

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: ACNC

Question: BET 832-836

Topic: Australian Charities and Not-for-profits Commission

Reference: Written – 12 June 2014

Senator: Xenophon

Question:

832. How many organisations have now registered with the ACNC?
- a. What has the feedback from the industry been in terms of this process?
 - b. Has the ACNC received any feedback from the public? What has this been?
833. Has the ACNC investigated any cases of non-compliance or similar concerns?
- a. How many?
 - b. What were the outcomes?
834. There have been significant past reviews, including the Henry Tax Review, that have recommended Australia establish an entity like the ACNC to regulate the NFP sector. If the ACNC were to be abolished, would any other existing organisation be able to fill that role?
835. The 2010 Economics Committee inquiry report into the Tax Laws Amendment (Public Benefit Test) Bill stated that: “The Committee notes the previous inquiries conducted by parliamentary committees, the Productivity Commission and the recent Henry Review. Notwithstanding their work, there remains a serious lack of information in relation to the not-for-profit sector; for example, estimates of the value of tax concessions range from \$1 billion to \$8 billion.”
- a. Is this consistent with what the ACNC is discovering as it begins to regulate the sector?
836. Is the ACNC familiar with the Government’s rationale on why the ACNC should be abolished? What is the ACNC’s response to this?

Answer:

832. As part of the establishment of the ACNC on 3 December 2012, the ATO transferred the records of 56,000 registered charities. These charity records formed the ACNC Charity Register. The ATO was not required to maintain an up-to-date register, and much of the information was years out of date so the ACNC has had to spend considerable resources getting verified information from all charities.
- Since the ACNC’s establishment to 12 June 2014, the ACNC has registered 3,597 charities.

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The total number of registered charities on the ACNC Charity Register is now 60,700. We estimate that approximately 50,000 of these will be active. The process that we are going through with the first Annual Information Statement and our work with other agencies will enable us to remove the thousands of charities that are no longer active from the Register. The Register will then be an accurate verified and searchable database of all active charities that is freely available to the public.

a. The ACNC sends a survey to everyone who applies to register a charity, including those that are declined registration or withdraw their application, to seek their feedback on the process.

The survey asks:

How would you rate your overall satisfaction with the quality of service that you received from the ACNC Registration team?

The results to date have been extremely positive:

Rating	Response in %
Very Satisfied	76.10%
Somewhat Satisfied	18.26%
Neutral	3.38%
Somewhat Dissatisfied	1.47%
Very Dissatisfied	0.79%
	100.00%

This is an overall satisfaction rating of 94.36% and an overall dissatisfaction rating of 2.26%.

The ACNC's submission to the Senate Inquiry also noted positive feedback from the sector:

- “You advertised yourself as a one-stop shop and you have delivered” Carolyn Kitto, Coordinator, Stop the Traffik.
- “The ACNC’s handling of our application was extremely professional; we were very pleased with the process, particularly given we applied in the run-up to Christmas. A great start for the ACNC!” Andrew Strainer, The Helmsman Project Director.
- “The whole system was extremely painless. We registered online and it was very simple, very quick and very efficient.” Roberta Thompson, Assistant Manager, Ashford Aged Care Facility.
- “The registration process was smooth and easy. The registration team gave us the best help for us” Pastor Carbrera, Joy of Life Christian Church.

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b. Since the establishment of the ACNC on 3 December 2012 to 12 June 2014, we have received 686 compliments via email (the ACNC does not record compliments received by phone although these are received every day) and 93 complaints about the ACNC. The most common complaints were in reference to IT difficulties that individuals were having (37), red tape/reporting (21) and the wording of some of our forms (15).

During this period the ACNC had 117,823 contacts with charities and the public where we have given advice or assistance:

- 54,589 calls,
- 33,721 emails,
- 28,016 items of paper mail, and
- 1,497 faxes.

The proportion of contacts regarding a complaint about the ACNC was less than 0.01%. The overwhelming feedback we receive is positive.

833. The establishment of the ACNC created Australia's first formal, independent mechanism for oversight of charities. Our regulatory role is to work with more than 60,000 registered charities to help them meet their obligations under the ACNC Act 2012 and its regulations.

The regulatory role includes investigating concerns or complaints about a charity's operation and its bona fides. It is important that only genuine charities should receive that recognition and consequential tax concessions. It is important that the public can have trust and confidence in the Australian not-for-profit sector as this underpins charitable giving, volunteering and other altruistic endeavour. By providing regulatory oversight and addressing misconduct and mismanagement in charities the ACNC is able to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector – one of three objects of the ACNC Act.

