



Senate Economics Legislation Committee

ACNC Repeal: effects on the charitable sector

Appendices to Submission

2 May 2014

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APPENDIX A: CHRONOLOGY OF REVIEWS AND ESTABLISHMENT OF ACNC

Key points

- 6 major reviews of charity sector regulation conducted between 1995 and 2012
- Total of 2029 submissions over two decades of consultation
- Reviews recommended a specialist charity oversight body
- Establishment informed by feedback obtained by ACNC Implementation Taskforce
- ACNC operating since 3 December 2012 – less than 18 months

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| 1995 | Industry Commission, <i>Charitable Organisations in Australia</i> 786 submissions A wide-ranging report with recommendations on government funding, quality management, improving evidence, accounting standards, taxation arrangements, and legal structures. It identified inconsistencies in fundraising regulation as a significant cost to charities and recommended COAG consider ways to harmonise fundraising regulation among the states and territories. |
| 2001 | Committee of Inquiry, <i>Report of the Inquiry into the Definition of Charities and Related Organisations</i> ('Charities Definition Inquiry') 375 submissions The Inquiry recommended the adoption of a statutory definition codifying, clarifying and correcting the common law meaning of charity. Also the establishment of either an independent administrative body to administer the definition of charity, or a permanent advisory body for the ATO. |
| 2008 | Senate Standing Committee on Economics, <i>Inquiry into the Disclosure Regime for Charities and Not-for-Profit Organisations</i> 183 submissions Key recommendations included the establishment of a single independent national regulator for NFP organisations, the development of national fundraising legislation and the implementation of a standard chart of accounts. |
| 2010 | Productivity Commission, <i>Contribution of the Not-for-Profit Sector Research Report</i> 319 submissions Key recommendations included the establishment of a national registrar for NFPs, harmonisation of fundraising legislation, implementation of a standard chart of accounts, and establishment of an Office for NFP Sector Engagement and Centre for Community Service Effectiveness. |
| 2010 | Review Panel, <i>Australia's Future Tax System</i> ('Henry Review') Key recommendations in relation to NFPs included retaining income tax concessions, establishing a national charities commission, and modernising and codifying the definition of charity. |

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| 2010 | Senate Economics Legislation Committee, Inquiry into Tax Laws Amendment (Public Benefit Test) Bill 88 submissions Key recommendations included the establishment of an independent national commission that would increase accountability and transparency in the NFP sector and also promote public trust and confidence. |
| 21 January 2011 | Treasury releases Scoping Study for a National Not-for-Profit Regulator Consultation Paper. |
| 10 May 2011 | Budget 2011-2012 includes \$53.6 million of funding over four years to establish the ACNC and make related structural changes in the ATO. |
| 27 May 2011 | Australian Government announces that Robert Fitzgerald AM will be the Chair of the ACNC's Advisory Board. |
| 4 July 2011 | Treasury, Final Report on the Scoping Study for a National Not For Profit Regulator 161 submissions Report on conclusions drawn from consultation on the goals of national regulation, the scope of national regulation, and the functions and form of a national regulator. Key recommendation was to pursue the long term objective of a single national regulator and regulation of the NFP sector. |
| 4 July 2011 | Susan Pascoe AM appointed Chair, ACNC Implementation Taskforce. |
| 8 December 2011 | Treasury publishes Consultation Paper reviewing governance arrangements. |
| 9 December 2011 | Treasury publishes Exposure Draft of the Australian Charities and Not-for-profits Commission Bill and ACNC Implementation Taskforce release a Discussion Paper on the functions and operations of the ACNC. |
| Jan - Feb 2012 | ACNC Implementation Taskforce conducts community consultations across the country. |
| 1 March 2012 | Government extends the start date of the ACNC to 1 October 2012. |
| 17 May 2012 | Australian Government defers timing of proposed governance and external conduct standards and financial reporting to allow for further consultation. |
| 12 June 2012 | Australian Charities and Not-for-profits Commission Implementation Taskforce, Implementation Report 117 submissions This report on the proposed implementation of the ACNC followed research and analysis of views of the sector, government and broader community expressed in consultations and written submissions. It involved: <ul style="list-style-type: none">• round table forums and individual meetings with key stakeholders from government, sector, overseas regulators and members of Parliament• community consultations in nine cities (17 sessions)• numerous speaking engagements from September 2011 to March 2012. |
| 3 December 2012 | ACNC established under the ACNC Act. |
| 19 March 2014 | Repeal Bill introduced in the House of Representatives. |
| 27 March 2014 | Repeal Bill referred to Senate Economics Legislation Committee |

APPENDIX B: ACNC SNAPSHOT

This is a summary of the ACNC's activities and achievements since 3 December 2012. It also answers common questions that the ACNC receives.

Numbers are as at **1 May 2014** unless otherwise stated.

