

Mr Murray Crowe
Individuals and Indirect Tax Division
The Treasury
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Parkes ACT 2600

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28 February 2018

Dear Mr Crowe

Submission to the Review of Australian Charities and Not-for-Profit Commission (ACNC) legislation

The Benevolent Society welcomes the opportunity to contribute to the review of the ACNC legislation. We support the ACNC and the important role it plays in supporting the charities and not-for-profit sector.

Our response to the terms of reference follows:

1. Are the objectives of the ACNC Act still contemporary?

The Benevolent Society believes the current objects of the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* (the ACNC Act) are still appropriate. We do not agree with the additional objects of the Act proposed by the ACNC in its submission to this inquiry. Any extension of the object to cover the effective use of resources and accountability of charities to donors, beneficiaries and the public is not necessary. Additionally, it would be very difficult to determine the 'effectiveness' of the use of not-for-profits' resources. Charities already need to prepare and publish annual reports and financial reports, which provide donors, beneficiaries and the public the opportunity to review and assess the charities operations and expenditure.

2. Are there gaps in the current regulatory framework that prevent the objects of the Act being met?

Yes, there are gaps between the operation of the ACNC Act and the *Corporations Act 2001 (Cth)* which cause confusion for charities, particularly small charities which do not have resources to consider the nuanced difference carefully.

There are two primary gaps:

1. A key issue is the 'switching off' of the role of officers and the company secretary in the *Corporations Act 2001 (Cth)* and not accommodating for it in the ACNC's mandatory Governance Standards.
2. Governance continues to be covered by other legislation, regulators and government funders in the context of the charitable purpose for which it exists. For example, in the case of our organisation, it would be for human services. Service delivery and ACNC legislation do not always sit well together, and it would be more efficient if governance and director duties are governed by the ACNC.

The Review Panel should investigate options to resolve the uncertainties between the ACNC Act and the *Corporations Act 2001 (Cth)*; and to standardise governance arrangements for charities.

3. Should the regulatory framework be extended beyond just registered charities to cover other classes of not-for-profits?

Yes, the regulatory framework is sufficiently broad to also cover not-for-profit organisations given the ACNC, by its name alone, is empowered to cover not-for-profit organisations as well as charities.

4. What activities or behaviours by charities and not-for-profits have the greatest ability to erode public trust and confidence in the sector?

In our view, public trust confidence would be eroded by dishonesty and lack of transparency in charities and not-for-profits. However, the current ACNC Governance Standards are sufficient to promote the right behaviours in charities and not-for-profits.

5. Is there sufficient transparency to inform the ACNC and the public more broadly that funds are being used for the purpose they are being given?

Yes, the current reporting regime which includes the Annual Information Statement (AIS) and the Annual Financial Reports (for eligible charities) are designed to do this and are sufficient to meet this purpose.

8. Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further reduce regulatory burden?

No, our organisation still has multiple reporting obligations and the AIS has added to this. There are opportunities for reducing duplication between ACNC, other regulators and government departments. For example, developing a standard reporting format for all government funded acquittals would be welcomed.

The Benevolent Society notes that in our sector, human services, there is still a lot of duplication in terms of accreditation and reporting, especially as new schemes such as the NDIS and consumer-directed care are introduced. We would welcome efforts by the ACNC to work with government funding bodies in this sector to help to reduce these burdensome and duplicative administrative processes.

9. Has the ACNC legislation and efforts of the ACNC over the first five years struck the right balance between supporting charities to do the right thing and deterring or dealing with misconduct?

Yes, overall, we believe the ACNC is doing a good job. It is engaging and consulting the sector in the right ways and we are supportive of its 'fair and proportionate' approach.

The Benevolent Society, like many other organisations in the sector, is concerned with the appointment of the new Chairman of the Commission. We hope that the ACNC maintains its balance between supporting charities to do the right thing and dealing with misconduct, and does not get too involved in second-guessing the decisions or operations of charities and not-for-profits that are fully compliant with all legislative and regulatory requirements.

10. Other comments

The Benevolent Society encourages the Review Panel to also consider the following issues:

- a) review the categorisation of charities according to 'size of charities' as the current categories are not meaningful to the sector;

- b) reconsider the use of the term 'Responsible Persons' as it is confusing because it is used in other contexts that are directly related to the sector;
- c) greater transparency and consistency between the level of information disclosed on each charity's page with the information that is currently disclosed on the relevant ASIC page of a company limited by guarantee as well as the ABN lookup page; and
- d) consider the ongoing need for the secrecy provisions in the ACNC, with consideration for balancing the rights of a charity under investigation or whose charity status has been revoked with the public interest of greater transparency and information about the standards required of registered charities.

Please do not hesitate to contact our Group Corporate Counsel and Group Company Secretary Elaine Leong on 02 8262 3455 or elaine.leong@benevolent.org.au if you require any further information.

Sincerely

A handwritten signature in black ink, appearing to read 'Jo Toohey', written in a cursive style.

Jo Toohey
CEO