



**Australian Council of Social Service**

**Submission to the Inquiry  
Into the Australian Charities and  
Not-for-Profits Commission  
(Repeal) (No.1) Bill 2014**

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## 1 About ACOSS

ACOSS is the peak body of the community services and welfare sector and the national voice for the needs of people affected by poverty and inequality. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life.

ACOSS leads and supports initiatives within the community services and welfare sector and acts as an independent non-party political voice.

ACOSS has long advocated for effective regulation of the community sector. ACOSS' positions around the essential elements of effective national regulation have been the result of significant policy development, consultation with members and engagement with a range of stakeholders over many years. It particularly draws on the contributions provided by the Council of Social Service network which operates across all states and territories in Australia.

## 2 Summary of Recommendations

**Recommendation 1:** That an independent regulator for the NFP sector is maintained, and resourced appropriately to support its charter.

**Recommendation 2:** That the Australian Charities and Not-for-Profit Commission's (ACNC's) eight principles of good charity regulation be used as a benchmark by which to assess future potential arrangements regarding regulation of the not-for-profit (NFP) sector in Australia.

**Recommendation 3:** That a comprehensive central register of NFP organisations in Australia be maintained in any future regulatory regime.

**Recommendation 4:** That specific attention be given to ensuring the ongoing independence of a national regulator for the NFP sector when considering alternative work and administrative arrangements for any new entity.

**Recommendation 5:** That any successor agency is not placed within the Australian Taxation Office.

**Recommendation 6:** That regulation of the NFP sector include mechanisms to protect the independence of the sector, including its legitimate role in policy and advocacy around system issues.

**Recommendation 7:** That a commitment is made to use information provided to date, and not waste work already undertaken by the NFP sector because of a change in direction regarding sector regulation.



**Recommendation 8:** That an educative and supportive approach to compliance is maintained in any regulatory approach moving forward.

**Recommendation 9:** That any discussion around a National Centre for Excellence for the NFP sector be accompanied by well developed and realistic financial modelling.

**Recommendation 10:** That any future regulatory regime continues to focus on the agenda of reducing duplication and ‘red-tape’ for the NFP sector. In particular, that the Commonwealth prioritise reforms to grants and service contracts to reduce the burden of unnecessary contract reporting – ensuring that reporting is appropriate, proportional and focused on accountability for meaningful outcomes. Further, that mechanisms are put in place to continue work to ensure streamlined processes between the Commonwealth, State and Territory funders, and industry specific regulation.



### 3 Introduction

The establishment of effective independent, national regulation for charities and community services has long been espoused by ACOSS.

ACOSS warmly welcomed the package of reforms that focused on improved regulation for the NFP sector, the establishment of an independent regulator and has been supportive of the work of the Australian Charities and Not For Profit Commission (ACNC). As such, ACOSS has publicly expressed our disappointment of the decision of the Government to repeal the legislation that established the ACNC<sup>1</sup>.

While we recognise that the Government signalled its intention to abolish the ACNC prior to their election, we continue to highlight the strong support by the sector for the work of the ACNC, and our concern at the prospect of returning to the situation of ineffective regulation prior to the operation of the ACNC. ACOSS believes that there is a need to maintain and protect the regulatory functions currently held by the ACNC. **As such, a key aim of this submission is to identify the key elements required to ensure effective regulation of the NFP sector.**

It is unusual for an industry to be championing regulation. However, as the recipient of ineffective regulation for many years, the Australian NFP sector recognises the value of an effective, sector-centred, streamlined and proportionate regulatory regime. In particular, the sector recognises the positive role that regulation can play in supporting the work of the sector. This includes:

- maintaining public trust in the work of the sector;
- working with the sector to raise the standard around governance, accountability and transparency; and
- working to introduce meaningful reporting of the sector and reduce duplication of reporting.

The ACNC has only been operational from the end of 2012 and ACOSS recognises that it is still in the early stages of development. As such, many of the objectives of the ACNC, particularly in relation to reducing 'red tape' and duplication have not yet been fully achieved. However, work that has commenced in a number of jurisdictions, particularly in South Australia and the ACT, has shown progress towards these aims, and has given the sector an indication of the usefulness of the ACNC in supporting a streamlining of reporting, and a reduction of 'red tape'.