From 1 July 2013 all registered charities, apart from what the Act calls basic religious charities, must meet five governance standards to maintain registration. These standards include: organisations fulfilling their charitable purpose, their responsible persons complying with specific duties and being accountable to members.

The ACNC uses a risk-based approach in allocating its compliance resources. While applying a high risk threshold before deciding to intervene, the ACNC will act quickly and firmly in cases where there is a likelihood of serious mismanagement and misappropriation.

- a. Since our inception in December 2012, the ACNC has received 889 complaints or concerns about charities.

The vast majority of these complaints come from the public or an interested party. The second largest group of referrals come from other government agencies at both a federal and state level. Some cases are also generated from our internal processes and intelligence.

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Of the complaints and concerns received by the ACNC, 332 were considered serious and required further inquiry, these were referred to the ACNC Compliance Directorate for evaluation. The remainder were dealt with by the ACNC's Advice Services Directorate with regulatory advice to the charity or referrals to other agencies where the matter was outside the scope of our legislative remit.

Most concerns about charities fall into three main risk types: governance, fraudulent or criminal activity, and private benefit. Of the 332 referrals received by the ACNC Compliance Directorate, approximately 25% were concerns about the failure to meet basic governance standards, 15% related to allegations charities being used for private benefit, and 10% related to allegations of fraud or criminal activity.

b.

Compliance outcomes

When a complaint or concern is within the ACNC's jurisdiction, a risk assessment is performed to determine whether a compliance review (review a charity's general level of compliance with the ACNC Act and take action to address any failings), or an investigation (for high risk or complex cases) should be conducted.

Since the establishment of the ACNC, we have finalised 52 compliance reviews, 10 are in progress, and a further 13 are planned. We have finalised eight investigations, there are eight in progress, and there is one about to be opened.

The ACNC has used its powers under the ACNC Act 20 times since its inception. This has included:

- 18 formal notices legally requiring the production of material and information
- Two enforcement power notices. We issued a warning under section 80-5, and published this on the ACNC Register. The ACNC also issued a direction under section 85-5. The charity concerned was the New Connection Church Incorporated (ABN 63603892875).
- We have also revoked one charity under section 35-10 as a result of our compliance activities. The revocation occurred on 30 June 2014. There are other cases where the ACNC is moving towards revocation.

Our more intrusive enforcement powers such as directions and revocation are reserved for the most serious cases of wilful and negligent behaviour of charities.

The ACNC has a range of graduated powers that enable us to work with charities, where that is appropriate to deliver outcomes that protect charitable assets and services and get the charity 'back on track'. For example, actions taken on cases closed during March – May 2014 include:

- Ensuring charities comply with their reporting obligations
- Working with banks to ensure charitable assets are not dissipated
- Withholding a charity's record from the public register on the basis that its information was inaccurate
- Working with charities to improve record keeping and to avoid conflict of interest

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- Providing clear regulatory advice on governance policies and requiring new policies to be implemented
- Ensuring a charity developed legal agreements to guarantee long-term protection of a charity's assets

Regulatory approach

The following is a de-identified example of how the ACNC works with charities to implement our regulatory approach in complex cases:

- The ACNC received information that a staff member of a well-known children's charity was using the charity's credit card for private purchases.
- Initially, the Board refused to accept they had been betrayed by a trusted employee, but they agreed to work closely with the ACNC to identify the extent of the theft and the governance failings that had allowed it to occur unnoticed for several years.
- Acting on the clear regulatory advice of the ACNC, the Board stood the employee down, advised the charity's stakeholders of the situation and reported the theft to police. The charity undertook a governance review by an independent external firm of advisers and introduced new internal controls to significantly reduce the risk of fraud in the future, and improve the transparency and accountability of the charity. The ACNC played an active role in ensuring that the recommendations of the Governance Review were the right ones and that they were fully implemented by the charity's board.
- The charity is now 'back on track' delivering important services to its beneficiaries.

If this case was handled solely by the police, their involvement would have been limited to a criminal justice perspective, without a broader perspective of improving the charity's governance and reduce the risk of theft occurring in the future, or to inform its stakeholders. If the matter had been reported to the ATO, it would have been limited to dealing with this case from a tax law perspective, rather than addressing governance issues that threaten public trust and confidence more generally. Regulation of charities may not be a high priority for ASIC, state or territory incorporating regulators or the Attorneys-General.

Analysis of complaints and concerns also enables the ACNC to identify where there are gaps in guidance and good practice. For example, based on our casework and the problems we have found the ACNC has produced guidance on [Protect your charity from fraud: the ACNC's guide to fraud prevention](#), which gives practical tips on how to manage and address fraud; [Governance for good – a guide for charity board members](#), as well as resources on managing conflicts of interest and governance standards, to name a few.

