
Submission to the Senate Standing Committee on Community Affairs

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This submission has been prepared by The Centre for Independent Studies (CIS) for the Senate Standing Committee on Community Affairs. It addresses Schedule 1A of the Social Services and Other Legislation Amendment Bill 2013. This section of the bill delays the commencement of the Charities Act 2013 by nine months from 1 January 2014 to 1 September 2014.

The CIS will be releasing a research paper early next year detailing the failures of the charity-commission model of not-for-profit regulation.¹ The abolition of the ACNC will be an important step in making charity regulation in Australia more efficient and effective. Now that the government has committed to abolishing the ACNC in the upcoming year, any adjustments to the legal definition of 'charity' and 'charitable purpose' should be delayed until more is known about how the ACNC will be wound down and what regulatory system will replace it.

Delay Needed If ACNC to Be Abolished

The government's decision to abolish the ACNC within the next year raises many questions about how the elimination of the commission should be managed. Will the national register of charities be maintained in some form? Will a national 'centre for excellence' be created to replace the ACNC, and if so, what responsibilities will it have? How can the commission be wound down in a way that preserves accountability in the charity sector?

Laudably, the government has committed to consulting with NFP sector stakeholders and experts over the next several months to develop constructive answers to these questions. It would be counterproductive if, while these consultations are taking place, the sector were simultaneously confronted with changes to the legal definition of 'charity' and 'charitable purpose.' Allowing the Charities Bill 2013 to come into effect on 1 January 2014 would be both distracting and constraining at a time when focus and flexibility are needed.

Abolition of ACNC Will Be Good for the Sector

The government's election promise to abolish the ACNC should not be allowed to fall by the wayside. From the beginning, the ACNC was unlikely to make significant progress on any of the three purposes for which it was created: improving public trust in the NFP sector; reducing red tape for charities; and policing fraud and wrongdoing in the sector. The commission's record in its first year has only confirmed this skepticism.

Objective #1: Improve Public Trust in the Charity Sector

Public trust in the charity sector has not been a problem in Australia in the past decade. In 2013, Australia ranked as the 'Most Generous Country' in the Charities Aid Foundation's World Giving Index. The percentage of Australians who engage in some form of volunteering is higher now (36 per cent) than it was in 2006 (35 per cent) and much higher than it was in 1995 (24 per cent). This hardly indicates a crisis of trust.

¹ Helen Rittelmeyer, 'Independent Charities, Independent Regulators: The Future of NFP Regulation' (Sydney: CIS, 2014), forthcoming.

Even if trust in charities were a problem, evidence suggests that the presence of a national charity regulator has no effect on trust levels. A 2013 survey revealed that Australians rate charities the third most trustworthy of the nation's institutions, with only doctors and police receiving higher ratings. (Federal Parliament came 12th.) Moreover, the score given to charities by Australians (6.6) was practically identical to the score given to charities by respondents in England and Wales (6.7), where a national charity regulator has existed for many years, and much higher than the score recorded in New Zealand (5.9), which at the time of the survey still had a national charities commission.²

Objective #2: Reduce Red Tape

A much-needed reduction in red tape for charities was not likely to be accomplished by the creation of an entirely new federal regulator for the sector. The ACNC's record so far has confirmed suspicions that the commission would merely impose an additional layer of reporting on top of existing requirements.

For example, in attempting to coordinate state and federal reporting requirements, the ACNC has reached agreements to eliminate duplicative reporting with the governments of South Australia and the ACT only. Neither New South Wales nor Victoria, which between them contain the lion's share of Australian charities, has agreed to accept the ACNC's Annual Information Statement (AIS) as a substitute for existing requirements. Without the cooperation of these important state governments, there is little chance that the ACNC will put a dent in charities' current paperwork burden.

The AIS itself has been criticized by many charities as a needless addition to red tape. The executive director of Catholic Education Melbourne stated in August 2013 that the form provided 'no additional transparency to the way Catholic education reports to government, only duplication of existing regulation.' He estimated that the new requirements would cost his organization 45 working days of 'unnecessary pen pushing' to complete.³ UnitingCare, the charitable arm of the Uniting Church, has noted that 'much of the information required in the AIS . . . has already been provided to government, often several times in different formats. . . . *A significant opportunity for the ACNC to reduce red tape from the beginning of its operations has been missed*' (emphasis added).⁴ By neglecting to obtain the information requested in the AIS from those government bodies that already had it, the ACNC missed an opportunity to demonstrate, rather than just proclaim, its commitment to the 'report once, use often' principle.