Charity registration and reporting

- **60 352 charities on the Register**, with 3161 registered by the ACNC since 3 December 2012
- First round of reporting: over 25 000 Annual Information Statements (AISs), of an expected 30 000, filed by the 31 March 2014 deadline – an estimated compliance rate of over 80%
- **99% of individual AIS submissions lodged online**
- 3130 charities submitted their AIS as part of a bulk submission (total of 40 bulk submissions) (as at 31 March 2014)
- 20% of all charities (5000) voluntarily filed their financial accounts when submitting their AIS
- 25 000 charities have now lodged their governing documents, with over 22 000 governing documents already published on the Register

Compliance activity (as at 31 March 2014)

- 686 complaints or concerns about charities reported to the ACNC
- 272 complaints warranted investigation or review by the ACNC

Advice services (as at 31 March 2014)

- 45 572 calls answered
- **33 second average wait time**
- 55 921 pieces of correspondence received (email, fax, paper)
- 59% of complex enquiries resolved within 5 days
- 79% of general enquiries resolved within 2 days

Website, Charity Portal and ACNC Register

- More than 825 000 visits to the website
- 335 000 views of the ACNC Register, 22 000 views of the Register mobile version
- 216 000 page views of ACNC guidance (including factsheets, guides and FAQs)
- 6 minute average visit to the website, average of 5 pages viewed per visit
- 88 000 visits to the Charity Portal (used by charities to update their information and lodge AISs)
- Average of 15 minutes spent in the Charity Portal per visit

Guidance, education and research

- Extensive range of guidance, including 52 fact sheets, 7 podcasts, 12 videos, quick tips, guides (governance and fraud prevention), and materials for non-English speaking audience
- 16 community presentations in 13 cities attended by over 2000 people in 2012-13

- 32 information and education sessions in 22 cities attended by 1600 people in 2012-13. Presentations and stalls at numerous charity sector conferences and events
- Policy contributions to government; reports on sector reform, red tape reduction and new charities registered, annual reporting trends and compliance activity; survey of public trust
- Charity data drawn from ACNC-collected data published to data.gov.au to support research
- Research support: research network of 80+ researchers and early career research awards

Relationships with other regulators and agencies

The ACNC has Memoranda of Understanding with the ATO, ASIC, the Australian Federal Police, the Office of the Registrar of Indigenous Corporations, the Tertiary Education Quality Standards Agency and the Queensland University of Technology (in relation to NSCOA), and an exchange of letters with the Australian Business Register. These arrangements facilitate liaison, cooperation, assistance and the exchange of information.

The South Australian and Australian Capital Territory governments have agreed to align reporting and some regulatory arrangements with ACNC requirements. Advanced discussions have taken place with other jurisdictions.

Due to the increasing international reach of charities, the ACNC has developed relationships with its counterparts in countries including New Zealand, the UK, Northern Ireland, Singapore and Canada.

Key ACNC publications

Corporate publications

- [ACNC Implementation Report Update](#) (January 2013)
- [ACNC Six Month Progress Report](#) (July 2013)
- [ACNC Statement: Regulatory Approach](#)
- [Annual Report 2012-13](#)
- [Strategic Plan 2012-15](#)

Research

- [2013 Annual Information Statement - February data](#)
- [ACNC compliance: An overview of the first year of compliance activity](#) (January 2014)
- [Forum Report: Measuring and Reducing Red Tape in the Not-for-profit Sector](#) (February 2014)
- [Not-for-profit reform and the Australian Government](#) (September 2013)
- [Research report: Public trust and confidence in Australian charities survey](#) (2013)
- [Snapshot: The ACNC's first 250 registered charities](#)
- [Snapshot: How our sector is growing \(analysis of the ACNC's first 1000 registered charities\)](#)

Guidance

- [Governance for Good Guide: the ACNC's guide for charity board members](#)
- [Protect your charity from fraud: The ACNC's guide to fraud prevention](#)
- [ACNC factsheets](#)

Common questions and answers

Why was there a need for a body such as the ACNC?

Deficiencies of the regulatory landscape prior to the establishment of the ACNC were well documented in six major government inquiries over two decades (see [Not-for-profit reform and the Australian Government](#)).

The 2010 Productivity Commission Report was clear:

“There is an urgent need to bring together the multiplicity of governance, taxation and fundraising regulatory arrangements, especially at the Commonwealth level. While reducing compliance costs is one motivation, improvements in the regulatory regime are important for maintaining trust in the fidelity and integrity of the NFP sector.”

How is regulation under the ACNC different from the previous regulatory regime?

Prior to the establishment of the ACNC, charity regulation at the Commonwealth level was fragmented and principally shared between the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC).

