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Building Stronger Communities

Through Stronger Community Organisations

Our Community  
Group of Enterprises:



Australian Institute  
of Grants Management



1 May 2014

Senate Standing Committees on Economics  
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**Submission from OUR COMMUNITY to the  
Senate Economics Legislation Committee on  
the Australian Charities and Not-for-profits  
Commission (Repeal) (No. 1) Bill 2014**

Please find enclosed our submission.

Yours sincerely

Denis Moriarty  
Group Managing Director

## Our view in a nutshell

1. The Australian Charities and Not-for-profits Commission has made a valuable and valued contribution to reducing red tape and improving oversight of the not-for-profit sector in Australia and **should not** be abolished. More detailed analysis of our position is contained in the remainder of this submission.
2. If the Federal Government is determined, for political reasons or because of religious or any other affiliations, to push ahead with its plans to abolish the Australian Charities and Not-for-profits Commission then
  - a. The Government should not hand oversight of charity status back to the Australian Taxation Office – this body's very reason for being makes it patently inappropriate for the task.
  - b. The Government should not move to implement a dumbed-down "leagues table" style of charity assessment. Implementation of a Charity Navigator-style body would be an unwelcome and unhelpful addition to the landscape.
  - c. The Government should ensure that any move it makes to replace the ACNC does not result in duplication of the work of Our Community, which has spent \$36 million on building a one-stop-shop centre of excellence for charities and not-for-profit organisations.
  - d. The Government must ensure that the work undertaken by the ACNC to build up a reliable, accurate database of charities is preserved at all costs. In ensuring this work is not wasted, the Government should be aware of Our Community's position as the holder of the largest database of charity and not-for-profit groups data in Australia (more than 180,000 records).

## General considerations

Why are we even having this discussion?

There have been at least 16 national inquiries and consultations into the Australian not-for-profit sector in the present millennium<sup>1</sup> (roughly 1500 pages of discussion) and as many at state level. There have been a minimum of 1600 submissions to these inquiries (at a rough estimate, 12,500 pages<sup>2</sup>).

We are not aware of any statement in those 14,000 pages expressing satisfaction with the previous Australian system of fractured and contradictory state-based not-for-profit legislation.

The proposal by the present government to return us to the previous system should not require any further investigation. Almost 1600 submissions have come out against it, and we are not aware of any praising it.

Conversely, all major inquiries have favoured the institution of a national regulator, and while many submissions have raised questions about particular elements of the powers of such a national regulator – questions that have in many cases been answered by subsequent legislative and administrative modifications – very few<sup>3</sup> have disagreed with the basic proposition.

## Previous deliberations

Many major inquiries have found unambiguously that a national regulator would be efficient, effective, and valued by the not-for-profit sector, as outlined below.

### Definition of Charities inquiry (2000)

The Definition of Charities inquiry found that

A number of submissions also expressed a need for stronger regulation of the sector, with publicly transparent accountability provisions, because of a concern about public confidence in charity being damaged by perceived inappropriate behaviour of some purportedly charitable organisations.

A large number of submissions expressed support for the establishment of an independent body to take on a variety of roles including: the registration of charitable organisations; ongoing monitoring and regulation of their activities; responsibility for official interpretation and development of the common law definition of charity; and provision of advice and guidance as required to the sector and administrators. Some have also suggested there is a need for an independent body to have overall policy responsibility for the balanced development and effectiveness of the sector generally.

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<sup>1</sup> See Appendix 1

<sup>2</sup> Based on the submission/page number ratios reported by the 2008 Inquiry into the Disclosure Regimes for Charities and Not-for-profit Organisations.

<sup>3</sup> The Asthma Foundation of Queensland, the Institute of Public Affairs, the Trustee Corporation of Australia, and the Catholic Church in Australia opposed any national regulator in their submissions to the Definition of Charities Inquiry. These represent, however, slightly more than 1% of submissions to that inquiry.

ACOSS recommended the establishment of a national Charities Commission to control access to tax concessions for charities, maintain a national register of organisations entitled to them, and to review the interpretation of the scope of the relevant definitions from time to time. ...

