

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

Department/Agency: ACNC

Question: AET 314-320

Topic: Waubra Foundation

Reference: written - 06 March 2015

Senator: Xenophon, Nick

Question:

In January 2015 the ACNC determined the Waubra Foundation did not meet the requirements for registration as a charity with the subtypes of:

- promoting or protecting human rights, or
- advancing education; or
- health promotion

In respect of a 'health promotion charity' the ACNC stated that these are 'institutions whose principal activity is to promote the prevention or control of diseases in human beings'.

Objective 8 of the Waubra Foundation states the foundation is to:

Facilitate the establishment of individual networks of relevant specialties of medical practitioners and other health practitioners to enable the rapid sharing of information and expertise in the diagnosis, management and treatment of patients with symptoms of diseases known as "wind turbine syndrome" and "vibroacoustic disease" as well as "environmental sleep disorder" and other symptoms and health conditions resulting from exposure to infrasound and low frequency noise (ILFN) and vibration, historically called "annoyance" by acoustic engineers and researchers.

314. Given Objective 8 of the Waubra Foundation deals with 'environmental sleep disorders' caused by exposure to infrasound, low frequency noise and vibration and the World Health Organisation's acceptance that sleep deprivation does affect human health, can you advise why the ACNC does not accept that the Waubra Foundation is a health promotion charity?
315. Can you also advise why in the ACNC's determination in relation to the Waubra Foundation's charity status only the first part of Objective 8 was quoted and the second half that deals with environmental sleep disorders was not?
316. Does the ACNC accept that sleep disorders and sleep deprivation are human health issues?
317. Does the ACNC accept that some residents living close to wind farms have experienced sleep deprivation?
318. I understand the ACNC has registered the following charities whose work involves sleep disorders:
 - Adelaide Institute for Sleep Health Incorporated
 - Australian Respiratory and Sleep Medicine Institute Limited
 - Institute for Breathing and Sleep
 - Monash Lung and Sleep Institute
 - Nodss – Narcolepsy & Overwhelming Daytime Sleep Society of Australia
 - Sleep Apnoea Association Incorporated
 - Sleep Disorders Australia
 - The Sleep Health Foundation

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

- West Australian Sleep Disorders Research Institute Inc
 - Whyalla Sleep Apnoea Support Group
- Why is environmental (noise induced) sleep disorder which the Waubra Foundation are seeking to prevent being ignored by the ACNC?
319. In the view of the ACNC, how does the work of the other charities whose work involves sleep disorders differ from that of the Waubra Foundation?
320. What kinds of activities does the ACNC accept promote the prevention and control of sleep disorders in human beings?

Answer:

314. The Waubra Foundation is a charity registered with the ACNC with two charitable purposes of advancing health; and promoting or opposing a change to law, government policy or practice.

The ACNC Register shows that on 11 December 2014 the ACNC revoked the Waubra Foundation's charitable subtype that is commonly called a 'health promotion charity'. The full description of a health promotion charity is set out in the legislation as being an '[I]nstitution whose principal activity is to promote the prevention or the control of diseases in human beings' (Item 13 of the table in s.25-5 of the Australian Charities and Not-for-profits Commission Act 2012 (the ACNC Act)). There are less than 1500 registered charities that have the sub-type of health promotion charity.

The ACNC accepts that the Waubra Foundation has the charitable purpose of advancing health and meets the other requirements of being a charity, but not that it meets the legal requirements of being a health promotion charity. Most charities with the charitable purpose of advancing health are not health promotion charities.

On 20 December 2014, the Waubra Foundation announced its intention to seek a review of the decision to revoke its health promotion charity sub-type. The ACNC is currently considering the objection. In exercising its powers and carrying out its functions, the ACNC acts in accordance with the ACNC Act, which includes complying with the Secrecy provisions in Chapter 7.

315. In making any decision about the registration or revocation of a charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (ACNC Act), the Commissioner uses best practice administrative law procedures, which we have set out in the Commissioner's Policy Statement on Decision-Making available at this link:

http://www.acnc.gov.au/ACNC/Publications/Policy_PDFs/CorpPol_Decision.aspx

When the ACNC Commissioner makes a decision adverse to a charity, clear written reasons for that decision are provided to the charity.

When the Commissioner has made a decision about the registration or revocation of a charity, the decision is subject to review or appeal. There is a formal review and appeal process for certain decisions under Part 7-2 of the ACNC Act. The Commissioner's statement: Reviews and Appeals is available here:

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

http://www.acnc.gov.au/ACNC/Publications/Policy_PDFs/CommSt_Reviews.aspx

Apart from seeking an internal review of a decision, charities can seek the review of an ACNC decision by the Administrative Appeals Tribunal or the Federal Court of Australia.

