



Australian Government



Australian
Charities and
Not-for-profits
Commission

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Committee Secretariat
Joint Select Committee on Northern Australia
By email: jscna@aph.gov.au

Dear Sir / Madam

Submission to the *Inquiry into the Development of Northern Australia*

The Australian Charities and Not-for-profits Commission (the **ACNC**) welcomes the invitation to make a submission to the Joint Select Committee on Northern Australia's Inquiry into the Development of Northern Australia.

The work of the ACNC is most relevant to the Committee's development of a recommendation to 'establish a conducive regulatory, taxation and economic environment' in Northern Australia. A significant aspect of creating an environment conducive to development is fostering a robust and vibrant not-for-profit sector that is supported by effective regulation. This enables charities and other not-for-profits to better serve the Northern Australian community, including to deliver public services, often under contract with government. Our submission will outline the role that the ACNC plays in enabling this regulatory environment, in administering the definition of charity, promoting public trust and confidence, and becoming a single repository of charity information to reduce the red tape on charities. I also outline some of the work done in relation to Indigenous charities. In particular, this submission covers:

1. the role of the ACNC in regulating charities
2. Commonwealth taxation concessions for registered charities
3. red tape reduction and easing reporting obligations
4. good governance and compliance of charities
5. my Commissioner's Interpretation Statement on Indigenous charities
6. work done on a proposed new category of tax exempt entity for Indigenous organisations called the Indigenous Community Development Corporation.





1 The role of the ACNC

1.1 History

The ACNC commenced operations on 3 December 2012 under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the **ACNC Act**).

The ACNC is the independent national regulator of approximately 59 000 charities.

Many of these charities deliver services under contract with governments. Determination and oversight of charitable status is critical, especially as government funded service delivery by the not-for-profit sector grows (for example, as part of reforms to disability services and support for Indigenous communities). As well as supporting a wide range of vital social services, the contribution of charities ranges across the arts, culture, environment, religion, science, medical research and education.

The ACNC (despite its name) does not currently regulate not-for-profit organisations that are not charities.¹ There are an estimated 600 000² formal and informal not-for-profit groups nationally, with about 10% of these being registered charities.

1.2 Objects

The ACNC has been established to achieve the following objects:

- maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector through increased accountability and transparency
- support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector
- promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

1.3 Functions

The ACNC's functions include:

- determining whether organisations are charitable for the purposes of accessing Commonwealth tax concessions
- maintaining and publishing a free, searchable online Register of charities, which includes core details about each charity (such as its purpose and activities, beneficiaries, location and who is responsible for its governance) and, from July 2014, financial reports for medium or large charities
- ensuring charities comply with minimum governance standards, and
- reducing the duplication of regulatory requirements on charities, including through the sharing of information between Australian Government agencies.

¹ See section 25-5(5) of ACNC Act

² Australian Government Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010, at pages XXIII and 53



1.4 Charities in the Northern Australia region

While it is difficult to give an exact figure, we estimate the number of charities in the Northern Australia region to be less than 12 400.³ The total number of charities in Western Australia, Northern Territory and Queensland is just over 17 300, but many of those are located in or around capital and other major centres. As the ACNC continues to collect more information on its Register, it will be able to provide more exact and fuller information about charities in the Northern Australia region.

2 Taxation concessions for registered charities

The taxation laws of the Commonwealth, State and Territories all provide concessions for charities. These tax concessions are a significant source of government support to the not-for-profit sector, and enable charities to carry out many functions on behalf of governments (for example, delivery of welfare and educational services), as well as functions that governments cannot carry out (for example, sustaining religious communities). These tax concessions enable and facilitate a more limited role for government than would otherwise be possible.

It is necessary for governments to examine the claims to these tax concessions to protect government revenue,⁴ a function which will only become more important if services traditionally delivered by government are increasingly delivered by the not-for-profit sector. The ACNC independently performs this function by administering the definition of charity. Registration with the ACNC is a pre-requisite for access to Commonwealth tax concessions.

