



Australian Government



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

23 December 2019

Secretariat  
Senate Economics References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**BY EMAIL:** [REDACTED]

Our reference: EXT2019/137

### **ACNC Submission – Inquiry into the unlawful underpayment of employee’s remuneration**

1. The Australian Charities and Not-for-profits Commission (ACNC) welcomes the opportunity to provide a submission to the Senate Economics References Committee’s (the Committee’s) Inquiry into the unlawful underpayment of employee’s remuneration (the Inquiry).
2. The ACNC has limited its submission to a consideration of unlawful underpayment in the charity sector, the steps the ACNC undertakes to ensure this is not occurring and what steps the ACNC can take when a charity is involved in unlawful underpayment. We provide this information to assist the Committee in its deliberations and as it makes recommendations to the Senate.

### **About the ACNC and the Charity Sector**

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:
  - a. maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
  - b. support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
  - c. promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.
4. Currently the ACNC’s regulatory responsibility extends only to registered charities, as distinct from the wider NFP sector.
5. Just over 57,000 charities are regulated by the ACNC<sup>1</sup>. Australia’s charities deliver services, make grants and perform a wide range of other activities to advance health, education, welfare, religious and other charitable causes. As reported in the [2017 Australian Charities Report](#), the charity sector employs over 1.2 million people. Over 17,000 charities employ staff either full or part-time. The largest employers are universities, child care centres and

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<sup>1</sup>As at 21 November 2019. See [acnc.gov.au](http://acnc.gov.au) for the most current figure for registered charities.





hospitals. The majority of charities are small (with annual revenue of less than \$250,000) and do not employ staff, instead relying on volunteers. Of all charities reporting activities in their 2017 Annual Information Statement, 49% did not employ any staff, but relied solely on volunteers to fulfil their purpose.

### **Entitlement to registration as a charity**

6. One of the requirements to be entitled to registration as a charity is to comply with the governance standards and external conducts standards as set out in the *Australian Charities and not-for-profits Commission Act 2012* (Cth) (ACNC Act). If a registered charity is found to be in breach of the standards, the ACNC will undertake enforcement actions against a charity, up to and including revocation of registration as a charity.
7. The governance standards require charities to comply with Australian legislation, which incorporates relevant employment law.
8. Wage theft and superannuation theft would be a serious breach of the governance standards and would be treated as such.

### **ACNC regulatory actions in relation to wage and superannuation theft**

9. The ACNC currently undertakes proactive analysis to identify charities that may be a higher risk for wage and superannuation theft.
10. The ACNC acknowledges the PwC report “Australia Matters” which identifies that one of the high-risk sectors for wage and superannuation underpayment is the healthcare and social assistance sector. It is likely that there are a number of charities operating in this sector.<sup>2</sup>
11. While the ACNC regards wages and superannuation theft as serious issues in their own right, occurrences of such theft may also indicate additional governance issues in a charity. When we investigate a charity, we assess its compliance with the governance standards broadly. This can include persons setting up a charity for fraudulent purposes, or fraudulently stripping assets from a charity for private benefit.

### **Trust and confidence in the sector**

12. The ACNC takes seriously its responsibility to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector. Proactively monitoring risks associated with wages and superannuation theft is one way the ACNC seeks to assure the public that the sector is trustworthy, not only providing public benefit, but providing all benefits due to its employees.

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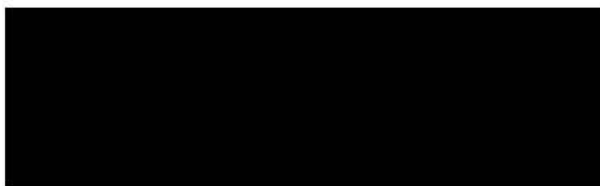
<sup>2</sup> Note, the ACNC cannot map charity subtypes or activities to another classification system with any degree of accuracy and has not attempted to do so.



**Further information**

13. The ACNC can provide further information should this be useful to the Committee. The ACNC can be contacted using the email address [REDACTED]

Sincerely,



**The Hon Dr Gary Johns**  
Commissioner  
Australian Charities and Not-for-profits Commission