The sector was concerned about a perceived conflict of interest between the ATO's revenue collection role and its regulatory role in determining charity status. The ATO itself called for a separate body to determine charitable status in its submission to the 2001 Charity Definition Inquiry. That inquiry and the 2008 Senate Inquiry into disclosure regimes agreed that as a matter of principle determination of charitable status should be separate and independent from taxation administration. Past inquiries found that ASIC's main role is 'in the regulation of the Business Sector, whose objectives and aims are vastly removed from those of Not-For-Profit Organisations'. Surveys of the sector showed dissatisfaction with this for-profit focus.

Hundreds of submissions made over the years by sector bodies have called for a dedicated regulator for the not-for-profit sector that can understand and have a particular focus on the unique needs and role that not-for-profits play.

Why do charities need to provide information to the ACNC?

The ACNC uses up to date information from charities to maintain the ACNC Register, which increases transparency, trust and confidence in the sector.

The ACNC publish information provided by charities (except for personal data on the directors or board members) on the ACNC Register. By providing information to the ACNC charities are effectively providing it to the community, to their funders, to potential funders and supporters, to their members and to the people they help. The Register is designed to enable the public to find charities that they can support with confidence.

The thing that distinguishes charities from other bodies is that they are established and run for the benefit of the public. The public have a legitimate desire to find out information about charities, to be able to check an organisation's bona fides and to see that it is effectively regulated.

Charities rightly command high support from the public and many depend almost entirely on donations and volunteers from the community. Governments provide tax concessions to charities that recognise their unique role in society.

Prior to the establishment of the ACNC there was no single national register of charities in Australia. The ATO had a list which was out of date and was not published. ASIC had information on charities that were companies limited by guarantee but these were only 7000 of the 60 000 charities and this had to be paid for. Some states, such as Victoria, had online lists of incorporated associations but many did not. Information on trusts and unincorporated charities was often impossible to find.

What information do charities provide the ACNC?

ACNC reporting for 2013 requires only minimal corporate information that should already be readily available to every charity.

The reporting requirements were designed in close consultation with charities to ensure that the right amount of the right information is collected. The ACNC Commissioner has been clear on this point:

“We are keen to work with the sector to ensure that reporting requirements are kept to a minimum, while allowing for the collection of information to populate the Register, and to create the Charity Passport which itself will also contribute to red tape reduction.”

Over 26 000 charities have already filed their Annual Information Statements for 2013 and these are published. Over 25 000 have also filed a set of their governing rules and most of these have been published on the Charity Register.

In 2014 the Annual Information Statement will be pre-populated with the information that each charity provided in their 2013 Annual Information Statement, making the process even simpler. In 2014 there will be some financial information required from most charities (basic religious charities, such as some unincorporated congregations, are exempt). The financial information is proportionate to charity size: small charities are required to provide an Annual Information Statement only; medium and large charities also submit their financial report.

The ACNC also works with charities to make reporting easier:

- simple online form for the Annual Information Statement (or paper form if charities prefer) and online upload of annual financial report
- streamlined bulk lodgement for charity groups developed in consultation with the sector
- online Charity Portal to facilitate easy real-time updates of charity information
- accessible guidance and advice to help charities understand and meet their obligations.

Can a body such as the ACNC improve public trust in charities?

The ACNC commissioned research into public views about charities in 2013. This was carried out by independent research body ChantLink and is published on the ACNC website.

This 2013 Survey found that 77% of participants believed a public register of charities to be “very important”. In relation to respondents’ overall trust of charities in Australia, initial scores were moderate. Once the ACNC’s role was explained, respondents’ level of trust increased significantly.

The Charities Aid Foundation has concluded that ‘the ACNC has a clearly defined role and responsibilities which directly respond to recognised needs’ and that should steps be taken ‘to diminish, or even abolish the role of the ACNC donors may lose faith in the regulatory system’.

Does the sector support the ACNC?

Numerous sector surveys have confirmed strong support for the ACNC and compliance with reporting requirements has been high.

Pro Bono Australia 2013 Not for Profit Sector Election Survey

- The survey found overwhelming sector support for the ACNC (over 80% thought the establishment of the ACNC was important).
- Respondents reported a strong preference for the ACNC when compared to the Australian Tax Office (ATO). Only 6% supported regulation by the ATO.

Grant Thornton 2013/14 Not-for-profit Survey:

- The introduction of the ACNC was welcomed by 83% of respondents who said they felt the sector needed a regulator. Most respondents were ready to meet their ACNC obligations.

Our Community Oct/Nov 2013 Online Poll:

Question: What do you think about the Federal Government's plans to cut the Australian Charities & Not-for-profits Commission?

- 74% selected 'bad idea'
- 15% selected 'good idea'

Annual Information Statement compliance rate

In the ACNC's first round of reporting, approximately 80% of charities submitted their reports on time.

Is misconduct a problem in the charities sector?

