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## **Submission to the Review of Australian Charities and Not-for- Profits Commission legislation**

28 February 2018

*[www.anglicare.asn.au](http://www.anglicare.asn.au)*

## About Anglicare Australia

Anglicare Australia is a network of over 40 independent local, state, national and international organisations that are linked to the Anglican Church and are joined by values of service, innovation, leadership and the Christian faith that every individual has intrinsic value. With a joint budget of \$1.48 billion, a workforce of over 18,000 staff and more than 11,000 volunteers, the Anglicare Network contributes to more than 50 service areas in the community. Our services are delivered to more than one million Australians, in partnership with them, the communities in which they live, and other like-minded organisations in those areas.

Anglicare Australia has as its Mission “to engage with all Australians to create communities of resilience, hope and justice”. Our first strategic goal charges us with reaching this by “influencing social and economic policy across Australia...informed by research and the practical experience of the Anglicare Australia network”.

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## Introduction

Anglicare Australia welcomes the opportunity to provide a submission to the legislated five-year review of the *Australian Charities and Not-for-Profits Commission Act* and the *Australian Charities and Not-for-Profits Commission (Consequential and Transitional) Act*.

Anglicare Australia supports transparency and good governance for the sector, and as such we have been a strong supporter of the Australian Charities and Not-for-profits Commission (ACNC) since its inception. We note that the Productivity Commission has found that the sector is well-governed and enjoys a very high level of trust throughout the community.<sup>1</sup> This trust does not seem to be reflected in some of the consultation questions, or in the ACNC's own submission to this review.

There is a strong consensus across the sector that the ACNC's first five years have been a success. It would be a great pity if the strong relationship with the sector was to be undermined after such a successful five years. Our responses to the consultation questions focus on how the sector can be supported to do its work, and how the ACNC can continue to build on its relationship with the sector.

## Questions 1 and 2: Objects of the ACNC Act and the current regulatory framework

The first five years of the ACNC's operation and the currently regulatory framework are widely regarded to have been successful. Anglicare Australia continues to support the objects of the ACNC Act, which are based on supporting the sector, promoting confidence in the sector and its work, and reducing the regulatory burden on charities. We note that these objects are based on years of consultation with not-for-profits, charities, and the bodies that represent them. It would be disrespectful and counter-productive to change to these objects in a way that didn't reflect a strong consensus from across the sector.

On that basis, Anglicare Australia rejects the ACNC's proposal that its objects be amended to include the following:

- (a) To promote the effective use of the resources of not-for-profit entities; and*
- (b) To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public*

Charities are already required to report to their members, publish their audited accounts and advance their mission statements. They are prohibited from advocating outside their charitable purpose. Those who receive government funding are subject to additional extensive reporting requirements. The ACNC submission fails to present any evidence of widespread accountability problems in the sector or any convincing rationale for proposed objective (b), particularly considering the fact that it duplicates the current objective relating to 'public trust and confidence'. At the same time, the new wording conflicts with the objective relating to 'reduction of unnecessary regulatory obligations'.

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<sup>1</sup> Productivity Commission (2010) *Contribution of the Not-for-Profit Sector*. Australian Government.

With regard to proposed objective (a), Anglicare Australia rejects the notion that there is any role for the ACNC in telling charities how to use their resources. Such a power would set the ACNC apart from every other regulatory body in Australia. Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA) and the Australian Competition and Consumer Commission (ACCC) do not have the power to tell corporations, banks, and businesses whether or not they operate efficiently, even when they are the recipients of major subsidies and tax exemptions. If the ACNC believes that there is malfeasance it already has the power to deal with any wrongdoing.

No suggestion has been made over the past five years there is a need to tell charities how to be more effective, either from the sector or the ACNC itself. This entirely new suggestion implies hostility to the sector, and could compromise the high level of compliance and cooperation that the ACNC currently enjoys.

### **Questions 3 and 4: Charities, NFPs, and behaviours that erode trust**

Anglicare Australia notes that the Productivity Commission Report into the Contribution of the NFP Sector found that the community had a high degree of trust in the sector. Anglicare Australia's view is that the greatest threat to this trust comes not from the behaviour of the sector itself, as Question 4 implies, but from recent efforts to undermine charity advocacy.

In 2010, a landmark High Court judgement involving Aid/Watch found that charities could have a dominant purpose of influencing and engaging in public “‘agitation’ for legislative and political changes.”<sup>2</sup> The decision applied the right to freedom of political communication in Australia, which the High Court had previously defined as a constitutional precondition for representative democracy. In the Aid/Watch case, the High Court found that “the generation by lawful means of public debate... itself is a purpose beneficial to the community.”<sup>3</sup>

Following this, the Charities Act 2013 recognised that charities can advance their purpose by engaging in public debate about public policies. Systemic advocacy is clearly recognised and protected under this definition.<sup>4</sup> And while campaigning for or any party or candidate is rightly not allowed, charitable organisations are permitted to compare or rank the policies of both parties and candidates.<sup>5</sup>

At the heart of this existing legal framework is a recognition that advocacy is an essential, and often the most effective, means of achieving charitable purposes. For agencies in the Anglicare network, tackling poverty and inequality entails not only providing services to assist people at coalface of these issues, but also advocating for policy and legislative change to address the root causes.