In supporting the establishment of a Charities Commission, Anglicare Australia argued there is a need to protect the interests of the public which donates millions of dollars per year to charitable organisations... (saying) a Charities Commission could help protect the public reputation of honest charities from unscrupulous people and organisations.

The Fundraising Institute Australia Ltd supported the establishment of a Charity Commission to have an oversight role over all charities in Australia. Philanthropy Australia suggested that the process of determining whether a purpose is charitable could be improved in one of a number of alternative ways, [including] establishment of a statutory Charity Commission.

Philanthropy Australia indicated that whatever structural option is adopted, it must be able to provide flexible interpretation of charitable purposes based on an informed understanding of contemporary circumstances, provide consistent and clear advice on the interpretation and administration of the law, and exercise clear responsibility for ensuring the accountability of charities.

The ATO in its submission stated that the current system does not work cohesively or well as a whole. It expressed the view that '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, or not'. The ATO said that decisions made objectively by an independent body, similar to the Charity Commission for England and Wales, could then serve as the criterion determining the level of funding and/or concessions to which an organisation would be entitled.

#### And the Inquiry concluded that

The Committee considers that an appropriately established independent administrative body for the charitable and related sector would provide the most effective means of implementing our recommended changes to the definitions of charities and related entities, and ensure the ongoing effectiveness of these changes.

### The Henry Review (2010)

#### The Henry Review into the Australian tax system found that

Tax concessions are an important and longstanding source of funding for the NFP sector (see Table 5.2). However, the system of concessions is complex and does not appropriately reflect current community values about the merit and social worth of activities. The complexity of these concessions is exacerbated by the opaque and inconsistent regulatory arrangements for the NFP sector.

Consistent with the recommendations of previous inquiries, these issues could be addressed through the establishment of a national charities commission to monitor, regulate and provide advice to all NFP organisations. The commission could be tasked with streamlining the NFP tax concessions, and modernising and codifying the definition of a charity.

## The Productivity Commission (2009)

The Productivity Commission recommended the establishment of a

Registrar for Community and Charitable Purpose Organisations that registers all national legal forms, offers the companies limited by guarantee form with appropriate compliance requirements, endorses NFPs for Commonwealth tax concessions, and provides a one-stop-shop for reporting for governance, financial accountability, tax endorsement and fundraising.

## The Tax Laws Amendment (Public Benefit Test) Bill 2010

This bipartisan parliamentary Committee recommended that

the incoming government work through COAG to establish a single independent national commission for not-for-profit organisations.

## Summary of findings

All the bodies that have deliberated on this issue without being constrained by the dictates of party orthodoxy or political affiliations have found that a national body with real powers is an essential element in any rational system of Australian not-for-profit regulation.

That we are going over this ground again is an insult to the Australian not-for-profit sector. The repeal of the ACNC legislation would add injury to insult.

## Sector polling

Our Community's 55,000-strong membership base has provided emphatic support for nationalisation of rules governing their operations.

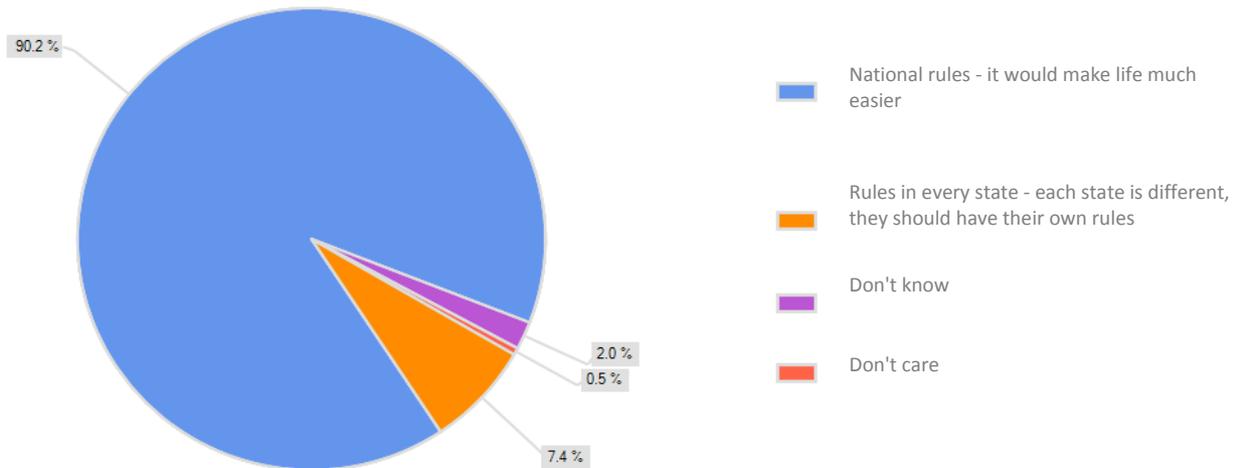
A poll of our members undertaken in 2012 asked not-for-profit organisation representatives their view on whether or not there should be separate incorporation and fundraising rules in every state (as is the case now), or if they would prefer one Australia-wide model.