Most people running charities are trying to do the right thing. This is why the ACNC devotes most of its resources to support and education for the sector. The ACNC is not a heavy handed regulator and this is enshrined in its Regulatory Approach, which was developed with extensive consultation with the sector, including face to face events in each state and territory.

The charity sector though, like any others is not immune from misconduct and serious mismanagement. There are people who set up scam charities, who rot the system and who steal from charities. These things often happen when there is poor governance. Poor systems and controls and directors who are either involved or who are failing to exercise proper scrutiny and control.

Since commencing as the national charity regulator 16 months ago, the ACNC has received 686 complaints about charities, of which more than 272 have warranted an investigation or review by the ACNC's compliance team. The majority of concerns raised about charities fit three main risk types: governance, fraudulent or criminal activity, and private benefit.

When wrongdoing occurs, it is often not just a financial loss that damages the charity. The impact on its reputation and the effects on staff, volunteers, beneficiaries and board members are also damaging. This reputational risk can spread to other charities and affect the reputation of all charities. This is why the ACNC handles compliance sensitively and works with charities to help them correct their mistakes, using the least intrusive powers possible to do so. The ACNC does, however, act firmly and quickly in cases where serious misconduct has been established, or where vulnerable people or significant charitable assets are at risk.

The problems are not often about tax; they are about wider governance problems. The ACNC has a different remit than the ATO had in connection with these matters. The basic Governance Standards that charities have to comply with enables the ACNC to address concerns appropriately and protect charitable funds, services and maintain public trust.

Does the ACNC have more extensive powers than other Australian regulators?

The ACNC's information gathering and monitoring powers were modelled on existing Commonwealth legislation. For example, the ATO has the same type of information gathering powers in relation to the tax affairs of an individual.

The same, or similar, monitoring powers are contained in various Commonwealth legislation, such as the Aged Care Act, the Civil Aviation Act, the Environment Protection and Biodiversity Conservation Act and the Migration Act.

In relation to enforcement powers, the ACNC has narrower powers than agencies such as the ATO, ASIC and APRA. These agencies have the power to apply for search and seizure warrants under their respective legislation, whereas the ACNC is only able to monitor compliance.

Many of the powers given to the ACNC can only be exercised with a narrow class of charities that come within the definition of 'federally regulated entities'.

The ACNC reserves the use of its compliance powers to cases where there is evidence of misconduct or serious and wilful mismanagement. The ACNC acts in accordance with its published Regulatory Approach.

How does the ACNC's role align with the Government's deregulation agenda?

1. **Removing duplication between different levels of government and between different agencies of government, including through one-stop-shops**

The ACNC is already a one-stop-shop for registering for, accessing and reporting under Commonwealth taxation concessions. Work is progressing to fulfil the ACNC's potential as a one-stop-shop for incorporated associations and fundraising legislation.

2. **Streamlining onerous and costly reporting requirements**

Through the 'report once, use often' Charity Passport, information collected by the ACNC is shared with other government agencies, eliminating the need for charities to repeatedly provide the same information to different agencies.

3. **A common sense approach to regulation**

The foundation of the ACNC's regulatory approach is an understanding of charities. The ACNC uses its powers in a way that reflects both the risks and the evidence before it. The ACNC begins by assuming that people involved in charities are acting honestly, give people a chance to address concerns, and use the least intrusive powers that are sufficient to address those concerns.

What progress has been made on harmonisation of regulatory requirements with states and territories?

The ACNC has made significant progress in harmonising Commonwealth, state and territory regulatory requirements, particularly in relation to incorporated associations legislation. South Australia and the Australian Capital Territory have led the way:

- In 2013, the Government of South Australia consulted on an Exposure Draft which proposes changes to the South Australian incorporated associations and charitable collections legislation to harmonise reporting, and to allow charities to collect donations in South Australia once they have registered with the ACNC.
- The Australian Capital Territory (ACT) Government announced in March 2013 and reaffirmed in April 2014 its intention to change the ACT incorporated associations and charitable collection legislation so that ACT charities will not need to duplicate reporting made to the ACNC.

As efforts to harmonise regulatory requirements progress, the ACNC Commissioner has taken the initiative to remove transitional duplication by accepting financial reports lodged by charities to state and territory regulators as satisfying ACNC 2014 financial report requirements.

This means that any charity that is an incorporated association, or has a fundraising license or is a co-operative, and files a financial report with a state regulator can send a copy to the ACNC and this will satisfy its requirements.

How else does the ACNC help reduce red tape for the sector?

In the ACNC's first 16 months of operation much has been done to reduce red tape for charities and a great deal more is planned.

The ACNC has a dedicated Reporting and Red Tape Reduction Directorate, which has worked with other directorates to:

- Implement the 'one-stop-shop' for charities to register, report, and access Commonwealth Government taxation and other concessions
- Align and streamline requirements for reporting to Commonwealth regulators:
 - Significant progress has been made, including Memoranda of Understanding with seven government agencies/regulators.