Objective #3: Police Fraud & Wrongdoing

Fraud is a minor and decreasing problem in the charity sector. Only 12 per cent of respondents in a sector-wide survey had experienced fraud in the previous two years, and this percentage has steadily decreased every year since 2006 when the survey was inaugurated.⁵ Obviously, this decrease predates the ACNC.

The types of fraud that are most common in the sector are not necessarily the kind best suited to

² ChantLink, 'Public trust and confidence in Australian charities,' Project No. 3592, 24 May 2013.

³ Media release, 'Coalition's reduction of duplicated red-tape welcome,' Catholic Education Office of the Archdiocese of Melbourne, 30 August 2013.

⁴ UnitingCare Australia, 'Increasing Our Impact: Reducing Red Tape for the Not-for-Profit Sector,' August 2013.

⁵ Andrew Howard & Prof. Peter Best, 'Not-for-Profit Fraud Survey 2012,' (BDO Australia, 2012).

regulation by a national charities commission. By far the most common type of fraud was cash theft (40 per cent of cases), which can be as mundane as a volunteer pocketing money from a cash box after a lamington sale. Across all types of fraud, the wrongdoing was uncovered by the charity itself in 61 per cent of cases, either through internal controls or an employee tip. External audits were responsible for discovery of fraud in only 4 per cent of cases. This fits with the experience of countries like Britain and New Zealand, where charity regulators rely heavily on whistleblowers and media stories to bring cases of fraud to their attention.⁶ Charity commissions, by their nature, are better at punishing fraud than detecting it.

Charity Commissions Falling Out of Favour Abroad

Other countries that have established their own charities commissions have realized that it is not an effective way to regulate the NFP sector. New Zealand disestablished its charities commission six months before the ACNC came into being, on the grounds that it was not providing value for money. The Key government saved \$2 million over four years by abolishing the New Zealand Charities Commission and giving its regulatory responsibilities to the Department of Internal Affairs. There is no evidence that regulation of New Zealand's charity sector has declined in quality since the commission was eliminated.

In the United Kingdom, the Charity Commission for England and Wales has also come under fire for ineffectiveness. Only last week, Britain's National Audit Office released a report stating that 'the Commission is not regulating charities effectively' and 'is not delivering value for money.'⁷ This report comes in the wake of several scandals in which charity fraud went unnoticed or unpunished by the Charity Commission, only to be discovered by Her Majesty's Revenue & Customs. The head of the parliamentary committee which commissioned this NAO report has concluded from the report that the Charity Commission may not be 'fit for purpose' at all.⁸ The committee's investigation into the Charity Commission is ongoing and may lead to sweeping changes.

Conclusion

It is not yet clear how the charity sector will be regulated after the ACNC is abolished. Some of its responsibilities might be assigned to a national 'centre for excellence,' others to the ATO, others to some other government body. The government may choose to pursue the goal of reducing red tape for charities through some means other than a national charity commission. These questions, and many others, should be given thoughtful consideration by everyone involved in the government's upcoming consultations on the future of NFP regulation. Any alterations to the legal definition of 'charity' and 'charitable purpose' should be postponed until that consultation process is complete and the future of NFP regulation is more clear.

⁶ Of the three charities deregistered for serious wrongdoing by the NZCC between 2009 and 2012, two were brought to the commission's attention 'as a result of media reports,' according to the commission's own deregistration orders. See www.charities.gov.nz/the-register/registration-decisions/deregistration. For UK, see Rupert Neate, 'Charity watchdog's "astounding" failure to detect tax avoidance condemned,' *The Guardian*, 4 June 2013.

⁷ National Audit Office, 'The regulatory effectiveness of the Charity Commission,' Session 2013-14, HC 813, National Audit Office, 4 December 2013.

⁸ Statement from the Rt Hon Margaret Hodge MP, Chair of the Committee of Public Accounts, 4 December 2013.

The Centre for Independent Studies (CIS)

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