



Review of the Australian Charities and Not-for-profits Commission (ACNC) legislation
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Volunteering Australia Contacts

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About Volunteering Australia

Volunteering Australia is the national peak body for volunteering. We work to advance volunteering in the Australian community.

Volunteering Australia's vision is to promote strong, connected communities through volunteering. Our mission is to lead, strengthen, promote and celebrate volunteering in Australia.

We work collectively with the seven State and Territory volunteering peak bodies to deliver national, state/territory and local volunteering programs and initiatives in accordance with the Government's priorities.

As the primary link between the volunteering sector and federal government, Volunteering Australia provides feedback into key decision making. All feedback is informed by research, evidence and consultation with the volunteering sector.

Introduction

Volunteering Australia welcomes the opportunity to provide a submission to the Treasury on the *Review of the Australian Charities and Not-for-profits Commission (ACNC) legislation*.

This is a legislated five-year review that seeks to look at 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 provides an opportunity for Government to meet its statutory obligations, to evaluate the performance of the legislative framework, the regulation of the charity sector, and to identify opportunities for reforms and ensure that the ACNC Acts remain contemporary.

Australian charities are reliant on the efforts of volunteers. Volunteers encompass 2.97 million members of the charitable sector workforce, compared to one million paid staff members.ⁱ The Giving Australia 2016 report on non-profits and volunteering found that 62.3 per cent of organisations in the not-for-profit sector actively recruited volunteers.ⁱⁱ Volunteers also play a crucial role in the delivery of community and emergency services, and are more likely to contribute financially to charitable causes.ⁱⁱⁱ

In this submission, Volunteering Australia highlights the important role of the ACNC, and the significant role it plays in the charities and not-for-profit sector more broadly. The ACNC Acts have been comprehensively formed to maintain, protect and enhance public trust and confidence in the Australian not-for-profit and charities sector.

Volunteering Australia also writes to endorse the Community Council for Australia (CCA) and Justice Connect's submissions on the *Review of the Australian Charities and Not-for-profits Commission (ACNC) legislation*. Both submissions provide a comprehensive overview of the ACNC Acts and the consequences of any reforms, with their views strongly aligned to the views in this response.

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Volunteering Australia Response

Are the objects of the ACNC still contemporary?

The objects of the Act have been comprehensively formed to determine the strategic direction and operational priorities of the ACNC, as well as to provide guidance on how the charity sector is to interact with the Commission.

Section 15-5(1) of the ACNC Act sets out three objects:

- 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.

Volunteering Australia emphasises the current objects are still contemporary, and that there is no benefit in adding two new objects (as highlighted in the ACNC submission)^{iv} to the ACNC Act.

The ACNC have identified that they would like to:

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

It is the view of Volunteering Australia that it is not an appropriate role for the ACNC to regulate the activities and resources of charities, or to evaluate the effectiveness of them. Charities are already accountable to members, constituents and funding bodies.

The addition of objects would also be an onerous process that would increase to the regulatory burden that many charities already face. In our view, the current objects are appropriate for a charity regulator, and we recommend that there is no change to the objects of the Act.

Gaps in the current regulatory framework

Volunteering Australia echoes the views of Justice Connect around reforms on the exemptions for some religious charities regarding the concept of Basic Religious Charity. There is no reason why the ACNC legislation should exempt an organisation established for a certain charitable purpose from specific reporting obligations. For example, an organisation can be exempt from financial reporting obligations if they are defined as a religious charity, irrespective of the size. For many smaller organisations, meeting existing reporting requirements forms a high administrative burden, as they may be reliant on the goodwill of volunteers. By exempting a potentially, large organisation from reporting requirements because they classify as a religious organisation is an inequitable regulatory oversight. In our view, this exemption needs to be revised, as it currently forms a gap in the existing regulatory framework.

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

In principle, Volunteering Australia agrees that the regulatory frameworks should be extended beyond registered charities to cover other classes of not-for-profits. However, until the regulator achieves a period

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of stability, it would be prudent to focus on the strategic objectives of the regulator at present, and work on enhancing the priorities of the ACNC, before extending any operational intentions.

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

The activities or behaviours of charities and not-for-profits that may be deemed to be unscrupulous would have the greatest ability to erode public trust and confidence in the sector. The ACNC has raised (in its submission), amending the secrecy provisions in the Act. In particular, the ACNC has identified that the current provisions are “overly restrictive”^v and that they would like to allow publication of the ACNC’s reasons for a decision to the public.

Under current secrecy provisions, the ACNC is unable to provide the details about investigations without the approval of the charity being investigated or unless they are correcting the public record. Volunteering Australia raises concerns around potential changes to the secrecy provisions in the Act. While we support that the activities or behaviours of charities and not-for-profits should be made public if they are found to be substantial, the recommendation outlined by the ACNC poses serious privacy and confidentiality concerns.