A total of 90% of the respondents said that there should be national rules, while just 7% wanted to continue with state-based rules.

Levels of apathy were impressively low – just 2% said they did not know and 0.5% said they did not care.

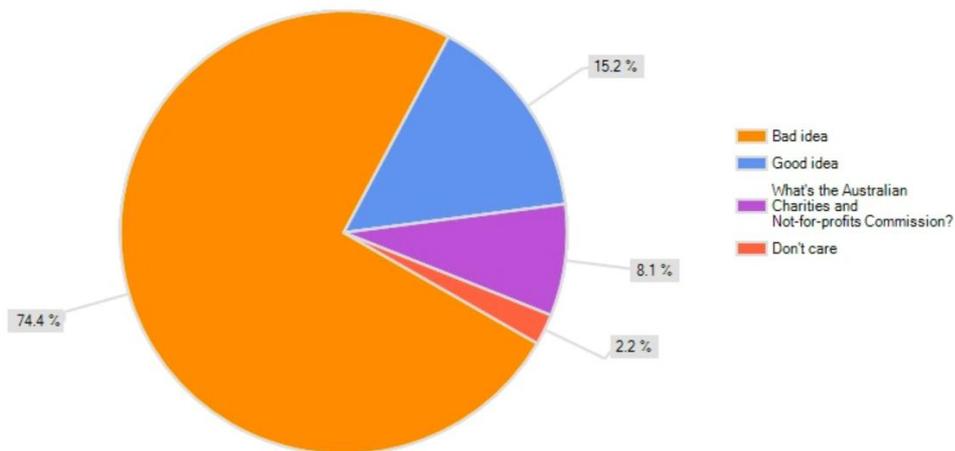
The findings are presented in the graph on the next page.

**Should there be separate incorporation and fundraising rules in every state, or would you prefer one Australia-wide model?**



More recently, Our Community polled our members again to ask their view on the Federal Government's plans to dismantle the ACNC. Members were emphatically opposed, with 74% considering its abolition a "bad idea" – see below.

**What do you think about the Federal Government's plans to cut the Australian Charities & Not-for-profits Commission?**



## Other considerations

None of the advocates for a national regulator have believed that this alone would solve the problems of the sector. We believe, however, that such a body is an indispensable condition for the other reforms that will strengthen the sector.

## Reduction of red tape

Regulatory reporting problems in Australia are primarily due to the necessity for any not-for-profit operating across state borders to satisfy the reporting requirements of each state not-for-profit regulator and each state's fundraising regulator. While removing the necessity to report to a federal regulator may seem superficially to reduce red tape, this would also make it impossible to remove the real state-based obstacles over time.

## Costs

COAG has released estimated compliance costs for ACNC governance and reporting requirements.

The table below presents an estimate of the compliance burden that arises from the duplication between existing regulatory requirements of States and Territories and the proposed ACNC governance and reporting requirements. This estimate of regulatory duplication costs relates to estimated costs incurred by incorporated associations and cooperatives and on a per-annum and/or once-off basis.

