



28 February 2018

Mr Murray Crowe  
Individual and Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

*Transmitted via email*

Dear Murray and Review team,

**Re: Review of the ACNC legislation**

The purpose of this submission is to provide Community Employers WA's (CEWA) brief comments on the review of the ACNC Act 2012, as outlined in the Terms of Reference dated 20 December 2017.

CEWA is a registered Employer Organisation with the Industrial Relations Commission of Western Australia, and represents non-government, not-for-profit employers in the community services sector of Western Australia. CEWA has over 140 member organisations comprising many of the largest and smaller NFP Community Services Sector employers in WA, and continues to grow in numbers and influence. Our members employ in excess of 25,000 staff and are supported by over 10,000 volunteers. A list of our members is attached in Appendix 1.

**Questions 1 and 2:**

**Continued relevance of current objects / access effectiveness of the regulatory framework.**

When the ACNC was established in 2012, the government promised

- The ACNC would be a "light touch regulator";
- There would be a reduction and streamlining of the administrative burden and onerous government compliance on the NFP sector, thus enabling the sector to redirect its resources to its front line services and core program work – "report once use often" – all words used by the Prime Minister at the time;
- There would be significant reform of the government's own bureaucratic practices and processes, including the onerous compliance and reporting requirements of government agencies on the sector; and

- There would be harmonisation of relevant legislation impacting upon the NFP sector across the various jurisdictions.

When the ACNC's objects are assessed against what was initially promised we note:

- Public trust and confidence in the Australian NFP sector remains exceptionally high and arguably was so prior to the establishment of the ACNC. In 2017, only 26 organisations out of 55,000 lost their charitable status – 0.05%
- The ACNC under previous leadership was reasonably light touch, providing NFP's with ongoing opportunities to comply with the lodgement of information and working with the sector to inform, educate and encourage compliance. We are waiting to see if this approach is maintained with the new leadership, and we note the concerns expressed by some across the sector;
- Our members advise us that from their perspective, there has been minimal reduction in the administrative burden and compliance on the NFP sector – if anything it has increased with more reporting requirements. The report once, use often remains elusive through tender processes and when reporting to State bodies. We do note however that some of this burden and compliance relates to tenders and reporting to funding bodies;
- Reform of the government's bureaucratic processes at a Federal level to assist the work of the sector has been minimal. By way of example, the 2014 broad-banding of DSS funding resulted in major uncertainty for many providers, and was of no meaningful benefit to the people supported. Additionally, the ongoing last minute annual rollover of homelessness funding has created much instability for organisations and workers. Inconsistencies across the States continue, with limited progress in the harmonisation of reporting or legislation. And at a WA State level, there are ongoing restructures and changes which are creating significant uncertainty for the sector;
- The move to NDIS is resulting in major issues in terms of the reduction in funding and the consequential impact on the sustainability of services;
- There has been limited progress with the harmonisation of reporting – for example in WA, reporting is still required to both the Department of Commerce and the ACNC on the same matters; and
- Over the past 5 years, the NFP sector has arguably become less robust, vibrant and innovative. Many organisations are finding it increasingly difficult to maintain service levels, to meet demand for services and to introduce new practices and models. It is more about survival, about trying to win/retain funding and constantly looking at where costs can be cut. In WA, the Equal Remuneration Order has placed significant financial pressure on many organisations, particularly those which are State funded, given the WA government is not currently funding it (as distinct from other States who are).

In summary, the establishment of the national register has provided a simple single source of data on charities and an opportunity to deregister a small number of charities who are not meeting appropriate standards. We also believe there is a lot more work to be done in making meaningful and lasting progress to achieving the initial promises of the government and second and third key objects.

**We recommend that KPIs be set for the ACNC to demonstrate annually to the sector of how it has progressed the original promises made, and the objects, particularly objects 2 and 3. Reporting on this should be clear, concise and widely shared.**

### **Question 3:**

#### **Are the powers and functions of the ACNC Commissioner sufficient to achieve the objects?**

As already noted, CEWA members have provided feedback to us that they believe there has been limited progress in fully achieving the ACNC's objects. We do note and accept that it does take time to bring all the States and Commonwealth together to reach a consensus on the reform of legislation and reporting, however we expected that more progress would have been made over the past 5 years. By way of example, we have met on reasonably regular occasions with the ACNC since inception, and in May 2017, we followed up with them again to try and drill down on progress made with red tape reduction. Their response below from May 2017 suggested they were making progress, yet in a request for an update in January 2018, it was clear that finalising agreements remains elusive.