- For charities that are corporations registered with ASIC there will be no duplication in reporting. ASIC will take all the information provided to the ACNC. There are no fees payable to the ACNC, unlike ASIC.
- For Indigenous corporations the ACNC takes the information provided to ORIC and there is no reporting required to the ACNC.
- For schools, the ACNC will accept the financial information provided to the Minister for Education as satisfying ACNC financial report requirements and discussions are continuing with the Department of Education to further streamline reporting.
- For all new charities the ACNC and the ATO have developed a seamless registration process across both agencies. There is a single application form that charities complete to both get their charity determination and tax concessions. We have had meetings with State Revenue Commissioners about enabling charities to apply for State tax concessions too as part of this single process.
- Develop and implement the Charity Passport to facilitate a 'report once, use often' framework so that charities no longer need to report multiple times to different government agencies (supports Commonwealth Grant Guidelines):
 - Charity Passport to be launched May 2014
- Implement an appropriate and consistent tiered reporting framework
- Harmonise regulatory requirements for charities registered under state and territory laws:
 - South Australia and ACT have committed to harmonising regulatory requirements.
- Target and measure red tape imposed on the sector and identify opportunities to reduce it:
 - Ongoing: sector consultation in user groups and forums; charity-type working parties in partnership with government departments and charity representatives; and research on red tape reduction.

The ACNC held a forum on *Measuring and Reducing Red Tape in the Not-for-profit Sector* on Wednesday 4 December 2013 with sector leaders and representatives from Commonwealth Government. This made a series of recommendations that are published on the ACNC website. As recommended at the forum, the ACNC commissioned research to measure the red tape burden on charities in Australia and to identify target areas for red tape reduction. The first phase of the research is focussed on red tape at the Commonwealth level and includes case studies, red tape mapping and costing. The report will be published on the ACNC website.

Can self-regulation entirely replace the government regulation of charities?

Self-regulation, supported by "charity watchdogs", is regarded by many to be inappropriate and inadequate for regulation of charities.

"Charity watchdogs" as seen in the USA only supplement government regulation as they draw upon the information that charities are legally required to annually report to the US Government (the Form 990, which has 10 times more questions than the ACNC's 2013 Annual Information Statement). They also have inadequate coverage of the sector. For example, the US "Charity Navigator" evaluates less than 1% of US charities. Charity Navigator itself states that "we believe it is important that our country establish a federal regulatory agency to monitor and regulate charities."

In addition, charity watchdogs are vulnerable to loss of philanthropic funding which they rely on for viability, as has recently occurred in the case of Charity Navigator in the USA.

The voluntary provision of data cannot deliver comprehensive sector-wide oversight. Without an element of mandatory reporting you cannot have an accurate Register, but rather you have a partial list that goes out of date quickly.

How does the ACNC compare to international models of charity regulation?

The ACNC model was developed drawing from and improving upon best practice regulatory models across the world. Jurisdictions reviewed included Singapore, New Zealand, Scotland, and Northern Ireland, the United States and Canada. The ACNC had secondees from both Canada

and England and Wales as well as also significant support from New Zealand. What was created was a uniquely Australian body designed for the sector and community.

The UK, Singapore, Scotland and New Zealand have dedicated charity regulators; Ireland and Jamaica have recently passed legislation to do the same; and there have been calls for the US to follow suit. See the [comparison of regulatory models](#) of delegates to the 2014 International Charity Regulators meeting.

Was the New Zealand Charity regulator abolished?

The NZ Charities Commission had its functions transferred to the Department of Internal Affairs, as the NZ Government wanted to bring a number of small agencies back into mainstream Government agencies.

The NZ structural change was made to achieve administrative efficiency, such as sharing back-end resources, making it more like the Australian model in which the ACNC receives this support from the ATO.

The NZ Charities Commission has retained its Charity Register, annual reporting and all its functions and powers. The charity regulator, with an independent decision-making board, is continuing to register and deregister charities, provide education, monitor charity compliance and publish annual information on a public register. The structure of the NZ Charities Commission has largely been maintained.



APPENDIX C: ACNC ADVISORY BOARD: PRINCIPLES OF GOOD CHARITY REGULATION

The Principles of Good Charity Regulation were developed to support the ACNC staff and Commissioner to most effectively and efficiently regulate charities in Australia. They were drawn from the ACNC Advisory Board's experience and expertise and are intended to contribute to informed discussion on good regulatory practice.

The Principles were published in February 2014 and are available on the ACNC website at acnc.gov.au/ACNC/Pblctns/Rpts/Board_Principles/ACNC/Publications.

Context

The Australian Charities and Not-for-profits Commission (ACNC) is the national independent regulator of charities across Australia. ACNC was established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the ACNC Act) and came into operation on 3 December 2012.

