



**Institute of  
Chartered Accountants  
Australia**

30 April 2014

The Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**By email:** [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Committee Members,

## **Australian Charities and Not-for-profit Commission (ACNC)(Repeal)(No1) Bill 2014**

The Institute of Chartered Accountants Australia (Institute) welcomes the opportunity to provide a submission to the Senate Standing Committee on Economics regarding the proposed repeal of the ACNC Act 2012. Appendix B includes information about the Institute.

### **Key points**

- We do not support the repeal of the ACNC Act 2012 without alternate measures to achieve the objectives of the legislation.
- We continue to promote the three objectives of the ACNC as set out in the Act and which are intended to provide national regulation in support of the charity and not-for-profit (NFP) sector. This regulation serves to promote the interests of transparency and accountability of those entities that receive Commonwealth government concessions through the tax system, and whose continued sustainability will rely on the support of the philanthropic sector.
- We continue to see the need for an independent national regulator, such as the ACNC, to enforce this national regulation. However, we could accept the function being moved into another regulator, as long as independence of the charity regulatory function is maintained. The Commonwealth regulator most appropriate to take on this role would be the Australian Securities and Investments Commission (ASIC).
- We do believe, however, that the breaking up of the ACNC and the transfer of its activities to a disparate set of other bodies, both existing and to be created, will reduce the capacity of these bodies to learn from the experience earned in undertaking the various activities collectively and to reduce red tape. The ACNC is currently the one entity with a whole-of-government responsibility for promoting and focusing on red tape reduction for the not-for-profit and charitable sector.
- Significant red-tape reduction in the sector can only be achieved through bringing consistency to Commonwealth and state/territory legislation in the areas of charity regulation in addition to fundraising legislation. This can be achieved through the Council of Australian Governments (COAG) and the highest priority should be given to this work.

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- In our view, the two step legislative process of which the disestablishment of the ACNC is a part is problematic in itself. We consider that a constructive and useful debate cannot be undertaken with respect to the first Bill, without adequate knowledge of what is proposed in the second Bill. This second Bill has not yet been subject to public scrutiny. We further note that this committee is the first opportunity we have been given to provide input on the government proposals.

More detail on our key points is provided in Appendix A.

Yours sincerely,

Rob Ward  
**Head of Leadership and Advocacy**

## **Appendix A**

### **Support for the ACNC Act 2012**

We, along with the majority of the charitable and not-for-profit sector (the Sector), have continuously supported the establishment and functioning of the ACNC as an independent purpose built NFP regulator.

The ACNC has built a strong positive reputation in little over one year of operation and gained widespread support across the Sector. It has also performed well in progress towards its core objectives, particularly in regards to the introduction of a national register which has provided transparency, never before seen, to this sector.

This register, as long as it continues to be maintained, is the best way to provide a single source of freely accessible information relating to charities to the community. Transparency will ultimately result in improved public trust and confidence in the sector, and provides some accountability to the general public, accountability which has been lacking for many charities for a long time. We see accountability as essential as these organisations have been granted Commonwealth tax concessions and therefore are supported by every tax payer in Australia.

They also receive philanthropic contributions which become both a tax deduction in the hands of the donor and a resource base for further charitable activities, thus reducing the burden on ever reducing government funding. It follows then, that increased, accountability, transparency and regulatory focus will result in greater philanthropic activity.

An important feature of the ACNC is its independence within government, having separate appropriations and reporting direct to Parliament. This regulatory model is consistent with the majority of regulatory models across the world, and is seen as best practice by those in the sector.

Additionally, the establishment of a built-for-purpose agency within government has led to a significantly increased understanding of the sector. This has enabled the ACNC to focus on delivering the government's policy objectives as they relate to the objectives regarding the sector and build sound relationships with state and territory agencies such that negotiations for reduced red tape can be undertaken in the short term. Removing the ACNC will see these advances reversed very quickly.

### **Support for a national regulator**

A national regulator has the best capacity to bring efficiencies to the NFP sector. This has been evidenced by the extensive inquiries, consultations and reviews undertaken by various governments since 1982. Of major importance in the very near past, the widely respected Productivity Commission, the Henry Review and various Senate Inquiries made significant recommendations all focused on the establishment of a national regulator. Importantly, each of these reports, created over a period of two decades, incorporated significant input from the Sector itself.