Charities should be afforded the same right to privacy and confidentiality during ongoing investigations, if a complaint has been made. The release of complaints to the public during ongoing investigations poses serious reputational risks for organisations, and has the propensity to erode public trust and confidence in charities.

If any changes are made, serious consideration needs to be made in relation to due process, if an organisation has a complaint made against them, and that they are afforded the courtesy to not be identified until the investigation is complete, or the issue is resolved.

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

Trust in charities, such as Volunteer Involving Organisations, still supersedes all other institutions, and this is supported by the ACNC’s own data on Public Trust and Confidence. The report found that 86 per cent of Australians trusted charities, and 91 per cent currently support them by volunteering or donating.^{vi} Furthermore, charities are the fifth most trusted institution in Australia, after doctors, police, the High Court, and the Australian Taxation Office.^{vii} The report also found that more Australians are volunteering for a charity in 2017 than in previous years.^{viii}

Volunteering Australia emphasises that there is sufficient transparency to inform the ACNC and the public, on the way funds are being used for any given purpose. Charities already have strict financial reporting requirements through the ACNC, where they are required to submit an annual information statement and financial reports (for those with annual revenue of above \$250,000).^{ix} The information provided to the ACNC is already publicly available in audited financial statements, Annual Reports and via the ACNC website. The ACNC also has sufficient powers currently to intervene, investigate, and restore public trust and confidence.

While there is not a consistent outcomes framework to report against, it is incredibly difficult for anybody to measure the effectiveness of charities, and whether the funds are being used for the purpose given. Donors are more likely to donate to charities that are transparent with their vision, mission, purpose and

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funds. Likewise, people are more likely to volunteer with organisations that are transparent with their practices.

While there are discussions about increasing transparency around public funds, it is also essential to recognise that many charities and not-for-profits (particularly smaller to mid-sized organisations) are working under severe funding constraints. With many organisations reliant on Government funding, organisations have been asked to increase their operational output, with a critical lack of funding and resources. While Volunteer Involving Organisations and Volunteering Support Services are subject to the same reporting requirements as other charities and not-for-profits, there are significant administrative costs associated with managing volunteers. Volunteers are frequently considered “free” but training, equipment, management and compliance have cost implications.

The Australian Account Standards Board (AASB) have also implemented a new Accounting Standard that applies when a not-for-profit receives volunteer services and can reliably measure the fair value of those services. The Standard will be overseen by the AASB, work in conjunction with the ACNC legislation, and will form part of future audit requirements. The Standard will become mandatory at the end of the financial year 2020, and is just another reporting requirement that enables charities who engage volunteers to ensure that funds are being used for the purpose they are given.^x

Are the powers of the ACNC Commissioner the right powers to address the risk of misconduct by charities and not-for-profits, or those that work with them, so as to maintain the public’s trust and confidence? Is greater transparency required and would additional powers be appropriate?

The ACNC Commissioner plays an important leadership role in the charity sector. It is the view of Volunteering Australia that the ACNC Commissioner has sufficient powers to address the risk of misconduct by charities and not-for-profits, and does not need expanded powers.

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

The ACNC legislation has been remarkably successfully in reducing duplicative reporting burdens for charities. Volunteering Australia highlights that administrative reporting and regulatory burdens have the propensity to force many charities to divert resources away from frontline services, advocacy, and the training and management of their volunteers.

The establishment of the ACNC legislation has been an important achievement, with a key success being the reduction of red tape and regulatory burdens for the charity and not-for-profit sector. This has been particularly important for many charities that engage a large number of volunteers, or that may be entirely volunteer-run.

The ACNC submission (recommendation 16)^{xi} has recommended that charities should maintain records with multiple regulators, including the Australian Securities and Investment Commission. The purpose of the ACNC is to have a sole entity to regulate the charity sector, reduce red tape, and streamline reporting requirements. It has also been a landmark step toward improving data collection, and assisting with research, with reporting being in one place. Volunteering Australia echoes concerns laid out by the Community Council for Australia (CCA), that this would represent additional work and the duplication of reporting, with very little positive gains.

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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?

The ACNC legislation and the efforts of the ACNC over the first five years have been positive in supporting charities in their vision, mission and purpose. It has also been a critical step toward dealing with misconduct and regulating the charity sector.

However, proposals to give the ACNC additional powers to restrict the advocacy activities of not-for-profits would be inconsistent with its role as the charity regulator. Advocacy is fundamental to the role of many charities and not-for-profits, providing a voice for the voiceless, tackling injustice, and social, economic and environmental inequalities. Charities also play a critical role in keeping Governments to account, by advocating for their constituents.