ACNC Advisory Board

After a public expression of interest process, members of the ACNC Advisory Board (the Board) were appointed by the (former) Assistant Treasurer for their expertise relating to not-for-profits (including charities) and their experience and qualifications in law, taxation and accounting.¹

The Board supports the ACNC Commissioner through advice and recommendations in relation to her functions under the ACNC Act.²

The Board meets quarterly and publishes a summary of its meetings on the ACNC website. The most recent meeting was on 31 January 2014.³

Government policy

The Australian Government has signalled a new approach to regulation of charities and the broader not-for-profit sector:

"The Australian Government has committed to abolishing the Australian Charities and Not-for-profits Commission as part of its agenda to reduce red tape and establish a National Centre for Excellence, to represent the interests of charities and not-for-profit agencies. The National Centre for Excellence (NCE) will support innovation, help to build capacity of the sector, provide education and training and work to reduce reporting and regulation with the civil sector."⁴

¹ For details about the members of the Advisory Board see http://www.acnc.gov.au/ACNC/About_ACNC/Corporate_info/ACNC_advisory/ACNC/Edu/Advis_Board.aspx?hkey=1a5a0183-6c22-446a-ba09-144534467e0e

² For appointment of Board members, see section 135-10 of the ACNC Act. For functions and powers of the Advisory Board see section 135-15 of the ACNC Act

³ See ACNC Advisory Board Meeting Summary, Melbourne 31 January 2014, http://www.acnc.gov.au/ACNC/About_ACNC/Corporate_info/ACNC_advisory/ACNC/Edu/Advis_Board.aspx?hkey=1a5a0183-6c22-446a-ba09-144534467e0e

⁴ See statement published 29 January 2014, <http://www.dss.gov.au/about-fahcsia/news/2014/civil-society-national-centre-for-excellence>

The Board notes that there are differing views within the sector itself and across the political spectrum and welcomes the Government's commitment to open and comprehensive consultation.

At its January meeting the Board, in providing advice to the Commissioner:

- recommended that the ACNC should constructively contribute to the ongoing consideration of effective charity regulation⁵ based on evidence and sound principles, having regard to its overarching statutory objectives
- noted that the Commissioner's obligation is to continue on a business as usual footing until, and unless, there is a change in the ACNC legislation by parliament
- noted that the Commissioner should do all that is necessary to ensure that charities continue to meet the requirements of the ACNC and the new statutory definition of charities - as is required by the law
- recognised the achievements and performance of the ACNC as evidenced by its Annual Report and Commissioner's progress reports and feedback from the sector.

The Board considered the basis of good charity regulation – from their combined experience and expertise, they reflected on what principles would best underpin effective and efficient regulation of charities in Australia.

In accordance with the objectives of the ACNC legislation good regulation should enhance trust and confidence in the sector, lead to a reduction in unnecessary or inefficient red tape and support the further development of a sustainable sector. Ultimately it must advance the public interest.

Principles of good regulation

The Board has had regard to established principles of good regulation.⁶ It has reflected on the experience of the ACNC to date and the years of inquiry and consultation leading to the ACNC and reforms initiated over recent years. In light of these principles, the Board believes good charity regulation and administration would include the following features:

- independence of decision-making (free of sector, political or commercial influence)
- effectiveness and efficiency in achieving clearly defined policy goals
- clarity, transparency and accountability
- fairness and natural justice in decision making and administrative processes
- integrity and certainty
- proportionality, consistency and regulatory necessity
- understanding of, and respect for, the contribution of the sector
- integration, consistency and support of other laws, agreements and international obligations.

These principles are provided by the Board to the Commissioner and, through her, for help inform wider debate. They are expanded on below.

The Board notes that a key role of charity regulation is as gatekeeper for access to taxation concessions and other benefits based on charity status. Also, determination and oversight of charitable status will continue to be critical as government funded service delivery by the not-for-profit sector grows (for example, as part of reforms to disability services). It is also noted that many charities exist beyond human service delivery including arts, culture, environment, religion,

⁵ The Minister for Social Services, the Hon. Kevin Andrews MP, has and is consulting on the establishment of the National Centre for Excellence and associated matters see, <http://www.dss.gov.au/about-fahcsia/news/2014/civil-society-national-centre-for-excellence> and earlier statement <http://www.dss.gov.au/about-fahcsia/news/2013/commencement-of-charities-act-2013-1-january-2014>

⁶ See characteristics of 'good regulation', Coghlan, P. 2000, 'The principles of good regulation', *Achieving Better Regulation in Services 26–27 June 2000*, Productivity Commission and Australian National University, Conference Proceedings, November, Canberra cited in 'Appendix I Principles of best practice regulation', 2012 Productivity Commission Research Report, *Performance Benchmarking of Australian Business Regulation: Role of Local Government as Regulator*, 18 July, p626 and COAG principles of best practice regulation, 2007, *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, October, p4.

science, medical research and education etc. and good regulation is just as important and relevant for these vital agencies. A strong civil society is underpinned by both the rule of law and for institutions that receive public funds and concessions sound regulation.

