



Australian Government



Australian  
**Charities** and  
**Not-for-profits**  
Commission

OUR REF: EXT2018/54

14 September 2018

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Parliament House  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**BY EMAIL: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)**

**Submission to the Legal and Constitutional Affairs Committee on the Freedom of Speech Legislation Amendment (insult and Offend) Bill 2018**

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to the Legal and Constitutional Affairs Committee (**Committee**) in regards to the *Freedom of Speech Legislation Amendment (Insult and Offend) Bill 2018 (the Bill)*.
2. While the Committee is simultaneously considering two other Bills in this suite of Bills introduced by Senator Leyonhjelm, the Bill is the only one of the three bills with a direct impact on the ACNC, and therefore is the sole focus of the ACNC submission.

**The ACNC's role**

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:
  - maintain protect and enhance public trust and confidence in the Australian not-for-profit (NFP) sector;
  - support and sustain a robust, vibrant, independent and innovative Australian NFP sector; and
  - promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.
4. The ACNC registers charities, as defined by the *Charities Act 2013 (Cth) (Charities Act)* and regulates registered charities. Information about all registered charities appears on the ACNC Charity Register (**the Register**). Once an organisation has its charity status revoked by the ACNC, the charity's status changes to that of 'revoked'





and some of the charity's information is removed from the register, but the charity listing remains.

### The Register

5. As at 5 September, there were 56,426 charities registered with the ACNC. All these charities and all revoked charities can be found on the Register.
6. By law, the ACNC can only publish certain types of charity information on the ACNC Register. Some information cannot be published, and in other cases charities can ask to have certain information withheld from the Register. If the ACNC agrees to withhold the information, it is not published.
7. The ACNC must also publish information when it uses its enforcement powers or revokes charity registration, as well as a list of any responsible person the ACNC disqualifies from that role. The ACNC may also publish statements on the Register if a charity does not meet certain reporting obligations. This information is published on the charity's page on the Register.

### Suggested Amendments

8. The Bill suggests amending the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**the ACNC Act**) by repealing para (c) of subs 40-10(2). Section 40-10 is headed *Commissioner may withhold or remove information from Register*. The subsection under consideration states:
  - (2) *The Commissioner may decline to include information on the Register, or may remove information from the Register, if the Commissioner considers that any of the following circumstances exist:*
    - (c) *the information is likely to offend a reasonable individual;*
9. The ACNC would prefer that this paragraph is not repealed. As explained above in paragraphs 4 to 7, the ACNC sets out specific information about each registered charity which the Commissioner is required to display on the Register. The Explanatory Memorandum to the ACNC Act (**Explanatory Memorandum**) states:
  - 4.5 *The specified information includes name, contact and identifying details for each entity, the type and subtype of registration, governing rules, responsible entities, information from financial and information statements, details of any enforcement action taken under Chapter 4 of the Bill and any resolution or response to such a matter and any other information prescribed in regulations.*
10. The purpose of the Register is not to provide a platform for the expression of views, but rather to provide information to the public about registered charities. It is not unreasonable that the information on a public Register maintained by a statutory regulator should not include material that is likely to offend a reasonable person. The Explanatory Memorandum relevantly states:



*4.8 The Bill provides for a single source of easily accessible public information to increase transparency, enable NFP entities to demonstrate appropriate levels of accountability and governance, provide information to the public about registered entities and promote public confidence, informed choices and philanthropy.*

11. It is therefore not an unreasonable restriction for the Commissioner to have the discretion to remove information from the Register that a reasonable person is likely to find offensive. It should also be noted that even if the Commissioner considers that test is met, he may nevertheless include the information on the Register, or decline to remove it from the Register if he considers that the public interest in the Register including the information outweighs the likely adverse effect.

12. The Explanatory Memorandum to the Freedom of Speech Legislation Amendment (Insult and Offend) Bill 2018 (**EM to the Bill**) states (p2):

*All Australians, regardless of their political inclinations, benefit from being able to freely express their views. The process of arriving at the truth relies on debate, which relies upon free speech.*

Given that the Register is not a vehicle for the expression of views, repealing paragraph (c) of subs 40-10(2) of the ACNC Act will not further freedom of speech any more than the paragraph currently restricts freedom of speech.

13. Further, if information appears on the Register that is likely to offend a reasonable individual, the ACNC anticipates that it will receive complaints from members of the public about the material. Time spent by ACNC staff in dealing with such complaints would be better spent pursuing the objects of the ACNC Act.

14. For these reasons, the ACNC is of the view that the Bill should be amended to remove this clause.

#### **Further information**

15. The ACNC can provide further information on any the above, should this be useful to the Committee. Contact information is provided below.

Contact:           Natashia Allitt, Policy Manager, Legal and Policy