



NDS Submission

Australian Charities and Not-for-profits Commission Bill 2012: Exposure Draft





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About National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes over 770 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.

NDS welcomes the Australian Government's to agree to the sector's request to consult further on the draft Australian Charities and Not-for-profits Commission Bill 2012. This allows the opportunity to provide comment on sections previously unavailable—transitional provisions, reviews and appeals and governance requirements.

As stated in an earlier submission, NDS largely supports the Bill. In particular we welcome the intention to establish a 'one-stop-shop' for the sector and the commitment to reduce the regulatory burden on not-for-profit organisations. The staged approach to regulation, beginning with charities, is appropriate, but care must be given to minimising duplication of reporting requirements on organisations during the transition phase. For this reason, the proposed automatic transfer of endorsements from the Australian Taxation Office (ATO) and acceptance of them by the ACNC is sensible. The long-term objective of having the ACNC as the national one-stop-shop for not-for-profit regulation, which requires the cooperation of state and territory governments, is desirable.

Specific comments

ACNC Independence

NDS strongly supports the ACNC being independent of the Australian Taxation Office (ATO); the current arrangement whereby the ATO (a revenue collector) determines the charitable status of organisations is inappropriate.

Tiers for reporting

The tiers within the reporting framework—less than \$250,000; between \$250,001 and \$1,000,000; and above \$1,000,000—are set very low (even though they reflect those of the Australian Securities and Investments Commission).

NDS recommends aligning these levels with that set for a small business (defined as a turnover of less than \$2 million). It is also recommended that reference to a mechanism to adjust the levels is included in the legislation.

National regulator

NDS supports the concept of a national regulator but is concerned that during the early stage of implementation it is possible that the reporting burden will increase for those organisations that retain a requirement to report to a state or territory regulator. Negotiations between governments to eliminate or minimise any duplication of reporting requirements arising from dual regulation need to be fast-tracked.

Objects of the Act

Section 15 sets out the Objects of the Act. 15-10 would be strengthened by the addition of 'the need to consider the reduction of red-tape and administrative burden on not-for-profit organisations'. This is a matter of such importance for the sector that it should be specified within the Objects of the Act.

Officers of the ACNC

Within the Bill, the ACNC is given a range of enforcement powers, one of which is to issue directions to the registered entity. Section 5–15 states

The registered entity has power to comply with the direction despite anything in its governing rules or any contract or arrangement to which it is a party.

This requirement could cause difficulties for the directors if it resulted in them breaching their duties or contractual obligations.

NDS recommends the draft legislation be altered such that if a direction would contravene an entity's governing rules, the ACNC should first give a direction that the entity amend its governing rules (to be followed by a second direction).

Public trust and confidence in the not-for-profit sector

Section 5–10(2)(e) indicates that in deciding whether to revoke the registration (or exercise enforcement powers) of an entity, the ACNC Commissioner must take into account a series of factors, including the extent to which the entity is conducting its affairs in a way that may cause harm to, or jeopardise, public trust and confidence in the not-for-profit sector. Consideration of whether or not public trust and confidence would be impaired is broad in scope and subjective.

Example 2 in the explanatory material raises concerns. In this example, ACNC officers are monitoring whether a charity continues to meet the requirements to be registered. While on the premises, they respond to concerns about food quality within the charity by taking photos and a sample of the food provided (with a view to passing it on to the government agency responsible for local food safety inspections). The ACNC should not deviate from its purpose to this extent. If concerned, the officers should refer the matter to the appropriate regulatory agency, not collect evidence on its behalf.

Review mechanism

NDS recommends that the Bill contain a requirement that the operations of the ACNC be reviewed five years after its commencement. This requirement is contained within the *Charities Act 2006* of England and Wales.

The inclusion of this provision would provide an opportunity to review progress on matters such as the reduction in regulatory duplication (which in part depends upon whether the States and Territories have either transferred powers to the Commonwealth or at least harmonised reporting requirements).



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