



Senate Economics Legislation Committee Inquiry into the ACNC (Repeal) (No. 1) Bill

The not-for-profit sector contributes substantial value to society: providing community services, building social capital and continually renewing civil society. Government regulation of the sector should help build public trust and confidence in charities, while not eroding their independence and diversity, or encumbering them with red tape. Regulation should not impede the legitimate activities of charities, including those they undertake to generate income to support their charitable purpose.

NDS supported the establishment of the Australian Charities and Not-for-profits Commission (ACNC) as a 'one-stop-shop' for the regulation of the sector. Results have been slow; however, if states and territories agreed to enact measures to eliminate or minimise duplication of reporting requirements, the ACNC has the potential to reduce the regulatory burden on charities, improve their accountability and transparency, and function as a central source of information and advice.

If the repeal of the ACNC proceeds, NDS would like to see several of the ACNC's important functions retained in some form. These are outlined in this submission.

At the outset, NDS expresses its concern about the two-stage process to repeal the ACNC. Informed debate on the ACNC (Repeal) (No. 1) Bill is severely constrained by lack of information on the No. 2 Bill. The arrangements that will replace the ACNC are crucial to addressing the concern that closure of the ACNC will result in the loss of functions of value.

Independence from the Australian Taxation Office

NDS strongly supports the regulator of charities being independent of the Australian Taxation Office (ATO). Prior to the establishment of the ACNC, the arrangement that saw the ATO (a revenue collector) determining the charitable status of organisations was inappropriate. In its 2010 report, 'Contribution of the Not-for-Profit Sector'¹, the Productivity Commission strongly supported this position.

It is telling that the ATO's own submission to the 2001 inquiry into the Definition of Charities and Related Organisations also argued for an independent entity:

¹ See http://www.pc.gov.au/_data/assets/pdf_file/0003/94548/not-for-profit-report.pdf, Chapter 6, viewed 17 April 2014

National Disability Services

Submission: Senate Economics Legislation Committee Inquiry into the ACNC (Repeal) (No. 1) Bill

...administration would be better served by a single, independent common point of decision making on definitions leading to conclusions about whether organisations are charitable or non-profit, such as occurs with the Charities Commission in the UK for example. That independent, objective decision making could then serve as the criterion determining the level of funding and/or concession to which an organisation would be entitled.²

NDS would not support returning the power of determining charitable status to the ATO.

Retain the 'charity passport' concept to be used across departments and levels of governments

The concept of the 'charity passport' ('report once, use often') is worthwhile as a measure to reduce compliance costs for non-government organisations which have contracts with multiple government agencies.

Any future regulatory framework for charities should seek to maintain a commitment to the charity passport idea. Significant progress in implementing this idea will depend crucially on cross-recognition (rather than duplication) of reporting requirements across levels of government. NDS urges governments to negotiate these arrangements.

Drive red tape reduction

Organisations that receive public funds should be accountable to government and the community for the use of those funds, but accountable in a way that minimises red tape and associated compliance costs. Accountability can easily become an instrument of government control which weakens the mission and identity of non-government organisations. Not-for-profit organisations have stakeholders apart from government (clients, families, local communities, sponsors) to whom they also must be accountable.

Government should fund the costs of reasonable accountability and compliance as well as working to eliminate excessive and inefficient regulation and onerous administrative requirements. For community service providers, the latter divert scarce resources from service provision and reduce the flexibility required to respond to the diversity of clients.

Reducing red tape is one of three legislated objects of the Australian Charities and Not-for-profits Commission. The ACNC has established 'user groups' to identify areas of potential red tape reduction, but work is at an early stage. Red tape reduction should be accelerated regardless of the regulatory framework that is in place. Reducing the regulatory burden for charities does not have to be at the expense of appropriate levels of accountability and transparency.

² See submission from the Australian Taxation Office to the inquiry into the Definition of Charities and Related Organisations at http://www.cdi.gov.au/html/public_submissions.htm viewed 17 April 2014.

National Disability Services

Submission: Senate Economics Legislation Committee Inquiry into the ACNC (Repeal) (No. 1) Bill

Government agencies should move from a risk minimisation approach in their contractual monitoring of charities to a risk management approach. The latter would be based on a tiered approach with reporting obligations least where the risk to public funds is low. Such an approach would take account not only of the quantum of funds involved, but also an organisation's record of compliance and its governance policies, internal systems, staff qualifications and other accountabilities. Progress in supporting such an approach is evident in the Department of Finance's development of a low-risk grant template. The adoption of this template should be mandatory across Australian government agencies.

Retain a national register of charities

The introduction of the National Disability Insurance Scheme will see a growth in the number of charities supporting people with disability which operate in more than one state or territory. In NDS's view, there is value in retaining a national register of charities. It is useful for the general public to be able to refer to one national register to locate reliable information about a charity.

Centre for Excellence

If Parliament repeals the ACNC, the Government has indicated that the ACNC's advice and education functions could be transferred to a new body—such as a Centre for Excellence. NDS sees value in maintaining the education and advice function. The advantage of locating education and advice in an entity that also has a regulatory role is that each role can inform the other. The connection between the roles should be maintained to ensure that education and advice are focussed on the issues that are problematic for charities.

May 2014

Contact: Dr Ken Baker
Chief Executive
National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote quality service provision and life opportunities for Australians with disability. Its membership includes more than 930 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.