For Volunteering Australia, and many other charities, advocacy is a core part of our mandate as a national peak body. We represent and influence Australia's (almost) 6 million active formal and informal volunteers, and the organisations to which they offer their time. Volunteering Australia cannot carry out its work without regular consultation, collaboration and advocacy activities on behalf of the sector.

Under the ACNC Acts, charities are already unable to partake in partisan political activities. Additional powers to restrict charities from engaging in issues-based advocacy would significantly inhibit the roles of charities to advocate effectively for the community.

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Recommendations

- No changes to the objects of the Act.
- Exemptions in reporting requirements for religious charities needs to be revised, with a view to having a mandatory reporting requirement for all charities (irrespective of charitable purpose).
- The regulatory framework of the ACNC should not be extended to other classes of not-for-profits until the ACNC has achieved a period of stability.
- Any changes to the secrecy provisions in the Act, must consider the serious privacy and confidentiality risks for charities and not-for-profits.
- There is no need to expand the powers of the Commissioner.
- Volunteering Australia recommends that there is a maintenance of current reporting requirements, and that charities should not maintain multiple records with multiple regulators.
- It would be incongruous to provide the ACNC with additional powers to restrict charities from engaging in issues-based advocacy.

Conclusion

Volunteering Australia thanks the Treasury for the opportunity to provide a submission on the *Review of the Australian Charities and Not-for-profits Commission (ACNC) legislation*.

The establishment of the ACNC has been fundamental in reducing red tape, and the immense administrative and regulatory burdens that exist for many Volunteer Involving Organisations and Volunteering Support Services. The ACNC also plays a significant role in enhancing wider societies trust and confidence in the charity and not-for-profit sector.

Volunteering Australia would welcome further opportunity to consult or expand on any of our recommendations raised in this submission.

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Authorisation

This submission has been authorised by the Chief Executive Officer of Volunteering Australia.



Ms Adrienne Picone

Chief Executive Officer

Endorsements

This submission has been endorsed by the seven State and Territory volunteering peak bodies.

Glossary

- VA** Volunteering Australia is the national peak body for volunteering in Australia. It works collectively with the peaks to deliver national, state and local volunteering programs and initiatives.
- VIO** Volunteer Involving Organisations are organisations that engage volunteers as part of their workforce.
- VSS** Volunteering Support Services (also known as Volunteer Resource Centres or Volunteer Support Organisations) provide place-based volunteer support services to volunteers and VIOs in their locality.

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ⁱ Ibid

ⁱⁱ Giving Australia (2016), Giving and volunteering: the non-profit perspective, https://www.communitybusinesspartnership.gov.au/wp-content/uploads/2017/12/nonprofit_report_final_4dec17.pdf.

ⁱⁱⁱ ACNC (2017), Public trust and confidence in Australian charities, Kantar Public, Market Research Report, October 2017.

^{iv} Australian Charities and Not-for-profits Commission (2018), Review of Australian Charities and Not-for-profits Commission legislation, ACNC review submission, https://www.acnc.gov.au/ACNC/Comms/LN/LN_20180119.aspx.

^v Australian Charities and Not-for-profits Commission (2018), Review of Australian Charities and Not-for-profits Commission legislation, ACNC review submission, https://www.acnc.gov.au/ACNC/Comms/LN/LN_20180119.aspx, p36.

^{vi} Australian Charities and Not-for-profits Commission (2017), Australians trust charities: new ACNC report, http://www.acnc.gov.au/ACNC/Pblctns/Media_centre/Med_Rel/ACNC/Comms/Med_R/MR_229.aspx.

^{vii} Australian Charities and Not-for-profits Commission (2017), Australians trust charities: new ACNC report, http://www.acnc.gov.au/ACNC/Pblctns/Media_centre/Med_Rel/ACNC/Comms/Med_R/MR_229.aspx.

^{viii} Australian Charities and Not-for-profits Commission (2017), Australians trust charities: new ACNC report, http://www.acnc.gov.au/ACNC/Pblctns/Media_centre/Med_Rel/ACNC/Comms/Med_R/MR_229.aspx.

^{ix} Australian Charities and Not-for-profits Commission (2018), Review of Australian Charities and Not-for-profits Commission legislation, ACNC review submission, https://www.acnc.gov.au/ACNC/Comms/LN/LN_20180119.aspx.

^x Australian Accounting Standards Board (2017), Income of Not-for-Profit Entities, www.aasb.gov.au.

^{xi} Australian Charities and Not-for-profits Commission (2018), Review of Australian Charities and Not-for-profits Commission legislation, ACNC review submission, https://www.acnc.gov.au/ACNC/Comms/LN/LN_20180119.aspx.