Under Chapter 7 of the ACNC the ACNC Commissioner and staff are prevented from providing or revealing 'protected ACNC information': information that was disclosed or obtained under or for the purposes of the ACNC Act, that relates to an entity and which identifies or may be used to identify an entity (s.150-15).

This includes information about a review or revocation of a charity, unless the information has lawfully been made public and is disclosed for the purposes of the Act (s.150-50); or is disclosed with consent (s.150-45).

316. The ACNC accepts that sleep disorders and sleep deprivation are human health issues. As is clear from the answer to Q 318 below, there are registered charities that work in various sleep related health fields.
317. It is not the role or function of the ACNC to determine whether some people who live near wind farms experience sleep deprivation. That question is more appropriately considered by a medical or health research institute, such as the National Health and Medical Research Council.
- 318: While all the charities listed by the Senator in this question are registered with the ACNC all of them, except one, were transferred to the ACNC Register from the ATO when the ACNC commenced operating on 2 December 2012. They were treated as being registered with the ACNC from its commencement, pursuant to Schedule 1 of the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012.

The one listed charity that was registered by the ACNC as a charity is the Monash Lung and Sleep Institute which was registered from 19 December 2012.

As you can see from the list below, only one of the listed charities is registered as a health promotion charity; that charity is The Sleep Health Foundation. All the others listed are registered as charities but they are not health promotion charities.

- Adelaide Institute for Sleep Health Incorporated 84 288 358 415
ACNC registered charity, not a health promotion charity
- Australian Respiratory and Sleep Medicine Institute Limited 18 148 172 347
ACNC: registered charity, not a health promotion charity
- Institute for Breathing and Sleep 39 093 685 879
ACNC registered charity, not a health promotion charity
- Monash Lung and Sleep Institute 55 161 726 227

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

ACNC registered charity, not a health promotion charity. This is the only one of the Senator's listed charities that the ACNC registered directly, rather than being transferred from ATO.

- NODSS – Narcolepsy & Overwhelming Daytime Sleep Society of Australia
74 098 031 595. ACNC registered charity, not a health promotion charity
- Sleep Apnoea Association Incorporated 62 545 256 140
ACNC register: registered charity, not a health promotion charity
- Sleep Disorders Australia 98 075 427 459
ACNC register: registered charity, not a health promotion charity
- The Sleep Health Foundation 91 138 737 854
ACNC register: registered charity and a health promotion charity
- West Australian Sleep Disorders Research Institute Inc 82 109 668 172
ACNC register: registered charity, not a health promotion charity
- Whyalla Sleep Apnoea Support Group 67 954 498 672
ACNC register: registered charity, not a health promotion charity

As can be seen from this list, there are registered charities that deal with various sleep disorders.

319. The ACNC has not considered how other registered charities whose work involves sleep disorders differ from the Waubra Foundation. Only one of the listed charities is a health promotion charity. The difference between a registered charity with the purpose of advancing health and the legal requirements of being a health promotion charity are explained above. Each case will of course depend on its own facts.
320. The ACNC has prepared an Exposure Draft Commissioner's Interpretation Statement on Health Promotion Charities which is published on the ACNC website here http://www.acnc.gov.au/ACNC/Contact_us/Pub_consult_comment/ConsultationHPC/ACNC/Edu/Consultation_Health.aspx?hkey=df79d345-df8c-4199-9c5e-ed46de1903a6

Commissioner's Interpretation Statements provide guidance to ACNC staff, charities and the public on how the ACNC understands the law that applies to charities. These statements reflect our current understanding of the law on charity and are binding on ACNC staff.

We have received submissions in response to this Exposure Draft Statement from several legal and accounting practitioners, peak bodies and charities. Those submissions are being considered before a final Commissioner's Interpretation Statement on Health Promotion Charities is settled and published.

The main focus of a health promotion charity is promoting the prevention or control diseases in humans. A broad view is taken of the activities that might promote

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

prevention or control of disease. Controlling disease includes easing suffering and distress associated with disease, and managing and treating disease.

While the activities of preventing or controlling disease must be the main focus of a health promotion charity, these do not need to be the only activities of the charity.

Some examples of HPCs that have been registered by the ACNC had these principal activities:

- Research and education into treatment and care for people suffering from brain cancer.
- Provision of mental health nurses and paediatric staff to rural communities
- Cancer awareness programs conducted in rural areas
- Providing sexual health and STI awareness classes for young people
- Providing behavioural therapy for serving and retired military personnel suffering from post-traumatic stress disorder and military-induced stress illness.