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	National
<b>One-off costs (,000)</b>									
<i>Incorporated associations</i>	\$59	\$532	\$52	\$348	\$273	\$83	\$-	\$297	\$1,648
<i>Cooperatives</i>	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
<i>One-off costs (subtotal)</i>	\$59	\$532	\$52	\$348	\$273	\$83	\$-	\$297	\$1,648
<b>Ongoing costs (per year) (,000)</b>									
<i>Incorporated associations</i>	\$336	\$1,509	\$122	\$933	\$1,282	\$210	\$1,256	\$7,643	\$13,295
<i>Cooperatives</i>	\$617	\$32	\$418	\$11	\$5	\$1	\$36	\$4	\$94
<i>Ongoing costs (subtotal)</i>	\$337	\$1,541	\$123	\$945	\$1,288	\$212	\$1,293	\$7,647	\$13,389
<b>Total* (,000)</b>	<b>\$397</b>	<b>\$2,074</b>	<b>\$175</b>	<b>\$1,293</b>	<b>\$1,561</b>	<b>\$295</b>	<b>\$1,293</b>	<b>\$7,945</b>	<b>\$15,038</b>
One-off per entity (all sizes)**	\$112	\$76	\$159	\$89	\$123	\$121	\$-	\$101	
Ongoing per entity (all sizes)**	\$633	\$221	\$377	\$241	\$583	\$310	\$261	\$2,600	

\* Costs incurred in the first year.

\*\* This figure indicates the difference in cost per entity between States and Territories (which have different numbers of charities). It does not take into account the significant variation between entity type and size.

It is clear from this table, showing as it does ongoing per-entity costs differing from state to state from \$221 in NSW to \$2600 in WA, that

- (a) these figures rank somewhere between wild guesses and total garbage and
- (b) cost issues arise within states, not at the federal level.

### The Charity Navigator model

It has been suggested that a non-governmental agency along the lines of the US Charity Navigator might provide an alternative model. Whatever the merits of Charity Navigator – and its approach has been widely criticised – it is possible at all only because the US government enforces on its charities public reporting requirements a great deal more onerous than anything contemplated by the ATO.

A move to the Charity Navigator system would result in an increase, not a decrease, in the administrative load on charities; alternatively, the ratings system would apply only to those charities that wished to publish their data, leaving any charity that preferred to conceal its workings from public view – the ones that should properly attract the attention of any regulator – entirely unreviewed.

## Recommendations from Our Community

### We need the ACNC to help cut fundraising and other red tape

We are living in the digital age. Anything that is put on a website is available nationwide (worldwide, in fact). That includes fundraising appeals.

State-based fundraising regulations need to be abolished. Any organisation that has successfully registered as a not-for-profit should be automatically entitled to fundraise without seeking further authorisation.

To achieve that end, Australia needs a national not-for-profit fundraising regulator – state regulators can't shut down if there is no federal body to take over the job. The Australian Charities and Not-for-profits Commission has proven itself as the best option for performing that role.

Similarly, the only possible way to have a smoothly functioning system of not-for-profit registration and reporting is for the states to cede the field entirely to the Commonwealth, thus

- creating the possibility of a coherent national system that is consistent and based on activities and outcomes rather than entity type,
- streamlining regulatory responsibility,
- consolidating and harmonising charities' reporting requirements, and
- addressing the informational needs of the Australian public.

**If the government really wants to reduce red tape, it should back the notion of state governments surrendering their not-for-profit fundraising and incorporation powers to the ACNC.**

### **We need the ACNC as an unbiased overseer of charity status**

If there's no ACNC, it seems clear that responsibility for decisions on tax status are going to revert back to the Australian Taxation Office (ATO).

It's not in the interests of the ATO for anybody to pay less tax.

### **We need the ACNC to help foster confidence in the not-for-profit and charity sector**

We want the public to have confidence in the not-for-profit sector. That requires greater transparency and greater accountability. That means public reporting of finances and governance – which the ACNC offers.

The public needs to have information on not-for-profits available online, in one place. That can only happen if you have an Australia-wide portal.

We haven't had many big financial and governance scandals reported in Australian not-for-profits over the past few decades. That's not because they don't occur. It's because there was nobody, up until the formation of the ACNC, whose job it was to police them. The important work in this area must continue.

### **Finally ...**

The bodies that oppose the ACNC are out of touch with the overwhelming majority of the not-for-profit sector, as expressed in the vast majority of submissions to the last eight inquiries into the affairs of the sector, as well as Our Community's own polls and observations.

