



Submission

Consultation, reform or review details

Title: ACNC Submission – Submission to Commonwealth Integrity Commission
consultation draft

Your details

Organisation: Australian Charities and Not-for-profits Commission

If you are providing a submission on behalf of an organisation, please provide the name of a contact person.

Full name: [REDACTED]

Please provide one or all of the following (these details will not be published):

Postal address: [REDACTED]
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Email: [REDACTED]

Publication of submissions

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- Microsoft Word
- Rich Text Format (RTF)
- txt format.

Please limit individual file size to less than 5MB. The department may create PDF documents from the above formats.

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Would you prefer this submission to be published anonymously?

Yes ☐ No ☒

Your submission:

EXT2021-6

ACNC Submission – Submission to Commonwealth Integrity Commission consultation draft

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to the Commonwealth Integrity Commission (**CIC**) consultation draft. This submission focuses on the classification of the ACNC as a public sector agency under section 8 of the draft Commonwealth Integrity Commission Bill 2020 (**the draft Bill**).

About the ACNC

2. The ACNC is an independent statutory authority, established as the national regulator of charities under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). The objects of the ACNC Act are to:
 - a. maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
 - b. support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and

- c. promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.
3. The ACNC's regulatory responsibility extends only to registered charities, as distinct from the wider not-for-profit sector. There are currently in excess of 58,000 charities.

ACNC structure

4. Established by section 105-5 of the ACNC Act, the ACNC is classified by Treasury as a secondary statutory office holder, office or committee under the Australian Taxation Office (**ATO**).¹ The ACNC operates independently of the ATO, despite being staffed by employees made available by the Commissioner of Taxation (s 120-5 of the ACNC Act).
5. The ACNC is headed by the ACNC Commissioner, an independent statutory office holder. Part 5-2 of the ACNC Act provides for the establishment of the Commissioner's position, functions and powers, including the terms and conditions of appointment. The activities of the ACNC are established by the ACNC Act and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).
6. The ACNC has a governance framework in place that provides for effective governance and risk management, informed decision-making and professional performance accountability. Our internal governance practices and structures ensure we meet the principles and requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth).

ACNC regulatory functions

7. The ACNC's regulatory approach is set out in the ACNC Regulatory Approach Statement: <https://www.acnc.gov.au/raise-concern/regulating-charities/regulatory-approach-statement>
8. The ACNC registers charities under 14 charitable subtypes set out in the ACNC Act. Once registered with the ACNC, charities can access certain charity tax concessions and other tax benefits administered by the ATO depending on their registration subtype. They may also be eligible for other concessions or benefits administered at Commonwealth, State or Territory levels.
9. The ACNC operates the Charity Register, which contains information about Australia's registered charities. It is free to search and publicly available. Each listing on the Charity Register is aimed at promoting transparency about the charity and the charitable sector. Among the things included on the register is information about any action the ACNC has taken against the charity for not complying with certain obligations.
10. Charities must meet certain obligations to be registered and remain registered with the ACNC, including the lodgement of an Annual Information Statement and compliance with the Governance Standards and External Conduct Standards.

¹ Australian Government, 'Australian Charities and Not-for-profits Commission', Directory (Web Page) < <https://www.directory.gov.au/portfolios/treasury/australian-taxation-office/australian-charities-and-not-profits-commission>>.

