



**Submission to the House Standing Committee on
Economics**

Inquiry into the Australian Charities and Not-for-profits
Commission Exposure Draft Bills

July 2012

Introduction

This submission briefly outlines the CCA response to the Exposure Draft Bills establishing the Australian Charities and Not-for-profit Commission (ACNC). This submission does not attempt to address every aspect of the proposed ACNC Bills but seeks to place the Bills within a broader context and address key issues from both the Bills and the Explanatory Materials.

This submission has been prepared through a process of consultation with the membership of the CCA (see Appendix 1 list of CCA members) and key organisations in the not-for-profit (NFP) sector. It is important to note this submission does not over-ride any positions outlined in individual submissions from CCA members.

CCA strongly supports the ACNC Bills on the basis that they provide for the establishment of an independent and responsive regulator for the charities and not-for-profit sector.

As noted in a previous CCA submission responding to the ACNC scoping study, CCA recognises that establishing a new regulator requiring new Federal structures is not something that can happen overnight. The real benefits will probably not be realised within the next few years, but will take at least three years to begin to flow. CCA believes that there are tremendous gains for governments, NFPs and the community if regulatory requirements can be applied more effectively; if the Australian Taxation Office ceases to be the default NFP regulator; and the current onerous and inconsistent requirements can be reduced.

This submission addresses the following four key areas:

1. The current situation
2. The benefits of a responsive ACNC
3. Key focus of the ACNC Exposure Draft Bills
4. Future development of the ACNC

CCA welcomes this opportunity to consolidate previous advice and submissions, and to provide input into this inquiry. CCA would welcome the opportunity to engage in further discussion about any of the points raised in this submission.

The Community Council for Australia

The Community Council for Australia is an independent, non-political, member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the NFP sector in Australia. CCA seeks to change the way governments, communities and the NFP sector relate to one another. This includes establishing a regulatory environment that works for community organisations, not against them.

The mission of CCA is to lead the sector by being an effective voice on common and shared issues affecting the contribution, performance and viability of NFP organisations in Australia, through:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with government, business and the broader Australian community to achieve positive change.

1. The current situation

The NFP sector contributes over \$43 billion to GDP per annum, encompasses over 600,000 organisations ranging in size from large to very small, and employs almost one million staff (or eight per cent of all employees in Australia). These figures only tell a small part of the story. The real value of the NFP sector is in the often unattributed contribution to the quality of life we all experience in Australia. NFPs are at the heart of our communities and are what makes us resilient as a society.

Despite the fact that the NFP sector is bigger than other sectors such as tourism, agriculture or communications, it has not benefitted from the kind of longer term strategic planning and reform that these other sectors have experienced. As a consequence, there is an immense amount of wasted effort associated with the running of many NFPs across Australia. On any given day there are thousands of government officials around Australia seeking reports or other compliance information from NFPs. These endeavours generate significant work resulting in countless hours of staff time for governments and NFPs, yet all this effort provides very limited benefit in terms of real accountability or transparency. Most of this waste is driven by poor government administration which imposes onerous reporting and accountability requirements, serving very limited purposes. This is compounded by the range of regulatory bodies at each level of government, and the seemingly unquenchable thirst from bureaucracies and others for more information about the inputs and outputs, rather than the impact, of NFP organisations.

There are clearly very real savings to be made in streamlining government interactions with the NFP sector. The compliance burden is not only wasteful; it is also often counter-productive to the achievement of government policy goals and serves no useful risk management role.

Aside from these very practical issues, there is currently an inherent contradiction in role of the Australian Taxation Office in relation to NFPs. The ATO is both the organisation that determines charitable status for tax concession purposes and the organisation responsible for collecting as much government revenue as possible. If a small community-based group driven by concern about a particular issue seeks to gain charitable status they can face real difficulties, particularly if they cannot afford the right lawyer or do not manage to connect with someone in the Australian Taxation Office who is sympathetic to their organisation. If a charitable organisation disagrees with the ruling of the ATO they can find themselves facing expensive legal bills and years of protracted legal argument sometimes ending up in the High Court.