Application of principles to charity regulation

- **Good regulation should be independent in its decision-making.**

For any regulatory system to be effective and well respected, decision-making powers must be, and be perceived to be, exercised independently and impartially.

For charity regulation this means independent and impartial determination of charity status free of sector, political or commercial influence, and separated from any potentially conflicting government functions. This also includes being free of the influence of revenue considerations. Decisions should be based on the expert application of law to the evidence provided. Any conflicts of interest (apparent or actual) should be disclosed and managed.

- **Good regulation should be effective and efficient, in terms of addressing clearly defined policy goals.**

Charity regulation should increase public trust and confidence in the not-for-profit sector. Increasing the transparency and accountability of charities contributes to this goal by providing credible information on charities for the public to access.

The provision of a free online register of charities with up-to-date core information provides a reliable database on charities; their mission, activities and achievements. This helps promote trust and confidence by allowing the public to evaluate and compare charities, enables research and supports donors (including volunteers) and beneficiaries.

As taxation laws provide concessions for charities, another dimension of this policy goal is to ensure appropriate transparency and accountability for charities that benefit from tax concessions in order to protect public money.⁷

- **Good regulation should be clear, transparent and accountable.**

Charity regulation should be clear, transparent and accountable. Any obligations placed on charities and those who run them should be easy to understand and clear. This is of particular importance for the charity sector – the majority of charities (and broader not-for-profit sector) typically have less access to specialist advice and rely heavily on volunteers, often helping in their ‘after hours’ time.

The regulatory approach (how the law is applied and enforced) should be well understood, with a clearly articulated framework for exercising regulatory discretion. Decision-making and administrative processes should be transparent, reasoned and consistent.

- **Good regulation should be fair and just.**

Charity regulation should be fair and just. Enforcement of obligations should be based on a presumption that the vast majority of people involved in charities are honest and trying to do the right thing. The emphasis should be on providing general information and support for charities so responsibilities are understood.

Administrative processes should reflect the principles of procedural fairness. Before decisions are made, there should generally be a reasonable opportunity to be heard. Decisions should be free of bias and open to challenge through administrative and judicial review.

- **Good regulation should have integrity and be certain.**

Good charity regulation should support and sustain charities in their charitable endeavours so they can best contribute to civil society. This can be done through a clearly articulated and well-understood regulatory framework that is administered by a regulator that acts consistently and is focussed on information, guidance and advice.

⁷ Note recent article by Prof Ann O’Connell, *The Conversation*, 27 December 2013 <http://theconversation.com/watching-over-the-helpers-why-regulation-of-charities-matters-19971>

Given how highly specialised and technical the field of charity law is, the regulator should develop a pool of expert staff who are able to ensure accurate, timely and consistent decision making, as well as providing thought leadership.

- **Good regulation should be proportionate, consistent and necessary, always being mindful of the compliance burden imposed.**

A charity regulation framework that includes a charities register as a conduit towards a 'report once use often' model provides the springboard for reducing the red tape faced by charities. This model enables charities to report once to government, in a way that avoids duplicative obligations to multiple agencies.

Good regulation is vigilant to not impose any unnecessary burden on charities and their volunteers, and to only impose obligations to the extent necessary to achieve policy goals, such as supporting public trust and confidence in the sector.

- **Good regulation should be based on understanding of, and respect for, the sector.**

In order to be effective, regulation must be based on a deep knowledge and understanding of those being regulated, in this case of charities. This is more likely to occur if the regulator builds knowledge of, and respect for the sector.

In exercising regulatory discretion, regard needs to be had to the huge diversity in the charity (and broader not-for-profit) sector. It must be remembered that charities (and the public who volunteer and donate to them) want charitable resources to be used for delivering on services (their mission), rather than being wasted on satisfying unnecessary or duplicative regulatory obligations.

- **Good regulation should be integrated, consistent and supportive of other laws, agreements and international obligations.**

To avoid duplication and to meet international and other governmental obligations, charity regulation (like any type of regulation) must be integrated, and consistent with other laws and agreements.

Good regulation would encourage a nationally harmonised approach so that charitable activities and services can occur easily across jurisdictions, without any duplicative or inconsistent reporting or other regulatory obligations. Efficient regulation would provide a level playing field for the sector with that enjoyed by the business sector for more than a decade.

