

Mr M Crowe
Individuals and Indirect Tax Division
The Treasury
Langdon Crescent
PARKES ACT 2600

Email: ACNCReview@treasury.gov.au

Dear Mr Crowe

Review of Australian Charities and Not-for-profits Commission (ACNC) legislation

We refer to the terms of reference for the review of the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (together, the **ACNC Acts**).

The review should evaluate the suitability and effectiveness of the ACNC Acts. In particular, the review should:

1. Examine the extent to which the objects of the ACNC Acts continue to be relevant.
2. Assess the effectiveness of the provisions and the regulatory framework established by the ACNC Acts to achieve the objects.
3. Consider whether the powers and the functions of the ACNC Commissioner are sufficient to enable these objects to be met.

Saward Dawson is a multi-discipline Chartered Accounting firm committed to serving the Not-for-profit sector and in particular charities. We work with hundreds of these entities each year providing accounting, assurance, taxation and other advisory services. We actively represent the sector through various channels including involvement and input into the Chartered Accountants Australia and New Zealand (CA ANZ), Australian Audit Standard Board, the Australian Accounting Standards Board and the Australian Charities and Not-For-profits Commission through the Professional User Group.

Our comments and recommendations regarding the legislative review are provided in this submission.

Please do not hesitate to contact us should you wish to discuss further any matters arising from this submission.

Yours Sincerely



P Shields
Partner



J Tulk
Partner

Specific Comments

Our specific comments in this section are made with reference to the current objects of the ACNC being:

- (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.

We note the recommendations by the ACNC to this Review recommending 2 additional objects regarding 'promoting the effective use of resources' and 'to enhance accountability'. We have also considered these potential objects in our comments.

In addition, we have referenced the relevant recommendations by the ACNC where we have relevant experience with regard to the matters raised.

1. Charity revocation

ACNC recommendation 11. We believe that publishing the grounds for the decision to revoke charity status will provide clarity over the issues to responsible persons of other charities, service providers and other stakeholders including donors. Accordingly we support this recommendation as it will protect and enhance public trust and confidence.

2. ASIC registers

ACNC recommendation 16. The inability to check the names of directors and company secretaries on ASIC registers causes issues for charities' financing arrangements and other legal matters. We recommend that ASIC registers for charities be either turned off and searches referred back to the ACNC register or ASIC details be updated via data transfer from the ACNC. We believe this will result in a reduction of unnecessary regulatory obligations.

3. Auditor appointment

ACNC recommendation 19. We believe the auditor appointment and change of auditor requirements should be transferred from ASIC to the ACNC and the process be simplified. The current ASIC requirements are overly onerous and complex resulting in significant time and cost to charities seeking to change auditor. We believe a simple requirement to include the auditor in the charity details (similar to a responsible person) and inform the ACNC of the change would be sufficient. Implementing a reporting safeguard for the auditor being removed requiring them to report to the ACNC where they believe their removal may result in non-compliance with the ACNC Act should be considered. We believe this approach will result in the reduction of unnecessary regulatory obligations and develop consistency with non-corporate entities change of auditor processes.

4. Reporting Framework for Charities

ACNC recommendation 21. Although we support the overall recommendation in the ACNC submission we believe more immediate actions should be taken.

We refer to the findings in the July 2015 ACNC publication "Lessons on Reporting to the Australian Charities and Not-for-profits Commission". We believe that the transitional reporting arrangement adopted by the ACNC in particular in relation to the acceptance of financial reporting and audit requirements of State and Territory regulators is a major contributor to issues identified in this report.

Consistent with the findings of this report we regularly identify financial reports on the ACNC website that are clearly non-compliant with the ACNC requirements of including a statement of profit or loss and other comprehensive income, statement of financial position, statement of changes in equity, statement of cash flows and notes to the financial statements.

In addition many do not comply with the minimum 6 accounting standards. In our view the recent extension of the transitional provisions (and any future extension) further undermines the ACNC object to maintain, protect and enhance public trust and confidence and does not align with the additional two objects recommended by the ACNC.

Clearly the ACNC does not have the resources to monitor all financial report lodgments. However, suitably qualified and competent assurance providers that are subject to regulation and professional development requirements are often the catalyst for improving reporting and meeting compliance requirements. Accordingly we strongly believe that current legislative requirements that large charities be audited by RCA's should be enforced and the ACNC should publically state that no further extension of transitional provisions will occur. This will allow charities time to plan in order to meet these requirements.

In addition, the current requirement to comply with the minimum 6 accounting standards results in less disclosures for entities preparing general purpose – reduced disclosure regime financial reports than technically those preparing special purpose financial reports. We believe the guidance should therefore state the requirement to comply with the minimum 6 accounting standards to the extent required under the reduced disclosure regime.

5. Sections 60-30 – audit or review

ACNC recommendation 25. We disagree with the ACNC submission. We are not aware of any circumstance where the requirement for audit will impose unreasonable burden on the charity. In our experience the audit environment within Australia remains highly competitive and audit fees are generally around or less than 1% of revenue for a large charity.

We also believe the assertion that remote or regional charities are unable to source an RCA does not align with our experience or practice. Increasingly through the use of technology and the electronic document storage of current accounting systems, the need for travel to perform an audit can be significantly reduced or eliminated and thereby result in the location of the charity being largely irrelevant.

6. Audit or review report legislative compliance

ACNC recommendation 26. We support the overall recommendation in the ACNC submission regarding inclusion of 'material'.

7. Framework for Financial Reporting

ACNC recommendation 28. We support the overall recommendation in the ACNC submission requiring compliance with AASB124 Related Party Disclosures. However we are concerned that full adoption of the standard may represent an additional burden on entities.

We draw your attention to our comments above regarding the transitional provisions where entities don't or are not required to comply with the current requirements.

We would note that the potential removal of special purpose has significant implications for many charities. In particular the requirement for consolidation where 'controlled entities' have different purposes is a matter for debate. Concerns have also been expressed over the increasing complexity of certain accounting standards, for examples AASB 16 leases, the appropriateness of certain disclosure requirements and the future of the reduced disclosure regime.

We believe that the ACNC should consult and determine an appropriate level of compliance with regard to both recognition and measurement and disclosure requirements under the current accounting standards as the ACNC recommendation 21 regarding developing a suitable framework for financial reporting will likely be a long term endeavour.

We draw your attention to ASIC Regulatory Guide 85 where it was determined that non-reporting corporate entities should consider disclosing additional information in relation to "significant related party transactions". See extract below:

2.9 Directors of non-reporting entities must also consider carefully the need to make disclosures which are not directly prescribed by accounting standards, but which may be necessary in order for the financial statements to give a true and fair view. Such disclosures could include certain significant related party transactions.