The issue of NFP reform has been on the agenda of Federal and State governments for well over a decade. As noted in the ACNC Bill Explanatory Materials, reviews including the Productivity Commission Report into the Contribution of the Not-For-Profit Sector (2010), the Senate Inquiry into Disclosure Regimes for Charities and Not-For-Profit Organisations (2008), and the Review of Australia's Future Tax System (2010) all made significant recommendations about the need for reform for the NFP sector and within government. All supported a one stop shop regulator that could be responsive to the particular needs of the NFP sector.

The current situation results in unacceptable, inconsistent and unnecessary impositions on NFPs. Most NFPs only exist because of the level of support they receive directly from their communities, including their clients or those they serve, but this support is rarely acknowledged by governments. Most have a higher community standing than any government. Most are transparent, more because they are part of their communities than because they fill in forms or compile reports that are sent off to central government offices to be filed away or listed on an obscure website. Reform in NFP regulation is long overdue and an independent regulator is a fundamental component of that reform.

2. The benefits of a responsive ACNC

The most important benefit offered by the proposed ACNC is the establishment of a responsive, independent regulator that will help reduce the massive expenditure on meaningless regulatory and compliance activities, while contributing to strengthening the sector through better regulation, education and information provision. Increased public confidence and even increased transparency are far less significant issues.

Reducing regulations and compliance requirements on NFPs presents a significant, but important challenge for the ACNC. However, without long term success in this area, any new regulator risks imposing further compliance burdens on NFPs with little real benefit. This is not to suggest that any gains through reduced reporting and compliance will be immediate. In fact, it is recognised that in the first instance there may be additional reporting requirements for NFPs as the ACNC establishes databases of information and builds credibility across governments and other regulatory bodies.

Having more accurate and reliable information about NFPs in Australia will bring its own benefits particularly in terms of developing more responsive policies. Trying to understand the NFP sector is currently very difficult as there is no broader data base beyond ATO records and the occasional snapshot study conducted by the Australian Bureau of Statistics as part of the Not-for-Profit Satellite Account.

Having a dedicated staff team recruited for their interest in the NFP sector will also bring its own benefits. Many NFPs feel somewhat intimidated by the way current government regulators, including the ATO, approach interactions and engagement with the sector. If the starting point for the new regulator is the need to support and strengthen the NFP sector, the regulator will adopt a different culture and a different form of interaction and engagement.

As part of this more responsive engagement, it is anticipated the ACNC will actively educate and inform the sector about how it can make improvements to both the level and nature of reporting and public disclosure. In areas such as governance; reporting on activities; and finances the work of the ACNC has the capacity to help drive improvements in organisations where some direction and support may be required to better enable them to fulfil their organisational goals. It is important that the ACNC work with the NFP sector in determining how best to provide this support and guidance.

There is no doubt that a very small minority of NFPs will not always do the right thing by their communities or the people they seek to serve. As the NFP sector has grown over the last decade, the number of organisations has increased along with the extent and scope of NFP activity. In some isolated cases this has created the capacity for community trust in NFPs to be undermined by a very small minority of organisations that primarily serve the needs of unscrupulous individuals. Having an NFP regulator with the capacity to not only educate, but also investigate and de-register charities may strengthen community trust and ensure good organisations are not harmed by the activities of a minority who do the wrong thing.

It is hoped that eventually the ACNC will become a dynamic one stop shop, providing a “report once and use often” approach to regulation and compliance across all levels of government. The ACNC also has the potential to be an important reference point; for individuals seeking to know more about particular segments of the NFP sector or about particular organisations; for organisations seeking to know how to become registered charities; for government agencies and regulators looking to reduce duplication, red-tape and compliance costs; for NFPs keen to improve their own reporting or governance; and for those seeking to plan and develop policies and strategies that draw upon the strengths of the NFP sector.

3. The key focus of the ACNC Exposure Draft Bills

Any Bill to establish a new regulator will include the description of powers; enforcement processes; penalty levels and other legal requirements. This may create a level of concern amongst those who will be subject to those powers.

CCA believes that as much as a regulator can be flexible without having to rely too much on subordinate legislation, the proposed Bills have struck a reasonable compromise between certainty and flexibility; between specificity and responsiveness. Sometimes people seek certainty through legislation, but certainty when establishing a regulator often means adopting an inflexible approach, and one that is more concerned about creating requirements to address the most extreme cases. CCA hopes the extensive discussion of powers and penalties throughout the establishment Bills will pertain only to the very unusual and exceptional cases where an NFP very deliberately misuses charitable status to benefit unscrupulous individuals.