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<sup>1</sup> With a range of other peak organisations, ACOSS wrote an open letter to the Prime Minister, noting our concerns and requesting ongoing dialogue with him about the future of not-for-profit regulation in Australia. The letter was released April 2013 and available via <http://www.communitycouncil.com.au/node/165> accessed on 27 April 2014



Given our concerns regarding the future of NFP regulation, ACOSS raises the question as to why a two-step legislative process has been proposed, which fails to give any indication regarding future arrangements. In this context, there is no certainty around what key elements of the current regulatory regime will be maintained, or in what form.

ACOSS sincerely hopes that both the Government and the Senate will ensure that the agenda which has been commenced through the ACNC is not lost.



## 4 Making the case for effective regulation for the NFP sector: A brief history of the origins of a national regulator

The concerns regarding appropriate regulation of the NFP sector have been the subject of debate for over a decade. Key forums where there the need for reform in relation to regulation of the charities and NFP sector included the *Senate Standing Committee on Economics* in 2001<sup>2</sup>, the *National Roundtable of Nonprofit Organisations* in 2004<sup>3</sup> and the *Senate Standing Committee on Economics, Disclosure regimes for charities and NFP organisations* in 2008<sup>4</sup>.

These concerns culminated in commissioning the Productivity Commission to undertake a study into the contributions of the NFP sector in 2009.

Given ACOSS' identification of effective national regulation for the NFP sector as a priority issue<sup>5</sup>, we devoted significant time and effort into contributing to the Study and its outcomes. As part of this, ACOSS conducted significant consultation across the community sector to support this work. We contributed a number of submissions to the study, appeared at Senate Committee hearings on the matter, responded to draft legislative proposals and engaged with the ACNC when it was established. While there was significant commentary regarding the detail of what form effective national regulation should take, comment on the detail of the overarching and subordinate legislation, and discussion regarding the objects and activities of the national regulator, there was broad support for the recommendations of the Productivity Commission, which focused on a consistent regulatory approach for the NFP sector<sup>6 7</sup>.

Responding to these recommendations, the then Government announced in May 2011 that it would establish the Australian Charities and NFPs Commission as well as committing to reform the use of tax concessions by businesses run by NFPs, with the objective of 'better targeting of tax concessions'.

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<sup>2</sup> A key conclusion of the Committee was that an independent national regulator for charities was needed. This was reported in: 2010 Australian Productivity Commission *The contribution of the Not-For-Profit Sector Study*. <http://www.pc.gov.au/projects/study/not-for-profit/report>. Accessed on 27 April 2014

<sup>3</sup> The Roundtable reported that there were at the time more than twenty different ways to incorporate a non profit organisation. Reported in: 2004 National Roundtable of Nonprofit Organisations, p.2

<sup>4</sup> At this Committee, ACOSS expressed its view that there was an urgent need for effective national regulation: 2008 ACOSS Submission to the Senate Inquiry: *Senate Standing Committee on Economics, Disclosure regimes for charities and not-for-profit organisations*

<sup>5</sup> 2009 ACOSS Submission to the Productivity Commission Study into the Contribution of the Not-For-Profit Sector available at [http://acoSS.org.au/images/uploads/ACOSS\\_submission\\_-\\_PC\\_Study\\_into\\_the\\_Contribution\\_of\\_the\\_Not\\_for\\_Profit\\_Sector.pdf](http://acoSS.org.au/images/uploads/ACOSS_submission_-_PC_Study_into_the_Contribution_of_the_Not_for_Profit_Sector.pdf) accessed 27 April 2014

<sup>6</sup> 2010 ACOSS analysis of the report of the Productivity Commission Study into the contribution of the not-for-profit sector. Available at [http://acoSS.org.au/images/uploads/ACOSS\\_analysis\\_and\\_advocacy\\_priorities.pdf](http://acoSS.org.au/images/uploads/ACOSS_analysis_and_advocacy_priorities.pdf) accessed on 27 April 2014

<sup>7</sup> *Ibid*



In addition, they also committed to introduce a statutory definition of ‘charity’, to address current ‘outdated and uncertain’ definition and to assist the sector through greater consistency<sup>8</sup>.