The ACNC has also engaged with State and Territory taxation authorities to improve efficiency by inviting them to use ACNC registration to determine charitable status under their applicable tax legislation.

3 Reducing Red Tape and Reporting

3.1 Publishing and maintaining a public Register of charities

While the ATO previously 'endorsed' charities, those endorsed charities were not required to provide regular returns to the ATO. Australian governments and the public therefore did not have basic, up-to-date, information about the charitable and not-for-profit sector (as examined in detail by the Australian Productivity Commission's 2010 report).⁵ Charities had to provide the same kinds of information multiple times to different government agencies, as there was no single repository of information about the governance and finances of charities.

This core information is routinely required by government agencies for the purposes of grants management and is essential in ensuring proper accountability for the allocation of taxpayer resources to charities. It is also required for compliance with corporate and fundraising regulatory regimes, in order to protect the public interest in ensuring the solvency and appropriate governance of charities.

The introduction of the ACNC means there is now a repository for baseline information about charities, published on a free, searchable Register of charities. This improves the efficiency and effectiveness of government by:

³ This figure is an overestimate as it was calculated by taking the total number of charities in Western Australia, Queensland and Northern Territory then removing those with postcodes in Brisbane city, Gold Coast, Perth and Freemantle. Alice Springs has been included.

⁴ Tax concessions are estimated to be worth at least \$4 billion in tax relief in 2008-9, Australian Government Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010, at page 155

⁵ Australian Government Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010, Chapter 5.



- consolidating the function of requiring information from charities, required across many government departments, into a single agency under the principle of 'report once, use often'
- providing a mechanism for sharing information across government agencies, with resultant reductions in administration for both charities and governments
- reducing the regulatory burden on charities, freeing up resources for charities to apply in the provision of more and/or better services
- providing a mechanism for assuring the quality of government data held on charities, resulting in improvements in government decision-making and allocation of resources
- improving efficiency as the data is free, publicly available, online, searchable and can be exported readily for use across information management systems
- publishing all information collected (through the ACNC Register, with extract published to data.gov⁶) so that the sector, government, researchers and the public can re-use the information, enabling learning and creating benefit to the sector. The ACNC also publishes its own analysis of information collected, including 'snapshots' on registered charities.⁷

3.2 Reducing red tape by sharing information across government

The ACNC has facilitated the sharing of information across governments, and acted as a catalyst and driver for the streamlining of regulatory and reporting requirements for the benefit of charities.

One of the reasons for the ACNC's establishment was recognition of the inadequacy of the patchwork of State and Territory regulation of charities, including:

- duplication of regulatory and reporting requirements across jurisdictions that caused significant red tape impost on civil society organisations
- significant gaps in the transparency and accountability of charities, both to government and the public generally
- differing requirements across different jurisdictions. (For example, the Northern Territory does not have charitable fundraising laws while other jurisdictions have varying requirements. This significantly adds to the costs of a charity fundraising across Australia.)

The ACNC is developing a 'Charity Passport' based on the Register information for the purpose of sharing with other government agencies. The ACNC has already developed, or is in the process of developing, Memoranda of Agreement with other government agencies (including the ATO, the Department of Social Services, the Department of Education, the Australian Securities and Investments Commission, the Office of the Registrar of Indigenous Corporations, the Tertiary Education and Quality Standards Agency and the Australian Federal Police) to share its information for their purposes. The ACNC has also offered similar data-sharing arrangements to State and Territory governments.

⁶ See <http://data.gov.au/dataset/acnc-register>

⁷ Read more about our research function on our website:

http://www.acnc.gov.au/ACNC/About_ACNC/NFP_reforms/Research/ACNC/Edu/sector_res.aspx?hkey=b4e0f93e-31e6-46f5-bb4c-b55a5fd7b730



Further, the Commonwealth Grant Guidelines (which are currently under review) mandate that an Australian Government agency cannot require information that has been already provided by a charity to the ACNC. This provides a significant driver for improving the efficiency of data collection across Australian Government agencies and reducing the reporting burden of charities.