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Case studies

To understand and identify trends or risk factors within the sector so the ACNC can better respond, we analyse our compliance data. For example, in April 2014, [we produced a public document based upon our 15 most significant cases](#) at that time. There were governance failings identified in each of these. One third of these cases involved charities less than five years old, all were of varying size and they were from every state and territory except the Northern Territory.

834. In addition to the Henry Tax review, other major reviews have recommended an independent regulatory body for charities (such as the 2001 Charities Definition Inquiry, 2008 Inquiry into the Disclosure Regime for Charities and NFP Organisations, the 2010 Productivity Commission Research Report on Contribution of the NFP Sector and 2010 Inquiry into Tax Law Amendment (Public Benefit Test)). For full list of inquiries – see [Appendix A to ACNC Submission to Senate Economics Legislation Committee Inquiry into ACNC \(Repeal\)\(No 1\) Bill](#).

In terms of potential replacement bodies, it is not appropriate for the ACNC as a regulator to comment more broadly on policy issues (particularly those currently the subject of consultation by the Department of Social Services). However, it is useful to point to the points raised on this issue in the [ACNC Submission to Senate Economics Legislation Committee Inquiry into ACNC \(Repeal\)\(No 1\) Bill](#). In particular the submission points to:

- the policy reasons for the establishment of the ACNC included the fragmented regulatory oversight that existed under the ATO, ASIC and others (regulatory failure in terms of duplicative and patchy regulation – see Parts 2.2 and 2.3 of ACNC Submission)
- the need for a specialist ‘fit for purpose’ regulator for the sector (much like the coherent regulatory framework that supports the business sector) - ATO and ASIC are large regulators focussed (rightly) on general taxation and corporate issues. There were also concerns raised with these regulators in the past:
 - that the ATO grew over time into a de facto regulator for the sector without that as the policy intent. The ATO was also perceived to have conflict of interest with its revenue collection role, and did not have a specialist approach on charities (see Part 2.3.3(a) and 3.1)
 - ASIC regulation of charitable companies (only a small subset of all charities) faced prescriptive requirements more suited for corporations, filing fees and a regulatory approach not tailored to the sector’s needs. Access to ASIC’s register would not only cover just a small part of the charity sector, it incurs costs, that may increase if the register is privatised (see Part 2.3.3(b) and 3.2)
- without the ACNC, there would be no obvious regulator ready to respond to any ‘sham charity’ or other scandals that risk public trust in charities, in effect respond to ‘market failure’ and the need for ‘consumer protection’ (Part 2.3.4 and 2.4).

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Under the ACNC Act, the ACNC's core functions are to:

1. independently determine charitable status
2. administer proportionate reporting
3. using this collected data, populate a national public register of charities

Any return of charity determination to the ATO would mean (without legislative change) a loss of independent decision-making and a return to perceptions of conflict.

There is no regulatory body with the legislative framework to collect core charity information that would support public confidence (such as information on a charity's purposes, activities, beneficiaries or governance). Any transfer of the free public register of charities requires significant legislative change to the ATO or ASIC regime. Based on our experience in building the ACNC register, any transfer of the register to these bodies would also require significant resources and operational (IT) changes, and a shift in organisational culture from a corporate or taxpayer centric focus to one of free public disclosure and confidence.

The Government's proposed Centre of Excellence is not intended to be a regulator, is likely to be introduced administratively, and is therefore unlikely to have the legislative remit to require reporting and maintain a public register.

The ACNC is also regarded as an important initiative in compliance with Australia's international obligations through the Financial Action Task Force dealing with money laundering, terrorist financing and other related threats to the integrity of the international financial system.

Its 2005 review assessed Australia as only partially compliant. The establishment of a specialist regulator with the functions of determining charitable status, maintaining a public register, collecting annual information (especially financial) and regulatory powers (information gathering, monitoring and enforcement powers), was expected to lift Australia's level of compliance. The formal peer review of Australia's compliance with FATF recommendations will be conducted in August 2014.

Based on [a researcher's analysis of other submissions](#) to the Senate inquiry, 55 submissions directly state that a return to regulation by the ATO/ASIC would be detrimental. In contrast, only two out of 155 submissions call for the return of functions to the ATO.