ACOSS welcomed the package of reforms outlined by the Government and, as previously noted, devoted significant resources to enable our engagement to the process around the rollout of these reforms. After the initial announcement around the reform package, ACOSS and others across the sector worked consistently in response to draft legislation on the establishment of the ACNC. Initial proposals were considered, and ACOSS continued to raise questions around threshold issues such as independence, proportionality and relationship with other key bodies such as the Australian Taxation Office. ACOSS has engaged with the ACNC since it became operational in December 2012, including registering with the ACNC and being one of the 25,000<sup>9</sup> organisations that provided an annual activity statement. This was a significant milestone as it was the beginning of the compilation of a comprehensive evidence base about the sector.

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<sup>8</sup> As reported at the time by Probono. This report also provides information regarding the sector’s response to this announcement. <http://www.probonoaustralia.com.au/news/acnceference> to the media release re these announcements. Accessed on 27 April 2014

<sup>9</sup> As reported on the ACNC website: [https://www.acnc.gov.au/ACNC/Edu/ACNC\\_key\\_facts\\_and\\_FAQs.aspx](https://www.acnc.gov.au/ACNC/Edu/ACNC_key_facts_and_FAQs.aspx). Accessed on 27 April 2014



## 5 The need for effective regulation: The key objectives and key functions

ACOSS has been consistent in its calls around the construction of effective national regulation of the NFP sector, and the key issues it should deal with.

While there may be a commitment from the Government to abolish the ACNC, ACOSS believes that it would be a retrograde step to go back to the situation that we faced prior to the establishment of the ACNC in 2012. As a sector, we now have a much better understanding of the objectives and functions that we seek in national regulatory approach.

Key objectives include:

- **Mechanisms that maintain public trust and accountability:** while the sector is trusted by the community, we know that there are risks due to lack of knowledge, poor processes, unscrupulous behaviour and breaches of trust which are heightened in an environment with little oversight or articulation of appropriate standards and accountability. It is in the sector's interest to have an independent oversight function that can provide information regarding the activities, standards, trends and progress of the sector. Good information regarding benchmarks for accountability, governance and administration build the sector's capacity and help to maintain public trust and support its important work.
- **Accountability to funders, supporters and service users:** the NFP sector is now a significant element of the economy<sup>10</sup>. Parts of the NFP sector provide a range of services on behalf of government, and accept a large amount of funds from governments, the public and private funders. There is strong (if not universal) support for transparent and accountable reporting to these funders. There is also growing discussion about accountability to service users, and by extension, the general community. The sector does not advocate for an absence of regulation, but is committed to effective and meaningful regulation and reporting. Part of the work of the ACNC is to streamline the many reporting processes that organisations are subject to, thus reducing reporting duplication. The work occurring in South Australia and the ACT provides an insight to what can be achieved when jurisdictions work together on these aims.

It would be a lost opportunity if this activity were to cease and organisations required to continue the unsatisfactory arrangements around reporting duplication with no consideration to improving things into the future.

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<sup>10</sup> 2010 Australian Productivity Commission *Op Cit*



- **Raising the standard of governance across the NFP sector:** the NFP sector has evolved and grown significantly over the last four decades. From a largely voluntary sector, we now see the emergence of complex, multifaceted organisations managing large numbers of programs and budgets. Like the for-profit sector, there is incredible diversity in organisations, and huge variety in the strength of governance and administrative processes that support these organisations. Continued work needs to occur to share the competencies of well functioning organisations with others who still need support and development. A well understood, simple national regulatory system is one way that this can be achieved.
- **Building the knowledge base:** Despite the economic significance of the NFP sector, there is little known about it. The work of the Productivity Commission highlighted challenges in even identifying the scale, scope and diversity of the sector. The development of a national repository of knowledge provides opportunities to better understand the sector, to identify trends and best practice, and enable the sector to better understand itself and how to appropriately grow and developed.