It is planned that in the future, the Register could also perform a significant function in improving the efficiency of fundraising regulation, which is currently undertaken by State and Territory governments. Fundraising reform is being progressed by the Council of Australian Governments, for similar reasons to those underlying the establishment of the ACNC: inconsistent and burdensome requirements, inadequate transparency and accountability, and poor enforcement.

4 Good governance and compliance

In addition to continuing to be charitable, the ACNC Act also requires charities to meet minimum governance requirements to remain entitled to registration. Registered charities must meet five 'governance standards', covering issues like accountability to members, and checking that the people of their governing body are suitable and comply with their duties.⁸ This helps to promote public trust and confidence in the governance of charities.

In monitoring governance and other requirements of charities, the ACNC applies a regulatory approach that is based on an understanding of charities, and that recognises their purpose is to benefit the public. The ACNC regulatory approach was developed in consultation with the sector and the public, through online, phone and face-to-face forums (including in Northern Australia). The approach is based on five key values: fairness, accountability, independence, integrity and respect.⁹

The ACNC is aware of the particular legal issues facing Indigenous charities and that these may not have always been dealt with consistently in endorsement for tax concessions. After consultation with Indigenous charities, peak bodies, academics and practitioners working in the field, in December 2013 the Commissioner's Interpretation Statement on Indigenous Charities was released, and is published on our website.¹⁰

This Statement acknowledges the key legal issues and addresses them in two ways: first by recognising Indigenous disadvantage; and second by clarifying the application of the public benefit test¹¹ for Indigenous charities whose members or beneficiaries are related. It deals with the issues before and after the commencement of the *Charities Act 2013* on 1 January 2014. This Statement enables consistent decision-making in registration of Indigenous charities and assists organisations to be established with more confidence about their status as charities.

5 Indigenous Community Development Corporation model

In March 2013 the Minerals Council of Australia and Native Title Council released a paper on the Indigenous Community Development Corporation (ICDC) concept.¹² The ICDC concept is designed to provide a new category of tax exempt entity for use by native title holders or those in receipt of compensation for impacts to their traditional lands to enable

⁸ See http://www.acnc.gov.au/ACNC/Manage/Ongoing_Obs/Governance/ACNC/Edu/GovStds_overview.aspx?hkey=71c9d907-f453-4539-bc1d-a1be471049e3

⁹ See http://www.acnc.gov.au/ACNC/About_ACNC/Regulatory_app/ACNC/Regulatory/Reg_approach.aspx?hkey=8251156f-f3c9-41bb-800a-304c2485be09

¹⁰ See http://www.acnc.gov.au/ACNC/Publications/Interp_IndigenousCharities.aspx

¹¹ Explain that public benefit test is prerequisite to establishing meet definition of charity

¹² <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2013/Taxation-of-Native-Title/Report/Attachment-B>



management of those benefits for a range of community purposes that may be wider than the usual charitable purposes.

The ACNC's Assistant Commissioner - General Counsel, Murray Baird, was invited to participate in the *Taxation of Native Title and Traditional Owner Benefits and Governance Working Group*, a joint working group of Treasury, Attorney-General's Department and the (then) Department of Families, Housing, Community Services and Indigenous Affairs. This Working Party prepared a report,¹³ which was presented to the previous government in July 2013.

The report considered the potential for an Indigenous Community Development Corporation (ICDC) model to enhance opportunities for Indigenous communities to explore economic development as a not-for-profit entity while retaining favourable taxation treatment. Attachment D of that report deals with ICDC Governance Standards. The report recommends the introduction of legislation to enable use of an ICDC type of entity. These recommendations may be relevant for consideration by this Committee as they were developed particularly to address the needs of Indigenous communities in Northern Australia.

I wish the Committee well in its deliberations

Yours sincerely

Susan Pascoe AM
Commissioner

¹³<http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2013/Taxation%20of%20Native%20Title/Downloads/PDF/Native%20Title%20Working%20Group%20Report.ashx>