

Principal Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
ACNCReview@treasury.gov.au

Re: Submission into the Review of Australian Charities and Not-for-Profits Commission (ACNC) Legislation

Dear Principal Advisor,

Positive Life NSW (Positive Life) welcomes the opportunity to provide a submission into the review of Australian Charities and Not-for-Profits Commission (ACNC) Legislation.

Positive Life NSW is the state-wide peer based non-profit organisation that speaks for and on behalf of people living with and affected by HIV (PLHIV) in NSW. We provide leadership and advocacy in advancing the human rights and quality of life of all PLHIV, and to change systems and practices that discriminate against PLHIV, our friends, family and carers in NSW. Positive Life has been an incorporated associated since 1988 and registered as a charity under the ACNC during the entirety of the ACNC's operation. Our compliance obligations adhered to under the ACNC relate to registering all responsible persons, submitting an Annual Information Statement, and supplying all current and relevant organisational details.

The ACNC Act sets out three objectives:

- (a) to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- (b) to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- (c) to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

At Positive Life, we believe that the ACNC has been set up and operating efficiently and effectively since its inception five years ago and has been successful in reducing unnecessary regulatory obligations and supporting a trusted and robust not-for-profit sector in Australia. Throughout any establishment process there will be lessons learned and ways in which to improve upon the existing framework. The ACNC must be charged with remaining relevant, credible and effective, and capitalise on any opportunities to reduce superfluous compliance or regulatory burdens on not-for-profit organisations. In doing so, the ACNC will ensure transparency, accountability and improved coordination for the Commonwealth, supplementing objects (a) and (b) above.

While there are currently approximately 55,000 charities registered within Australia under the regulation of the ACNC, a very small number (64) of these charities have had their charity status

revoked, or are undergoing investigation, enforceable undertakings, directions or warnings¹ in the five years of ACNC operation. Most of charities and other not-for-profit organisations with Australia are governed and operated efficiently and are deserving of trust and confidence from the ACNC as a regulatory body as well as the wider Australian community. The effectiveness of this governance and operation is a matter for each organisation's Board, funding bodies, members and donors to determine, rather than an overarching regulatory body such as the ACNC.

As a regulatory body of the not-for-profit sector, the ACNC's role, like that of ASIC, cannot be involved in operational or efficiency-based metrics. The ACNC needs to ensure that charities are governed and operated according to the purposes for which they are on the register and for which they obtain tax concessions. This regulation does not, and should not, extend to monitoring and adjudicating the "efficiency" of organisation's operations. Efficiency assessments are conducted on a subjective basis, and vary drastically between sectors and jurisdictions, and within sectors between organisations, dependent on the requirements of the funders, internal governance structure, members and constituents. Efficiency of not-for-profit organisations should undoubtedly be encouraged sector-wide and fostered by the ACNC through the systematic dismantling of unnecessary and onerous compliance- and reporting-based red tape where possible.

For the ACNC to continue to and improve in supporting and sustaining a robust, vibrant, independent and innovative Australian not-for-profit sector, we consider that there is still red tape in place that somewhat contributes to a constriction of the sector. Such mechanisms to achieve this important object and foster organisational efficiency would include improved system automation for the not-for-profits recorded on the register (such as via automatic upload of jurisdictionally submitted compliance reports being uploaded into the ACNC portal to avoid duplication), and a clearer road map of how the regulatory bodies jurisdictionally and federally operate, for more comprehensive clarity of compliance requirements. This is particularly important for smaller organisations with limited governance and administrative capacity, as in the vast majority of cases where charities or not-for-profits are perceived as engaging in misconduct and noncompliance, they are likely to instead simply have limited capacity or ability to maintain accountability, rather than engaging in intentional deception or fraud. An enhanced ability to achieve and maintain compliance within the ACNC framework will also enable and facilitate an easier process for not-for-profit organisations to achieve accreditation within the relevant standards. Continuous Quality Improvement implemented via formal Accreditation processes will in turn contribute to a vibrant and effective not-for-profit sector.

For the not-for-profit sector, backed by the ACNC, to maintain, protect and enhance public trust and confidence in the Australian sector, it is vital that charities and not-for-profits remain front and center advocates for their communities. To achieve all three vital objects of the act, the ACNC must support not-for-profits to be able to advocate on behalf of our communities, because we are each the experts in our fields and in our communities. This expert advice is an asset and will add value for the Commonwealth and national agenda into the future. To stifle and censor the voices of not-for-profit organisations by way of an increasing number of gag clauses in social services agreements and the accumulative limitations on receptivity to advocacy efforts from not-for-profits, the community is being systematically silenced. For the pivotal role of not-for-

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http://acnc.gov.au/ACNC/About_ACNC/Regulatory_app/ComplianceDecisions/ACNC/Regulatory/ComplianceDecisions.aspx?hkey=2cad5dc8-7d0c-4fe9-ace6-0a86b583e008

profits within Australia is to represent the interests of the wide and diverse range of Australian communities and peoples, who oftentimes do not have a voice of their own.

Positive Life believes that the ACNC legislation as it currently stands is sufficient in providing a regulatory framework for the ACNC to operate within and is widely acceptable by the charity and not-for-profit sector in Australia. Positive Life would like to commend the ACNC in their continued support of the not-for-profit sector's competent operations on a macro scale under existing legislation, by reducing unnecessary limitations and regulations where possible, which will in turn facilitate ongoing trust and confidence in the sector by the public.

If this submission requires additional information or clarification, I can be contacted on 0422 509 200 or at craigc@positivelife.org.au

Yours respectfully,



Craig Cooper
Chief Executive Officer

23 February 2018