Beyond Australian borders, the effective regulation of charities and not-for-profits can play a significant role in ensuring the sector is not being used as a vehicle for money laundering or terrorist financing. The Government, as a member of the international inter-governmental body – the Financial Action Task Force (FATF) – is committed to meeting FATF's international standards and recommendations.⁸ These recommendations require regulation of not-for-profits to be adequate by having the capacity to obtain timely and relevant information about not-for-profits.⁹

⁸ In early 2014 Australia is due for its next mutual evaluation report under the peer review system of the International Financial Action Taskforce charged with combating money-laundering and terrorism (www.fatf-gafi.org). In its 2005 review, Australia was assessed as only partially compliant. The results of Australia's next review will be presented at the international plenary in July 2014.

⁹ Including information about how they are run (including specifics like their objectives, governance, financial statements and internal controls).



APPENDIX D: ACNC-RELATED LEGISLATION

ACNC-administered legislation

The ACNC administers the following legislation, which would need to be amended or repealed if passing the Repeal Bill.

- *Australian Charities and Not-for-profits Commission Act 2012* (Cth)
- *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth)
- *Australian Charities and Not-for-profits Commission Regulation 2013 (No. 3)* (Cth)

Other key legislation

Other key legislation that the ACNC applies or has a responsibility to fulfil:

- *Charities Act 2013* (Cth)
- *Public Governance, Performance and Accountability Act 2013* (Cth)
- Government Grant Guidelines (June 2013)

Other legislation requiring amendment

Legislation that refers to the ACNC or creates obligations for the ACNC to discharge includes:

- *A New Tax System (Australian Business Number) Act 1999* (Cth)
- *A New Tax System (Goods and Services Tax) Act 1999* (Cth)
- *Administrative Decisions (Judicial Review) Act 1977* (Cth)
- *Aged Care Act 1997* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Aircraft Noise Levy Act 1995* (Cth)
- *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth)
- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)
- *Australian Postal Corporation Act 1989* (Cth)
- *Australian Securities and Investments Commission Act 2001* (Cth)
- *Broadcasting Services Act 1992* (Cth)
- *Child Care Act 1972* (Cth)
- *Classification (Publications, Films and Computer Games) Act 1995* (Cth)
- *Competition and Consumer Act 2010* (Cth)
- *Copyright Act 1968* (Cth)
- *Corporations Act 2001* (Cth)
- *Customs Tariff Act 1995* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Disability Services Act 1986* (Cth)
- *Do Not Call Register Act 2006* (Cth)
- *Financial Transaction Reports Act 1988* (Cth)

- *Fringe Benefits Tax Assessment Act 1986* (Cth)
- *Income Tax Assessment Act 1936* (Cth)
- *Income tax Assessment Act 1997* (Cth)
- *Income Tax (Transitional Provisions) Act 1997* (Cth)
- *Insurance Act 1973* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Sex Discrimination Act 1984* (Cth)
- *Social Security Act 1991* (Cth)
- *Spam Act 2003* (Cth)
- *Sex Discrimination Act 1984* (Cth)
- *Social Security Act 1991* (Cth)
- *Taxation Administration Act 1953* (Cth)
- *Tax Laws Amendment (2009 Measures No.5) Act 2009* (Cth)
- *Tax Laws Amendment (2010 Measures No. 2) Act 2010* (Cth)
- *Telecommunications Act 1997* (Cth)
- *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth)



APPENDIX E: COMPARISON WITH INTERNATIONAL REGULATORS

| Regulator | Established | Public online register of charities? | Model of regulation |
|---|--|--|---|
| ACNC (Australia) | December 2012 | Yes - includes all charities who voluntarily register for tax concessions | Independent sector regulator as statutory office, with support functions from tax revenue agency |
| Charity Commission (England & Wales) | 1853 | Yes - includes all charities (registration mandatory except for small charities) | Independent sector regulator as standalone statutory Commission |
| OSCR (Scotland) | April 2006 | Yes - includes all charities (registration mandatory) | Independent sector regulator as standalone statutory regulator |
| Office of Commissioner of Charities (Singapore) | July 2006 | Yes - includes all charities, and fundraising permit information | Independent sector regulator as statutory office, located under line Department (also regulates fundraising) Works in close collaboration with statutory Charity Council (advises Commissioner and promotes good governance) |
| Charity Services (New Zealand) | July 2012 (transferred out of Charities Commission which was established Feb 2007) | Yes - includes all charities who voluntarily register for tax concessions | Independent sector regulator as statutory office, located under Department of Internal Affairs |
| Charities Regulatory Authority (Ireland) | Expected to be established after board appointed shortly | Yes - includes all charities (registration mandatory) | Independent sector regulator as standalone statutory authority |
| Charities Directorate (Canada) | 1967 | Yes - includes all tax exempt charities (not separation from tax status) | Regulation by tax revenue agency but separate Charities Directorate |
| Inland Revenue Services (US) | 1974 (current Division established late 1999) | Yes - includes all tax exempt organisations (not separation from tax status) | Regulation by tax revenue agency as part of broader Tax Exempt and Government Entities Division |