835. The inquiries (Productivity Commission Report and others) all consistently referred to the inadequacy of credible consistent and comparable data on the NFP sector. As noted in Part 2.4 of the [ACNC Submission to Senate Economics Legislation Committee Inquiry into ACNC \(Repeal\)\(No 1\) Bill](#), before the ACNC Register, the public (potential donors and volunteers) did not have access to a free up-to-date and trusted source of data about a charity's status, purposes, activities, beneficiaries or governance arrangements. Other registers of information are incomplete (e.g. the ATO's ABN Lookup only covers tax concessions accessed by charities) or incur fees (e.g. the ASIC register requires filing fees and only covers those charities that are incorporated with ASIC).

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As the ACNC begins to collect and maintain this data for the first time, we are working continuously to verify the integrity of the data received from the ATO (see outline of our work at Part 4.1.2 of ACNC Submission). For example, the ACNC had some 5,500 mail items returned from charities and has a major project under way to verify which charities on the Register are inactive or no longer operating. After attempting to directly contact charities multiple times, and doing public outreach (through advertising on ACNC website and mainstream media), the ACNC Commissioner will remove those charities that fail to contact us, in order to maintain the integrity of the ACNC Register. As at 30 June 2014, the ACNC estimates there are 5,000 – to 10,000 charities that appear to be inactive. This will ensure for the first time that Australia has an accurate comprehensive and up-to-date data on its charitable sector.

As part of the objective to promote public trust and transparency, the ACNC is also ensuring that the data collected is useful to the sector and the public. For example, the ACNC:

- regularly produces ‘sector snapshots’ on the charities that we register. We will also shortly publish a detailed report by an independent research body on the Annual Information Statement data we have collected up to 30 June 2014
- publishes the non-personal information it collects to data.gov.au (the Commonwealth government’s central open data repository).

836. As mentioned, it is not appropriate for the ACNC as a regulator to comment more broadly on policy issues (particularly those currently the subject of consultation by the Department of Social Services). However, the ACNC did respond to an invitation to make a submission to the Senate Economics Legislation Committee Inquiry into the ACNC (Repeal)(No 1) Bill. The resulting [ACNC Submission](#) provides a detailed ACNC response to the Government’s policy to abolish the ACNC and return regulatory functions to the ATO and ASIC. The submission seeks to respond in the context of maintaining good charity regulation. The key points of the Submission to note (as summarised in the Executive Summary) are:

- the pre-ACNC regulatory environment – after decades of inquiries and submissions, the deficiencies with the regulatory landscape facing charities were well documented. The ACNC was established to address some of these deficiencies
- return to ATO and ASIC – a return of regulatory functions back to ATO and ASIC would mean a return to the same regulatory deficiencies, the loss of a specialist regulator and unnecessary transitional costs for charities. It would also mean a significant loss of public transparency and accountability
- work of the ACNC to date – since December 2012 the ACNC has made significant progress, setting up Australia’s first free, online, national register of charities, a ‘report-once use-often’ framework to reduce red tape, and a specialist sector-tailored approach. The public and charities would lose this if the ACNC is abolished

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- full implementation of ACNC model – if allowed to be fully implemented, the ACNC model has the potential for very significant longer term benefits (such as simplifying and streamlining fundraising requirements and reducing duplicative reporting across agencies and jurisdictions). Such opportunities will be lost if the ACNC model is not given time for full implementation
- the future of effective charity regulation – just as the ACNC model followed years of extensive inquiry and consideration, any successor model of charity regulation should consider the principles of good charity regulation. The risks and cost of abolishing the ACNC could be minimised if the successor model retains (i) a public register of charities, (ii) proportionate reporting, and (iii) independent regulatory decision-making.

Finally, the ACNC notes that the uncertain environment about the ACNC's future has unfortunately stalled the significant progress made in red tape reduction (see Part 4.2 of ACNC Submission). Despite this, the mechanism for 'report once use often' framework – the [ACNC Charity Passport](#) was launched successfully on 11 June 2014. This provides a secure online system for the ACNC to share the information we collect with all authorised government agencies (at all levels of government). This mechanism could play a significant role in the Government's deregulation agenda for the NFP sector, including in the area of government grants reporting, which is one of the largest areas of unnecessary red tape.

The ACNC could also make a major contribution to addressing the other most significant areas of red tape burden – charitable fundraising reform (see Part 5.1.1 of ACNC Submission). However, a further detrimental aspect of the dismantling of the ACNC is the likely increase in red tape for charities. Already one Commonwealth Department has been requesting information from charities held in the ACNC's Charity Passport. The revised Commonwealth Grant Rules and Guidelines have removed the mandatory requirement for Commonwealth agencies to use ACNC data rather asking charities repeatedly for it. There is no single Commonwealth agency with the remit to oversee red tape reduction, comparable to the ACNC's role.