We agree with the goals of establishing a regulator as set out in the 2011 Consultation Paper: Scoping study for a national not-for-profit regulator. These were to

- place minimal costs on NFPs in order to allow better direction of NFP resources to philanthropic objectives
- remove current regulatory duplication
- streamline requirements, including reporting, so as to provide consistency and minimise compliance costs
- provide a 'one-stop shop' for NFP entities, to assist all NFP entities to more easily access information that helps them understand and comply with their regulatory obligations
- be simple, transparent and flexible
- provide NFP entities with certainty as to their rights and responsibilities

- be proportional to the size and complexity of NFP entities and to the public monies and risks associated with NFP entities.

Those opposed to the establishment of a national regulator, such as the ACNC, include charities which have not had a good record in transparency, governance and public accountability. We appreciate the right of such entities to their right to privacy, but simultaneously we believe the public have an entitlement to a level of transparency and accountability from entities which enjoy the various concessions and exemptions available to charities in Australia.

### **Alternative to the ACNC**

If the ACNC is abolished we do not support a move back to the Australian Taxation Office (ATO). There is potential for a conflict of interest given the ATO's primary role concerning charities is to assess them for deductible gift recipient status. We believe the Australian Securities and Investments Commission (ASIC) is the more appropriate regulator for charities regardless of whether they are incorporated. Even if this model were adopted, we believe that it is important that independence is maintained. This would mean maintaining the area as a separate unit within ASIC, with its own appropriations, and decision making ability.

Overall, we are very keen to see the ongoing upkeep of a register and a reporting framework. These are central to ongoing transparency and will be critical in supporting growth in philanthropy.

### **Where significant red-tape reduction can be achieved**

We believe the work commenced by the ACNC and COAG to remove the duplication of reporting requirements and fundraising requirements imposed by state and territory governments and other Commonwealth agencies and regulators on NFPs should be continued, with added priority given to this work. This work is essential for a national regulator model to be successful, as it will reduce layers of red tape that currently exist due to inconsistent state/territory legislation, currently making it operationally difficult for many charities that operate across multiple jurisdictions.

We note that the referral of powers from state/territory laws to the Commonwealth for private entities, occurred more than a decade ago when the Corporations Act was first introduced. This removed a dual regulatory regime (across Commonwealth, state and territory governments) and had immense economic benefits to corporates, with ASIC being the national regulator in areas of governance, reporting and audit. These same benefits should be afforded to the NFP sector, with its own one-stop-shop regulator, rather than being laden with dual and inconsistent reporting regimes.

### **The legislative process**

The process to remove the ACNC Act 2012 has been put forward as an unusual two stage process. The first Bill is the repeal Bill, and a second Bill has been mooted which will be used, we understand, to introduce the replacement arrangements and transitional requirements. It has been noted that the second Bill is to be introduced to Parliament at some later date, the timing of which is uncertain. This process results in a number of concerns.

Firstly, the uncertainty it has created on charities is significant. They are unsure as to their current obligations, who they should contact and who they will be regulated by. This has occurred at a time when they are in preparation for their first year end under the ACNC Act, being 30 June 2014. At least half of the 60,000 charities registered under the ACNC have year ends of 30 June.

Secondly, the structure of a two stage process, with the first Bill linked to the second Bill, makes debates on this first Bill on the future of a national regulator inadequate. We do not consider the first Bill can be considered in isolation of the second Bill.

In relation to consultation, we have noted in our cover page that this committee has provided our only opportunity to provide input on the government proposals. This is contrary to the regulatory impact statement comment on page 4 which indicates that the Minister has consulted with a 'range of stakeholders'. Our membership, as indicated in Appendix B, comprises a broad range of stakeholders with an interest and expertise in the Sector. Therefore, we contend that consultation to date has not been sufficient and we welcome further opportunities to provide our views to those making policy decisions.

## **Appendix B**

### **About the Institute**

The Institute represents accounting and business professionals in Australia and around the globe. Members strive to uphold financial integrity through a commitment to ethics and acting in the public interest.

We focus on educating candidates through the Chartered Accountants Program and engage in advocacy and thought leadership underpinned by our members' knowledge and experience. We influence a range of policy areas impacting the Australian economy and domestic and international capital markets.

A watershed member vote in 2013 set the course for the Institute to amalgamate with the New Zealand Institute of Chartered Accountants (subject to obtaining formal government approvals and effecting amendments to constituent documents), with the vision of becoming the trusted leaders in business and finance.

The proposed new institute – Chartered Accountants Australia and New Zealand – is expected to have more than 90,000 members in total with 17,000-plus candidates, giving us greater scale and influence on the world stage.

We are on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong GAA and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

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