



Australian Government



25 September 2019

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ACNC Submission - Religious Freedom Bills

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to the Attorney General's Department's (**AG's**) Consultation on the Religious Freedom Bills (**the Consultation**).
2. The ACNC notes that the Bills, should they be enacted, will have a direct relevance to the charity sector. The ACNC is able to work with AG's or the Australian Human Rights Commission to ensure charities are aware of the legislation once enacted.

About the ACNC and the Charity Sector

3. The ACNC was established on 3 December 2012 by 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.¹
4. Currently the ACNC's regulatory responsibility extends only to registered charities, as distinct from the wider NFP sector.
5. Just over 57,000 charities are regulated by the ACNC¹. Australia's charities deliver services, make grants and perform a wide range of other activities to advance health, education, welfare, religious and other charitable causes. As reported in the 2017 Australian Charities, 30.4% of charities reported their main activity as religious activities. Other charities may have a different main activity but also have a religious background or motivation. It is not possible to calculate numbers for these types of charities.

¹As at 15 September 2019. See acnc.gov.au for the most current figure for registered charities.





Charity law and advocacy

6. The ACNC notes that one of the Bills in the Religious Freedom package, the Human Rights Legislation Amendment (Freedom of Religion) Bill 2019 proposes amending *The Charities Act 2013* (Cth) (**the Charities Act**).
7. The Charities Act commenced on 1 January 2014. The Act clarified concepts from the common law to introduce a statutory definition of 'charity' for Commonwealth purposes. Among other requirements, not-for-profit organisations must meet the definition of 'charity' in the Charities Act to become and remain a registered charity.

8. Section 5 of the Charities Act defines 'charity':

charity means an entity:

(a) that is a not-for-profit entity; and

(b) all of the purposes of which are:

(i) charitable purposes (see Part 3) that are for the public benefit (see Division 2 of this Part);

or

(ii) purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and

Note 1: In determining the purposes of the entity, have regard to the entity's governing rules, its activities and any other relevant matter.

Note 2: The requirement in subparagraph (b)(i) that a purpose be for the public benefit does not apply to certain entities (see section 10).

(c) none of the purposes of which are disqualifying purposes (see Division 3); and

(d) that is not an individual, a political party or a government entity.

9. The meaning of 'disqualifying purpose' is defined by section 11 of the Charities Act:

disqualifying purpose means:

(a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or

Example: Public policy includes the rule of law, the constitutional system of government of the Commonwealth, the safety of the general public and national security.

Note: Activities are not contrary to public policy merely because they are contrary to government policy.

(b) the purpose of promoting or opposing a political party or a candidate for political office.

Example: Paragraph (b) does not apply to the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office (such as by assessing, critiquing, comparing or ranking those policies).

Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country may be a charitable purpose (see paragraph (i) of the definition of charitable purpose in subsection 12(1)).

10. The Bill will insert a new subsection into S11, to provide clarity that "the purpose of engaging in, or promoting, activities that support a view of marriage as a union of a man and woman to the exclusion of all others, voluntarily entered into for life, is not, of itself, a disqualifying purpose."



11. The ACNC understands that this change is being proposed to address Recommendation 4 of the Religious Freedom Review to clarify that the advocacy of traditional views of marriage by charitable institutions will not disqualify the charitable institution from being a charity.
12. The ACNC notes that under the current Charities Act, such a purpose is already not a disqualifying purpose in and of itself.²
13. The ACNC notes that such a change may set a precedent whereby any group desiring absolute clarity around what does or does not constitute a disqualifying purpose may seek to have a similar subclause inserted into the Charities Act.
14. Some charities conduct public advocacy when working towards achieving their charitable purposes. A charity can promote or oppose a change to any matter of law, policy or practice, as long as this advocacy furthers or aids another charitable purpose.

ACNC guidance

15. The ACNC has publicly available guidance [“Charity Advocacy”](#) which assists charities to understand the ways in which they can undertake advocacy activities while maintaining their obligations as a registered charity.
16. This guidance provides clarity that, as stated in paragraph 14 above, a charity can promote or oppose a change to any manner of law, policy or practice in furtherance or aid of another charitable purpose. The law, policy or practice being promoted or opposed can be anywhere in Australia or overseas.
17. The guidance goes on to state:

Advocacy must further or aid another charitable purpose. However, your charity does not need to be eligible for, or registered as having, another charitable purpose to undertake advocacy in relation to that purpose.

The public benefit of advocacy is its contribution to public discussion, which informs the public and policy-makers. But the way a charity undertakes advocacy, and its aims, must be consistent with the rule of law and the established system of government.

Charities must operate for public benefit, rather than the private benefit of Responsible Persons or members. If advocacy activities are directed at the general public, there is likely ‘public’ benefit, even if very few people directly benefit from that advocacy.
18. It is the view of the ACNC that legislative change is not necessary to achieve the aim the change is seeking. If, however, there is uncertainty in the sector, the ACNC is willing and able to issue guidance that will clarify the operation of the law.
19. If the existing guidance referenced above is deemed insufficient to provide the required level of certainty, the ACNC can issue separate guidance.

²Noting that while this is not a disqualifying purpose, an entity would still need to meet the definition of charity as set out in the ACNC Act in order to be a registered charity.



Further information

20. The ACNC can provide further information should this be useful to the Committee. Contact information is provided below:

[REDACTED]
[REDACTED]

Sincerely,

[REDACTED]
Commissioner
Australian Charities and Not-for-profits Commission