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SUBMISSION ON THE COMPETITION POLICY REVIEW DRAFT REPORT

The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the Competition Policy Review Draft Report (**Draft Report**). This submission relates to the implications of the Draft Report for charities and the broader not-for-profit (**NFP**) sector.

The ACNC notes the Panel's encouragement of a diversity of service providers and welcomes the Panel's intention to not 'discourage or crowd out the important contribution of the not-for-profit sector and volunteers currently make to the wellbeing of Australians'. The feedback provided in this submission is directed at supporting this intention and covers the following points:

- ACNC experience
- the importance and contribution of the NFP sector (providing up-to-date data)
- unique barriers to competition for NFPs
- the importance of appropriate regulation
- the value of sector data
- the risk of crowding or forcing out NFPs.

1. ACNC experience

The ACNC has been regulating charities for two years, having been established as Australia's first specialist charity regulator on 2 December 2012. This submission draws on this experience as well as two significant pieces of research it has commissioned (Curtin University Report¹ and Ernst & Young Report², copies attached).³

¹ Knight P.A and Gilchrist D.J, 'Australian Charities 2013: The First Report on Charities Registered with the Australian Charities and Not-for-profits Commission', Report for the Australian Charities and Not-for-profits Commission, 2014.

² Ernst and Young, 'Research into Commonwealth Regulatory and Reporting Burdens on the Charity Sector', 2014.

³ More information about the ACNC, its role in reducing red tape and the potential for an expanded role (for example, in reducing red tape associated with fundraising) is contained in its [submission](#) to the recent Senate Inquiry into the Australian Charities and Not-for-profits Commission (Repeal Bill) (No. 1) Bill 2014.



2. The importance and contribution of the NFP sector

The Draft Report notes the contribution of NFPs in the context of human service delivery, but the full contribution of the NFP sector (social and economic) is much broader. For example, analysis of the 2013 Annual Information Statements lodged by charities with the ACNC shows that as well as human services, charities conduct activities in areas such as arts and culture, grant making, the environment, emergency relief, animal protection, and research.⁴

NFPs are estimated to comprise some 600,000 organisations, just over 60,000 of which are charities registered with the ACNC. The Australian Bureau of Statistics (Satellite Account, 2014)⁵ estimates that the 56,894 economically significant NFPs employed over a million people in 2012-13 (1,081,900, or 9.3% of the Australian workforce). In 2006–07, an estimated 4.6 million volunteers, with a wage equivalent value of \$15 billion, worked with NFPs.⁶ In 2010, 36% of Australians aged 18 years and over participated in voluntary work.⁷

The income of the charities submitting their 2013 Annual Information Statements to the ACNC has been estimated by Curtin University at over \$100 billion a year, excluding donations.⁸ The charity sector receives approximately \$28 billion in government funding alone.

As well as accounting for approximately 4% of GDP (which does not include the contribution of volunteers), the NFP sector is estimated to be growing at around 6% each year in real terms, exceeding the mining industry in relative growth.⁹ This growth has been achieved despite significant and unique barriers to competition not faced by the business sector ('for profits').

3. Unique barriers to competition for NFPs

Unlike the business sector which has long enjoyed a national system of regulation under the Corporations Act, regulatory oversight of incorporated associations and fundraising remains fragmented across the country.

This fragmentation affects the majority of incorporated NFPs, as incorporated associations are the most common form of legal structure. If they 'carry on business' in more than one state, they are also required to register under the Corporations Law, creating dual reporting and complexity.

⁴ As above, 1.

⁵ Australian Bureau of Statistics, 2012-13 Australian National Accounts: Non-Profit Institutions Satellite Account, Canberra, June 2014.

⁶ McGregor-Lowndes, M., ACPNS Current Issues Information Sheet 2014/4, The Not for Profit Sector in Australia: Fact Sheet, August 2014, [http://eprints.qut.edu.au/75397/4/75397\(updated\).pdf](http://eprints.qut.edu.au/75397/4/75397(updated).pdf)

⁷ Ibid.

⁸ As above, 1.

⁹ As above, 2.



Fundraising regulation in particular is detrimental to competition. Raising funds is already more difficult for NFPs than for business because they do not have the same access to equity financing or capital fundraising. Added to this inherent barrier is complex and inconsistent charitable fundraising regulation. NFPs wishing to fundraise across Australia have to apply for separate fundraising licences in different jurisdictions with very different reporting and regulatory obligations. This imposes significant and unnecessary costs, hindering their capacity to compete with for-profit businesses. For example, World Vision Australia has previously estimated that it spends \$1 million per year on fundraising compliance.¹⁰

Multiple government and independent reports¹¹ have identified fundraising red tape as a significant problem for the sector. There is a clear and urgent need for governments to take action on harmonising fundraising regulation across Australia.

4. The importance of effective and appropriate regulation

As the NFP sector is being increasingly asked to compete with for-profit providers and across state and territory borders, it is critical that the sector has a national regulator that is fit-for-purpose and supports it to be healthy and sustainable. The NFP sector has long recognised this and its advocacy for over the last two decades, including through six major parliamentary and independent inquiries, led to the establishment of the ACNC.¹²

The ACNC currently regulates charities, although this includes the vast majority of economically significant NFPs in Australia. Effective regulation provides assurance to the public that Australian charities are well-governed and doing good work for the community. This ultimately serves the public interest by underpinning public trust and confidence. This in turn helps to promote Australia's high levels of charitable giving and volunteering, which is vital to the sustainability of charities in a more competitive economy.