11. The ACNC monitors compliance – and identifies non-compliance – with the ACNC Act and Regulation in the following ways:
 - a. Assessing information provided by charities in their Annual Information Statements and financial reports
 - b. Assessing concerns received from the community and other government agencies and
 - c. Data-matching and intelligence projects (operating within the parameters set by the ACNC Act, the *Privacy Act 1988* (Cth) and other relevant legislation) across government agencies to identify areas of risk.
12. The ACNC works closely with the sector, including through professional and sector forums, which can provide valuable insight into areas of risk.
13. The ACNC works with state and territory governments and other Commonwealth government agencies to reduce unnecessary regulatory obligations for charities. Our aim is to harmonise and simplify reporting for charities so they can report once to government and have that information shared with other government agencies using the ACNC Charity Passport.
14. The ACNC's compliance powers include providing regulatory advice, issuing warnings and directions, seeking injunctions, entering into enforceable undertakings, suspending or removing board members, and ultimately, revoking charity status. The revocation of charity status is used only in the most serious of cases. In some instances, the ACNC will enter into compliance agreements with charities.
15. The ACNC is not resourced to investigate every regulatory concern that is brought to our attention, instead we target areas that present the greatest risk to public trust and confidence. Our actions remain proportionate to the problems we seek to address.

The ACNC and the Australian Commission for Law Enforcement Integrity (ACLEI) and CIC

16. The ACNC were not included in the ACLEI's jurisdiction, unlike the ATO. The ATO have advised the ACNC that it has received comments from the Attorney-General's Department during ACLEI regulation amendments outlining that the ACNC did not fall under ACLEI jurisdiction. However, there has been no further communication as to what approach should be taken in regard to the CIC jurisdiction.
17. The ACNC believe a similar approach should be extended to the new CIC framework. While the ACNC does exercise regulatory functions, the ACNC operates separately from the ATO and those regulatory functions are not law enforcement as exercised by the ATO.
18. The ACNC Commissioner is an independent statutory office holder, and the ACNC remains independent from the ATO. The ACNC is governed by its own legislation, has its own budget (included as a separate line item in the ATO appropriation) and reports annually to Parliament.
19. The ACNC supports law enforcement agencies and other government regulators that undertake their own investigatory functions – agencies that do and are likely

to fall under the list of law enforcement agencies contained in section 7 of the draft Bill. The ACNC does this by referring information to these agencies, or receiving information from them, about registered charities.

20. ACNC investigations and regulatory powers go to the right of an entity to be registered as a charity, or to the suspension or removal of a charity's responsible person, as opposed to other legal enforcement.
21. ACNC regulatory and enforcement powers do not rise to the level of the powers that the ATO, the ACCC or ASIC have under their legislation.
22. Additionally, the ACNC have internal procedures for upholding integrity within the ACNC. All staff adhere to the Australian Public Service's Code of Conduct and Values, as well as the organisational values. The ACNC Act sets out when and how ACNC officers may act. For example, the secrecy provisions contained in Part 7-1 of the ACNC Act are strict and set out the limited exceptions in which ACNC officers can disclose information. It is an offence for officers under section 150-20 of the ACNC Act to disclose protected ACNC information without an exception to the secrecy provisions.
23. Despite the ACNC being an independent body under the ATO, staff are made available by the Commissioner of Taxation and therefore adhere to staff policies set by the ATO. The ACNC has entered into Memoranda of Understanding with the ATO for the provision of services, including human resources and financial services. Under arrangements with the ATO, the ATO Integrity Unit, which aims at enhancing integrity in the ATO and supports the internal integrity risk owner in setting appropriate behaviours, also supports the ongoing integrity of ACNC staff. The formal Integrity Unit framework ensures that internal risks are identified, assessed and managed appropriately.
24. The fact that the ACNC regulatory and enforcement powers are not as extensive as the agencies contained in the table in section 7 of the draft Bill, combined with current measures and practices already in place to ensure integrity and prevent and investigate corruption, leads the ACNC to recommend that the current approach undertaken in regards to the ACNC and the ACLEI be extended to the new CIC framework.
25. The ACNC should be considered independent of the ATO and defined as a public sector agency under section 8 of the draft Bill.

Further information

26. The ACNC can provide further information should that be useful to the Government. The ACNC can be contacted using the email address

[REDACTED]

Sincerely,

[REDACTED]

[REDACTED]

Commissioner

Australian Charities and Not-for-profits Commission