One of the themes that emerges very strongly in the ACNC Bills is the focus on developing more detail over time through a process of consultation with the sector. CCA commends this approach. It is particularly pleasing that key areas such as governance requirements and financial reporting have largely been left as 'in principle' and to be developed over time through a process of active engagement. CCA would be concerned if the Treasury was seeking to lock in detailed provisions in these areas, as the Treasury approach may not achieve the best outcome for the sector. CCA would much prefer for the details to be developed over time by a responsive regulator committed to consultation and engagement with the sector.

CCA has been one of many active participants in consultations leading up to the development of the ACNC Bills. It is very pleasing to note the four pages of key changes to the original draft bills in response to eight months of consultations with key stakeholders in the NFP sector. Regardless of what forms various consultations take, most are inconsequential if they result in no real change to what was proposed in the first instance. This is not the case with the most recent consultations on the ACNC.

It is also important to note the extensive work undertaken by the ACNC Task Force in many consultations with a broad range of NFPs, and the release of key public documents about the implementation of the ACNC. In many ways these consultations and public reports have addressed some of the concerns and answered questions that arose through consideration of the establishing legislation.

If the ACNC Bills are read in isolation, they may lead to questions about how and when the ACNC will use the proposed powers, but when considered alongside both the Explanatory Materials and the ACNC Implementation Report, the purpose of the ACNC Bills becomes clearer.

CCA supports the flexible and proportionate approach to enforcement; the preparedness to provide scope for the ACNC Commissioner to choose whether penalties may be imposed; the capacity to take account of particular circumstances; the willingness to review the impact of legislation over time; and the active monitoring of the ACNC through clear annual reporting requirements.

The establishment of an advisory group with the capacity to provide advice on whatever issue the Advisory Group choose to pursue is also a positive development.

It is clear that the ACNC Task Force has already achieved a measure of independence from the Treasury and the ATO, having attained the capacity to employ its own staff and allocate its own budget. CCA would like to see this independence grow over time.

The work of the ACNC Task Force to date has included a substantial amount of education for the NFP sector. This educative role of the ACNC is reflected in the establishing legislation which enables real engagement with the broader sector to be driven by the ACNC.

The capacity for the ACNC to determine charitable status is also clearly reflected in the Bill. This measure alone will reduce the concern of many organisations when faced with applying to the ATO to gain recognition of their status as a charity. This is currently a process that is daunting for many and can be both expensive (you need a lawyer), time consuming (applications often take considerable time to be decided). In addition challenging an ATO ruling is well beyond the scope of most NFPs.

CCA supports the recent changes to the Bills to enable small religious groups and congregations who do not claim tax concessions to be exempt from ACNC reporting requirements.

Similarly CCA has been concerned that the level of public exposure about individual donors may lead to a reduction in philanthropy. The growth of philanthropic trusts (public and private) has been a real benefit for the broader NFP sector. The exemption for Trusts in relation to some public disclosures is supported.

The provision of an appeals process; discretion in applying penalties; and a proportional approach to the work of the ACNC all suggest the ACNC will not be locked into a one size fits all approach. This is important, as an inflexible approach may result in significant unintended consequences for many NFPs, particularly when oversight is likely to be the biggest reason for failing to comply. The reality is that the vast majority of NFPs are simply trying to do the best they can to serve the interests of their community and should not be subject to the same response as an organisation that has been established by unscrupulous individuals seeking personal gain.

The ACNC Bills are not perfect. Much of the language is focused more on accountability than enhancing the sector, but the Bills do serve their purpose of enabling the ACNC to not only be established, but to be a responsive regulator for the NFP sector.

4. Future development of the ACNC

As noted throughout this submission, CCA believes the future development of the ACNC, as it is established and begins to operate as a regulator for the NFP sector, provides a real opportunity to achieve worthwhile benefits. Achieving these benefits will take time and work by all involved at the ACNC.

It is also important to note that the NFP sector itself has a role to play in ensuring the ACNC is not only responsive to its needs in areas such as governance and financial reporting, but also that other governments and regulators are pressured by the NFP sector to make use of the capacity of the ACNC. One of the issues here is that the NFP sector is a very wide ranging group of organisations in size, scope and capacity. Sometimes those who receive the most government funding are in the best position to have their views heard and responded to. It may be useful for the ACNC to explore ways of better engaging the broader NFP sector perhaps by drawing on peak bodies and other NFP networks.