Key functions and elements of ACOSS' work have included:

- support for a **single national regulator** which captures all legal entities represented by the NFP sector. While ACOSS advocates the retention of the main functions in any future regulatory regime, ACOSS continues to hold the view that a dedicated regulatory entity will deliver more significant benefit to the sector than the same functions delivered by a range of different agencies;
- the establishment of an **independent** regulator that is dedicated to regulation of the NFP sector and does not undertake responsibility for this as a secondary activity;
- **independence of decision making** by the regulator, unable to be unduly influenced by political, sector or commercial interests;
- commitment to a **central and comprehensive register** of the NFP sector that captures a core of information regarding NFP organisations across Australia, and provides a central repository of information regarding the sector;
- **cooperative approaches** for interaction between sub-sector regulators and the different regulatory approaches of jurisdictions, with a commitment to move towards a 'report once, use often' approach;
- a commitment to **'light touch' regulation**, which includes the collection of data that is meaningful, relevant and utilised by regulators, and views the



NFP sector as a partner to regulatory activity. This compliance should be proportionate in relation to risk, as well as size and complexity of NFP organisations;

- commitment to an **educative approach to compliance**, where the regulator and the sector work together to raise governance standards, administration and activity of the NFP sector; and
- recognition and support for **improved research** around the contribution of the NFP sector and the development of an **evaluation culture** across the sector.

In addition to the above functions, ACOSS also recognises the need for complementary work to continue to support effective national regulation of the NFP sector. In particular, we have contributed significant resources related to work focused on developing appropriate legislation around the definition of a charity. While we understand that this issue is being examined separately, ACOSS would like to reiterate support for the enactment of legislation on this issue, which has removed previous ambiguity and created greater certainty for the sector, the regulator and other relevant agencies such as the Australian Taxation Office.

As previously noted, the NFP sector has devoted significant time and resources to the development of a new national regulatory scheme. This may go some way to explaining the strong support for the ACNC, as evidenced in a recent survey which showed that 80% of the sector support the ACNC<sup>11</sup>. This is impressive, given the fact that this is about a regulatory and oversight body. There has been a minority voice outlining opposition on the basis of duplication of regulatory effort, over reporting and costs of compliance. These are issues that, with goodwill and effort can be overcome, and in many cases relate to reluctance of regulatory bodies other than the ACNC to explore efficiency and streamlining.

Accordingly, ACOSS continues to believe that the ACNC is well-placed to deliver on these principles, and fulfil the key functions as outlined above. However, we would seek to see the functions and objectives outlined above reflected and incorporated into any future regulatory regime, whether or not this includes the ACNC.

Again, we raise concern regarding the proposed two-stage legislative process, which means that there is no clear idea of the new regulatory approach that will be in place, and no detail as to the extent to which the above principles will be reflected.

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<sup>11</sup> 2013 Probono Not for Profit Election Survey  
[http://www.probonoaustralia.com.au/sites/www.probonoaustralia.com.au/files/news/archive/nfp\\_election\\_survey\\_2013.pdf](http://www.probonoaustralia.com.au/sites/www.probonoaustralia.com.au/files/news/archive/nfp_election_survey_2013.pdf) Accessed 27 April 2014



## 6 International Experience

Public commentary regarding the future of the ACNC in Australia and potential alternative models has often cited examples from overseas as evidence that national regulatory approaches have failed.

However, there are a large number of nations that support a charities regulator, including the United Kingdom, Singapore, New Zealand, Ireland and Scotland. The oldest of these is the Charities Commission of England and Wales, which has operated since 1841. ACOSS understands that a number of countries are moving to establish regulatory regimes for the NFP sector including the Republic of Ireland, which quickly moved to establish a regulatory body after a significant scandal involving a disability charity<sup>12</sup>.

While there has been some suggestions that a number of current national charity regulators have failed, or are being abolished, recent interactions with these regulators has revealed this not to be the case. For example the Independent Regulator in New Zealand has not been abolished but its administrative functions have been relocated to a Government Department. We understand that the legislation under which the regulator operates is still in operation, and there is still clear independence in the decision-making powers of the agency<sup>13</sup>.