But in recent years, and particularly since the 2016 federal election, a number of politicians have commented negatively on the participation of community groups in public debate and elections. They have frequently argued that civil society organisations and charities have a

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<sup>2</sup> Aid/Watch Incorporated v Commissioner of Taxation [2010] HCA 42

<sup>3</sup> Ibid.

<sup>4</sup> Maddison, S. and Carson, A. (2017) *Civil Voices*. University of Melbourne. p8

<sup>5</sup> Ibid.

lesser “right” to engage in election campaigns than political parties and candidates. This view is both harmful and wrong in seeking to deny the right of the public to collectively participate in civil discourse and debate. It also fundamentally ignores the role of self-interested advocacy by far more powerful players in politics.

Our expectation is that there will be no changes to the existing legal framework around advocacy as part of this review.

### **Question 5: Transparency in the use of funds**

The ACNC has done a great deal to promote transparency across the sector. In particular, Anglicare Australia highlights the establishment of the Charities Register. The Register enables the public and the Regulator to access to important information about the purposes and activities of ‘registered charities’. Over 60,000 charities are now listed on this register, and there have already been hundreds of thousands of visits to it online.

The extent of information provided by this register is growing as charities complete their Annual Information Statements (AIS). For example, the register has highlighted that almost 10% of listed charities appear to no longer be operational. This is something that the Australian Taxation Office (ATO) and ASIC might not have been aware of. In general, ASIC and the ATO have a strong registration process that can make it difficult to register a charity, but once inside the system, the monitoring of their behaviour seems negligible. The ACNC has clearly strengthened regulation in this regard.

Anglicare Australia also notes the ACNC’s role in the production and analysis of data about the charitable sector. The Australian Charities Report, for example, draws on information provided by charities to the regulator and uses this data to generate insights on revenue, employment levels, service trends, and wider benefits to the community. It has already provided valuable information to those who research the sector and for the sector itself.

### **Questions 6 and 7: The role of the ACNC in addressing misconduct**

Under the previous regulatory regime, complaints were made directly to the ATO about the operations of charities. The ensuing process was opaque, and it was unclear what if any action was taken after complaints were received.

Since the ACNC was established, over 1,300 complaints have been lodged. Many of these have resulted in investigations and resolved through various forms of mediation and working with the charities themselves. In 2017 alone, the ACNC finalised 80 investigations, and 26 charities had their registration revoked. A further 115 charities were issued with penalty notices for failing to submit their AISs. This demonstrates a major improvement in complaints processes investigation and resolution under the ACNC.

Anglicare Australia notes this still represents a very high level of compliance, particularly when compared to other service-oriented sectors. In the banking industry for example, the Financial Ombudsman Service has managed 235,372 contacts in 2017, closed 39,481

disputes, and identified 133 breaches of codes of practice.<sup>6</sup> Similar rates of complaints and non-compliance can be found across the telecommunications and health insurance industries. This is likely to be a reflection of both the sector's commitment to good governance and the support and cooperation enjoyed by the ACNC.

## **Questions 8 and 9: Reducing the regulatory burden and dealing with misconduct**

The ACNC has done more in the past five years than COAG and most government agencies have done in 20 years to reduce the regulatory burden on charities. It has provided a 'one stop shop' for charities to register, report, and access Commonwealth Government taxation and other concessions. The ACNC and the ATO have also developed a seamless registration process across both agencies. There is a single application form that charities complete to both get their charity determination and tax concessions. This work is being extended through ongoing work with State Revenue Commissioners that will eventually enable charities to apply for State tax concessions as part of this single process. Once finalised, this will be a valuable tool for Anglicare's member agencies and many comparable charities.

In Anglicare Australia's view, the ACNC has largely succeeded in balancing the need to reduce the regulatory burden on charities against the need to provide oversight and deal with misconduct. As noted above, organisations were previously approved by either ASIC or the ATO, and were then largely unmonitored. This is in contrast to the ACNC's approach, which has been to support organisations in gaining registration, and more actively engage with them once they are registered. Compliance activity is critical, not only to end wrongdoing but to support struggling charities to become more viable. It is also interesting to note that over 99% of AISs are completed online, serving a critical oversight role while also providing considerable savings in time and energy.

### **Next steps**

Anglicare Australia hopes that this will review will enable the ACNC to further build on its the strong relationship with the sector. We continue to support the ACNC Act and its objects, which are based on supporting the sector, promoting confidence in the sector and its work, and reducing the regulatory burden on charities.

We would welcome to meet the opportunity to discuss the matters raised in this submission with the Review Panel.

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<sup>6</sup> Financial Ombudsman Service (2017) *Annual Review 2016-17*. Australian Government.