*Only a national body can ensure national regulatory consistency, and as national consistency is absolutely essential for the smooth operation of Australian not-for-profits, only a national solution is acceptable.*

If the ACNC goes down, it's going to be the last chance at reform for a generation. This will be a tragedy for the sector, and for Australia.

## Appendix 1: Inquiries

	<b>Inquiry</b>	<b>Date</b>	<b>Website</b>	<b>Submissions</b>	<b>Commissioned by</b>
16	Annual Information Statement Consultation Paper	March, 2013		30 pages	ACNC
15	ACNC Discussion Paper – Regulatory Approach	January, 2012		18 pages	ACNC
14	Review of Not-for-profit Governance Arrangements	January, 2012			Treasury
13	Australian Charities and Not-for-profits Commission Bill – Exposure Draft	January, 2012	<a href="http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=economics/nonprofit/report.htm">http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=economics/nonprofit/report.htm</a>	73 Submissions 102 pages <a href="http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=economics/nonprofit/report/appendixa.pdf">http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=economics/nonprofit/report/appendixa.pdf</a>	<a href="#">House Standing Committee on Economics</a>
12	Australian Charities and Not-for-profits Commission Implementation Design Discussion Paper	December 2011			ACNC taskforce
11	Consultation Paper on the Definition of Charity	October, 2011	<a href="http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2011/A-definition-of-charity">http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2011/A-definition-of-charity</a>	215 submissions, 19 confidential 43 pages	Treasury

10	Consultation Regulatory Impact Assessment (RIA) on the Regulatory burden resulting from the establishment of the Australian Charities and Not-for-profits Commission (ACNC)	February, 2011	<a href="http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/completed-programs-initiatives/COAG-NFP-Reform-Working-Group">http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/completed-programs-initiatives/COAG-NFP-Reform-Working-Group</a>	111 pages Submissions to this consultation process were not published prior to the September 2013 election.	COAG
9	Consultation paper on current governance arrangements applying to not-for-profit (NFP) entities.	January, 2011	<a href="http://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/Non-profit/Consultation-on-governance-arrangements-for-the-not-for-profit-sector/">http://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/Non-profit/Consultation-on-governance-arrangements-for-the-not-for-profit-sector/</a>	161 submission 50 pages	ATO
8	Consultation Paper - Scoping study for a national not-for-profit regulator		<a href="http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2011/Scoping-Study-for-a-National-Not-For-Profit-Regulator">http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2011/Scoping-Study-for-a-National-Not-For-Profit-Regulator</a>	158 submissions 84 pages	Treasury
7	Tax Laws Amendment (Public Benefit Test) Bill 2010	September, 2010	<a href="http://www.aph.gov.au/binaries/senate/committee/economics_ctte/public_benefit_test_10/report/report.pdf">http://www.aph.gov.au/binaries/senate/committee/economics_ctte/public_benefit_test_10/report/report.pdf</a>	88 Submissions 82 pages	The Senate Economics Legislation Committee
6	Inquiry into the Disclosure regimes for charities and not-for-profit organisations	August, 2008	<a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2008-">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2008-</a>	154 pages 178 submissions 1390pp <a href="http://www.aph.gov.au/">http://www.aph.gov.au/</a>	The Senate. Standing Committee on Economics.

			10/charities_08/index	Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2008-10/charities_08/submissions/sublist	
5	Contribution of the Not-for-Profit Sector	March 2009	<a href="http://www.pc.gov.au/projects/study/not-for-profit">http://www.pc.gov.au/projects/study/not-for-profit</a>	319 submissions 441 pages <a href="http://www.pc.gov.au/projects/study/not-for-profit/submissions">http://www.pc.gov.au/projects/study/not-for-profit/submissions</a>	Productivity commission
4	Australia's Future Tax System (The Henry Review)	2010			Treasury
3	Small Nonprofit Associations Reform -	23 June 2008			Parliamentary Joint Committee on Corporations and Financial Services
2	Review of Financial Reporting for Unlisted Companies	2007			Treasury
1	Charity Definition Inquiry	2001	<a href="http://www.cdi.gov.au/">http://www.cdi.gov.au/</a>	349 submissions <a href="http://www.cdi.gov.au/html/public_submissions.htm">http://www.cdi.gov.au/html/public_submissions.htm</a> 438 pages	Treasury

## ACNC Discussion Paper