Engagement and responsiveness are the keys to an effective regulator. These two measures should be included in all public reporting about the future performance of the ACNC, along with clear performance measures in relation to the reduction of duplication, red tape and compliance costs.

Conclusion

As noted in the introduction, in this brief submission CCA has not sought to address every detail of the proposed new ACNC establishment bills, but to place the Bills within a current context and to consider whether they fulfil their purpose to the benefit of the NFP sector.

Legislation to establish a regulator does not describe the activities of the proposed regulator, only the scope and the powers. The real benefit of this legislation is not in the description of what penalty an ACNC Commissioner may or may not be able to impose but the fact that, for example, NFPs will no longer have to rely on the ATO to determine their charitable status. In addition, there are many other potential benefits through reduced red tape, duplication and compliance costs; the provision of better guidance and support to NFPs, improving knowledge about the NFP sector and making much of this information publicly accessible.

CCA believes the proposed ACNC Bills enable the ACNC to begin to achieve what is now a long overdue reform - the establishment of an independent, engaged and responsive regulator serving the needs of the NFP sector.

Whether this is achieved will not be determined by the ACNC Bills in themselves, but by the work of the ACNC once established, and the degree to which the NFP sector can become a proactive partner in reform.

Current Membership – Community Council for Australia (June 2012)

Appendix 1

1. Aboriginal Employment Strategy Ltd – Danny Lester
2. Access Community Group – Samantha Hill
3. Alcohol and other Drugs Council of Australia – David Templeman
4. Alcohol Tobacco and Other Drugs Association ACT – Carrie Fowlie
5. Associations Forum Pty Ltd – John Peacock
6. Australian Charities Fund – Edward Kerr
7. Australian Indigenous Leadership Centre – Rachele Towart
8. Australian Institute of Superannuation Trustees – Fiona Reynolds
9. Australian Major Performing Arts Group – Bethwyn Serow
10. Catholic Social Services Australia – Paul O’Callaghan
11. Church Communities Australia – Chris Voll
12. Connecting Up Australia – Doug Jacquier
13. Consumers Health Forum of Australia – Carol Bennett
- 14. Drug-Arm Australia – Dennis Young (CCA Board Director)**
15. Foundation for Alcohol Research and Education – Michael Thorn
16. Fundraising Institute of Australia – Rob Edwards
17. Good Start Childcare – Julia Davison
- 18. Good Beginnings Australia – Jayne Meyer Tucker (CCA Board Director)**
- 19. HammondCare – Stephen Judd (CCA Board Director)**
20. HETA Incorporated – Sue Lea
21. Hillsong Church – George Aghajanian
22. Illawarra Retirement Trust – Nieves Murray
23. Lifeline Australia – Dr Maggie Jamieson
24. Maroba Lodge Ltd – Viv Allanson
25. Mental Health Council of Australia – Frank Quinlan
- 26. Mission Australia – Toby Hall (CCA Board Director)**
- 27. Musica Viva Australia – Mary Jo Capps (CCA Board Director)**
28. Opportunity International Australia – Rob Dunn
29. Philanthropy Australia – Deborah Seifert
30. Principals Australia – Liz Furler
- 31. RSPCA Australia – Heather Neil (CCA Board Director)**
32. St John Ambulance Australia – Peter Lecornu
33. Social Ventures Australia – Michael Traill
- 34. Surf Life Saving Australia – Brett Williamson (CCA Board Director)**
35. The ANZCA Foundation – Ian Higgins
- 36. The Benevolent Society – Anne Hollands (CCA Board Director)**
- 37. The Big Issue – Steven Persson (CCA Board Director)**
38. The Centre for Social Impact – Peter Shergold
- 39. The Smith Family – Lisa O’Brien (CCA Board Director)**
40. The Ted Noffs Foundation – Wesley Noffs
41. Volunteering Australia Inc. – Cary Pedicini
- 42. Wesley Mission – Rev. Keith Garner (CCA Board Director)**
43. WorkVentures Ltd – Arsenio Alegre
- 44. World Vision Australia – Rev. Tim Costello (CCA Chair of Board)**
45. YMCA Australia – Ron Mell
46. Youth Off The Streets – Fr Chris Riley
47. YWCA - Dr Caroline Lambert