What is clear from international experience is that knowledge and expertise is evolving around the most effective methods of regulating NFP activities. While a variety of models exists, regulators are united in their view that there is a role for to play in supporting the vital work of the NFP sector.

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<sup>12</sup>[http://www.civilsociety.co.uk/governance/news/content/16733/republic\\_of\\_ireland\\_sets\\_up\\_charity\\_regulator\\_after\\_scandal](http://www.civilsociety.co.uk/governance/news/content/16733/republic_of_ireland_sets_up_charity_regulator_after_scandal) accessed 27 April 2014

<sup>13</sup> As reported by the ACNC:  
<http://www.acnc.gov.au/ACNC/Pblctns/Rpts/IntReg/ACNC/Publications/Reports/InternationalReg.aspx?noleft=1> Accessed on 27 April 2014



## 7 Where to Next:

### What do we need for effective national regulation of the NFP regulator?

As previously noted, ACOSS has been consistent in its call for the creation of a manageable and meaningful regulatory system for Australia's NFP sector. We have previously articulated support for the current national regulator, the ACNC, and have called for reconsideration of the abolition of the ACNC.

On the whole, ACOSS believes that the ACNC is fulfilling the objective of acting as an independent regulator that understands the needs of the sector. As this is a relatively new body, there has been a need for an ongoing dialogue as new elements are rolled out, and we have found that the ACNC has been accessible, open and able to work in partnership with the sector throughout this phase.

It is also important that any regulator is appropriately resourced in order to fulfil its charter. As such, ACOSS calls for an assurance that appropriate resources are in place to support the regulatory functions which will need to be fulfilled in any future regime.

**RECOMMENDATION:** That an independent regulator for the NFP sector is maintained, and resourced appropriately to support its charter.

ACOSS also welcomes the ACNC's constructive contribution through their articulation of the eight principles of good charity regulation, which include:

1. independence of decision-making (free of sector, political or commercial influence);
2. effectiveness and efficiency in achieving clearly defined policy goals
3. clarity, transparency and accountability;
4. fairness and natural justice in decision making and administrative processes;
5. integrity and certainty;
6. proportionality, consistency and regulatory necessity;
7. understanding of, and respect for, the contribution of the sector; and
8. integration, consistency and support of other laws, agreements and international obligations.

These reflect the principles that ACOSS has articulated as important in charity regulation. As such we believe that these provide a sound basis for future regulation.

**RECOMMENDATION:** That the ACNC's eight principles of good charity regulation be used as a benchmark by which to assess future potential arrangements regarding regulation of the NFP sector in Australia.



Central to ensuring building on the positive work that has occurred to date, ACOSS calls for the maintenance of a central register of NFP organisations. When it was responsible for regulation of charities, the Australian Taxation Office was not able to maintain an up-to-date list of contacts for charitable organisations, and, with regulation shared between agencies, there was no publicly available register in one place. For the first time, we are starting to build a comprehensive picture of the NFP sector in Australia to understand better the contribution of the sector to the community. In order for this register to be useful, it must be compulsory for organisations to participate.

As with the current system, a graded system of information requirements would ensure that resource input is proportionate and appropriate. This would also enable greater information sharing between the Australian Taxation Office, other Government departments and stakeholders when understanding the NFP status of organisations and entities.

**RECOMMENDATION:** That a comprehensive central register of NFP organisations in Australia be maintained in any future regulatory regime.

As previously noted, ACOSS strongly supports the maintenance of an independent regulator. In reviewing organisational arrangements which may focus on reducing administrative duplication, there is a need to ensure that the decision-making functions remain independent of influence, whether it be political, sectorial or commercial in nature. In addition, there is a need to ensure that the regulatory system is accountable and transparent. In determining future arrangements, public reporting of the work of the regulator will be an important feature for the maintenance of confidence and trust.

**RECOMMENDATION:** That specific attention be given to ensuring the ongoing independence of a national regulator for the NFP sector when considering alternative work and administrative arrangements for any new entity.

In particular, ACOSS has highlighted with placing the regulator within the Australian Taxation Office, given it has a different mandate and there are potential conflicts of interest, particularly where the recognition of charitable status results in exemptions from tax requirements.

