60-85 Commissioner may approve a different accounting period

Clause 60-85 allows the Commissioner to 'approve' a different accounting period. This is consistent with the provisions relating to taxation but is inconsistent with the requirements under the Corporations Act.

Research Australia submits that in this regard, the ACNC's role is closer to that of ASIC than the ATO, and the Commissioner's approval should not be required. Changing the accounting period should be a matter for the entity to determine, subject to some basic requirements about the length of the period. Research Australia submits that the requirement to seek the Commissioner's approval should be replaced with a requirement to notify the Commissioner of the change in the accounting period.

Clause 60-90 enables the Commissioner to impose conditions in relation to the new accounting period and could be retained, to ensure that the Commissioner is able to continue to appropriately monitor the entity involved.

Chapter 4- Regulatory powers

Chapter 4 gives the Commissioner a range of regulatory powers, including information gathering powers (Division 70), monitoring powers (Division 75) and the power to issue directions (Division 85). While the Commissioner can issue orders to entities under all of these divisions, only the directions power under Division 75 is subject to the Reviews and Appeals provisions of Part 7-2. The powers provided to the Commissioner under divisions 70 and 75 are substantial and have the capacity to impose a significant burden on an entity (which is defined to include individuals). As such, an appropriate, low cost avenue for objection and appeal to an exercise of a power under divisions 70 and 75 should be available, as it is for decisions made under Division 85.

Research Australia submits that the decisions made by the Commissioner under Division 70 and 75 should be subject to the Reviews and Appeals provisions of Part 7-2.

120-25 Typographical error

Clause 120-25 (1) contains a typographical error. Both sub-clauses are denoted as (a).

Conclusion

Research Australia supports the general direction of the reforms proposed by this Bill and recognises that it has the potential to improve public confidence in charities. Research Australia is, however, concerned about the potential for regulatory duplication for entities that already exist. The removal of the aim of *minimising regulatory duplication and simplifying registered entities' interactions with governments* is a retrograde step.

Research Australia has appreciated this opportunity to make a submission.