More consideration could be given in the Draft Report to the importance of appropriate and effective regulation. Consideration could also be given to the role a national regulator (be that the ACNC or any successor agency) could play by operating as a 'one stop shop' for registration and reporting, including for fundraising.¹³

5. The value of sector data

The ACNC collects vital sector data through annual reporting by charities. As the Draft Report notes, consumers must be able to gather and process the right information. The

¹⁰ Australian Productivity Commission Research Report: Contribution of the Not-for-Profit Sector, 2010, p. 138.

¹¹ Industry Commission, Charitable Organisations in Australia (1995); Charities Aid Foundation, Giving Australia: Research on Philanthropy in Australia (2005); Senate Standing Committee on Economics Inquiry into the Disclosure Regimes for Charities and Not-for-profit Organisations (2008); the Productivity Commission Report on the Contribution of the Not-for-profit Sector (2010); The Treasury, Charitable fundraising regulation reform: Discussion paper (2012).

¹² See ACNC submission (Submission 95) to the Senate Inquiry into the Australian Charities and Not-for-profits Commission (Repeal) (No.1) Bill 2014, p.3, <http://www.aph.gov.au/DocumentStore.ashx?id=5cf5b3ee-efb6-4faf-b7e1-0e30df7bb7e8&subId=252173>.

¹³ Ibid, p.29.



same is true for consumers of NFP services, but also for other NFP-specific stakeholders such as volunteers, carers (who may not be 'consumers' or clients) and philanthropic funders.

The ACNC Register provides what the Draft Report states is the ideal – information that is “freely available, aggregated (e.g. on a single website), easy to interpret and access, and relevant to the user’s needs.”¹⁴

The collection and publication of this information is also critical to sector planning and collaboration, which is important for competitiveness with large for-profit providers. For example, the ACNC data, especially if collected over time, can show possible gaps/gluts in service delivery in particular locations, workforce (paid and volunteer) growth/decline and revenue growth/decline. ACNC datasets have already been uploaded to data.gov.au so they are freely available for the sector, researchers and government.

Under the ACNC's 'report once, use often' reporting framework, the data can also be shared by secure electronic transfer with Commonwealth, state and territory agencies, thereby reducing the number of times charities need to provide the same data to different agencies.

The important role regulators such as the ACNC can play in facilitating the collection, publication and distribution of vital sector data should be recognised.

6. The risk of crowding or forcing out NFPs

The Draft Report points out the strengths for-profit providers may bring to human services markets, such as stronger incentives to minimise cost. The Report also notes that policy design needs to be sensitive to the risk that for-profit providers may 'cherry pick' lower-risk or more profitable consumers, and suggests ways to counter this risk.

Conversely, it is important to recognise that NFP providers do not have the same incentive to maximise profit at the potential expense of vulnerable consumers. Indeed, NFPs can deliver greater value for funders and consumers by leveraging volunteer participation and donations without needing to extract profit. The danger in the push for increased diversity of service providers is that program and reporting requirements will be increased to address the additional risks posed by for-profit providers, but applied across all providers (for-profit and NFP). This could significantly reduce competition by driving NFPs (particularly smaller NFPs), which have limited resources available for compliance activity, out of the market.

A 2014 report by Ernst and Young on regulatory burdens in the charity sector recommended that government funders should:

“reconceptualise risk management in the context of charities, taking into account the broad risk mitigation role played by the charity regulator and the mission of charities.”¹⁵

¹⁴ Draft Report, p 152.



It is reasonable for government funders to determine that an NFP should be subjected to less rigorous program and reporting requirements than a for-profit provider, particularly where the NFP's purpose is aligned with that of the program. The Australian National Audit Office Better Practice Grants Administration Guide recognises this:

“the key principle of proportionality is relevant in determining the information required of applicants. For example, the extent of financial and other information required to assess grant applications for low-risk projects by community organisations may be considerably less than the information required for complex or high-risk projects submitted by commercial organisations.”¹⁶

To avoid the crowding out of NFPs, the Draft Report should acknowledge the unique value proposition offered by NFPs and make clear that the principle of contestability must be complemented by that of proportionality.

7. Final comment

The underlying theme of this submission is that the NFP sector faces unique barriers that should be addressed and possesses unique attributes that should be recognised and promoted in the design of competition policy.

Contact:



About the ACNC

The ACNC was established in December 2012 as Australia's first independent national charities regulator. Approximately 60,000 charities are registered with the ACNC. As regulator, the ACNC maintains, protects and enhances public trust and confidence in the charity sector through increased accountability and transparency. It also has a broader role in supporting, and promoting the reduction of unnecessary regulatory obligations on, the not-for-profit sector as a whole.

It is the Government's intention to abolish the ACNC and return functions to ATO and ASIC. The Australian Charities and Not-for-profits Commission (Repeal) (No.1) Bill was introduced into the House of Representatives on 19 March 2014, but has not yet passed. This Bill does not come into effect until a future ACNC (Repeal) (No.2) Bill is passed by both houses of Parliament. At this time the (Repeal) (No.2) Bill has not yet been released. Unless and until the ACNC Act is amended or repeals, the ACNC Commissioner must and will continue to implement the Act.

¹⁵ As above, 2.

¹⁶ Australian National Audit Office, Implementing Better Practice Grants Administration, 2013, p. 36.