**RECOMMENDATION:** That any successor agency is not placed within the Australian Taxation Office.

A key issue for the NFP sector when considering regulation is to ensure that all the legitimate roles of the sector, which sometimes includes government contracting but most often includes a much wider remit are protected. There have been times where the contracting arrangement with Government has been used to limit the role



of the NFP sector, and curtail its role in public commentary. The sector welcomes the legislation that is current in place which enshrines the role of policy and advocacy of NFP organisations and recognises its independence. Any future regulatory regime must support the independence of the NFP sector, and ensure that this principle is nurtured and encouraged.

**RECOMMENDATION:** That regulation of the NFP sector include mechanisms to protect the independence of the sector, including its legitimate role in policy and advocacy around system issues.

Throughout all discussions regarding a national regulator for NFP organisations, the concept of proportionality has been a significant focus. Firstly, it has been clear that the NFP sector should not be required to undertake compliance requirements that are more onerous than the for-profit sector; and, secondly given the diversity of the NFP sector, there needs to be proportionality about requirements within the sector.

Significant discussion and debate has occurred regarding the nature of reporting, and there has been some feedback provided regarding the ACNC's requirements around annual activity reports. A significant positive has been the use of information technology which means that, while the first reporting requirement was significant for many organisations, the burden will be greatly reduced for subsequent reporting as certain information will be asked for only on the first instance.. As such, in moving forward it is important that we do not devalue the work undertaken to date, or waste it by not using it in the ways that it had been intended to be used.

**RECOMMENDATION:** That a commitment is made to use information provided to date, and not waste work already undertaken by the NFP sector because of a change in direction regarding sector regulation.

Throughout the life of discussions around a national regulatory system for the NFP sector, there has been a commitment to a sector-driven approach, which focuses on education and supporting the sector to reach compliance. In moving forward, it is important that this emphasis is maintained.

**RECOMMENDATION:** That an educative and supportive approach to compliance is maintained in any regulatory approach moving forward.

There has been some limited discussion regarding replacing some of the functions of the ACNC within a new National Centre for Excellence. This draws on some of the findings of the Productivity Commission study, which identified the need for increased research and evaluation around the NFP sector. This concept is welcomed, but there is a need for a better understanding of the proposed governance, administrative and funding arrangements for such an entity. It is clear from early discussions that funding associated with a National Centre for Excellence would be in reality 'seed funding' and would require alternative funding models moving forward.



It is important to understand that, in a sector that dependent on fundraising and financial support for direct service, often to vulnerable people, that sector's ability to financially support a body of this type is limited.

**RECOMMENDATION:** That any discussion around a National Centre for Excellence for the NFP sector be accompanied by well-developed and realistic financial modelling.

The focus of the discussion regarding the abolishing of the ACNC has been framed part of a deregulation agenda and the simplification of reporting for the NFP sector. However, the experience of the sector is that there was significant duplication without a national regulator, and there have been early signs of the potential for a national regulator to have a positive impact on reducing duplication and 'red tape'. As such, there is a need to continue this focus, even if the ACNC ceases operation.

**RECOMMENDATION:** That any future regulatory regime continues to focus on the agenda of reducing duplication and 'red-tape' for the NFP sector. In particular, that the Commonwealth prioritise reforms to grants and service contracts to reduce the burden of unnecessary contract reporting – ensuring that reporting is appropriate, proportional and focused on accountability for meaningful outcomes. Further, that mechanisms are put in place to continue work to ensure streamlined processes between the Commonwealth, State and Territory funders, and industry specific regulation.



## **8 Conclusion**

The discussion of the appropriate approach for regulation of the NFP sector in Australia is decades old, and many organisations and individuals have contributed to this discussion. The ACNC is a relatively new entity, which has commenced the task of introducing an effective regulatory scheme, and has made positive first steps in this endeavour.

In moving forward, ACOSS urges that we do not lose the significant momentum that has been gained, we do not devalue the contributions that have been made, and that we learn from the lessons provided during the journey to date.

ACOSS remains at hand to be a constructive and productive partner in continuing to move towards an effective regulatory system for Australia's NFP sector that recognises the contribution of the sector, values its inputs and supports it in its work.