#### ***"MOU***

*On 10 May 2017, ACNC Commissioner Susan Pascoe and acting WA Commissioner for Consumer Protection David Hillyard signed an MOU which will enable data sharing to occur in future. Data sharing will enable WA Consumer Protection to exempt fundraisers from annual reporting, if they are registered with the ACNC and have submitted their AIS. The WA responsible Minister is currently considering new fundraising license conditions to create this reporting exemption but until this is enacted the MOU is not activated.*

#### ***Incorporated Associations in WA***

*ACNC and WA Consumer Protection have also been in discussion about other red tape reduction measures, such as exempting incorporated associations from state reporting if they are registered with the ACNC. There is good will and commitment to reduce red tape in WA, but there are logistical and practical matters to work through before this exemption could be enacted. The main issues have been around information mismatches between the current WA returns and the ACNC AIS, as well as the practical IT and resourcing issues in WA. All of this is overlaid by the significant machinery of government changes that are taking place across the WA Government. We are hopeful this arrangement will be in place for the 2018-19 reporting period at the latest, but don't yet have a written commitment from WA.*

#### ***Other red tape work in WA***

*The ACNC is also in discussion with the WA Office of State Revenue about ways to reduce red tape in the tax concession applications process. This work is still in its early phases. Fundraising regulation in WA may also be reviewed more broadly in the coming year, in relation to licensing processes.*

*However, with the change in government and proposed machinery of government changes, there is little certainty at this stage.”*

We are not aware of specific areas where more power and functions are required to achieve the objects, and would be very cautious about increasing power, functions or funding until such time as there is clearer evidence of a need and the benefits in doing so.

We have read that the ACNC has recommended two new objects and are of the view that until there is more substantial progress on achieving the current objects, it would be very premature to seek to expand their workload and that of service providers.

Furthermore, we are very concerned with the additional reach and potential consequences of the ACNC’s proposed two additional objects around the *effective use of resources* and *enhancing accountability of NFPs*.

The assessment of “the *effective use of resources*” is very open to interpretation, and beyond the remit of a regulator. It is not the role of the ACNC to seek to influence or guide the management of organisations, nor how they seek to allocate and use resources. Such judgements run the real risk of the marketization of services, increasing expenditure on branding and marketing, and potentially the creation of league tables. Furthermore, the role of *enhancing accountability for NFPs* to stakeholders is the responsibility of the Board of an organisation. If the ACNC looks to increase accountability, the risk is that they will indirectly seek to take on some of the governance role and to overtly impact the independence of NFPs and their direction. If this level of government control were to be exercised over any other non-government, private body not registered with the ACNC, it would likely be considered as totally unacceptable.

The current objects of the ACNC remain relevant, and until they are achieved, it would be premature to consider extending them further. There are also grave concerns about over-reach should the ACNC’s proposed additional objectives be adopted. It is not the role of a regulator to shape a sector, to promote mergers, nor to increase outcomes reporting. To do so will create more unnecessary reporting, for very little benefit. Again, we highlight the high degree of trust and confidence in the sector from the community in general, and the negligible level of de-registrations. The NFP sector is a long way from needing major regulatory controls or interventions.

We continually hear of the importance of ensuring that taxpayers and donors funding is directed to the causes and the people supported. The more reporting, compliance and checks and balances which are set, the greater the cost to NFP organisations. We should be looking to simplify, not to add to reporting. This sector already has more reporting requirements than most other businesses, and this should not be increased further.

**For the reasons outlined above, we recommend that there be no new objects for the ACNC until there is clearer progress and evidence of achievement of the current objects.**

#### **Question 4:**

**Are amendments required to the ACNC act to enable achievement of the objects and to respond to emerging issues?**

We believe that the ACNC should remain light touch regulator and should balance this with also being a supporter and promoter of the good work of the sector. There is little evidence of systemic failings in the NFP sector, so the work of the ACNC should not generally be heavy handed or overt.

At the ACNC roundtable discussion we attended in Perth last week, a number of questions were posed by the Chair. Issues flagged included:

1. **Are the size categories still appropriate?** We believe this should be revisited by the Government. To view a \$1M revenue charity as large, goes against what is generally accepted in the community sector. Whilst the original levels might have been based on the number of organisations in each category, this isn't necessarily the optimal way to segment the sector. An example was given of an organisation with six staff, some of whom are part time. A key role for them is the re-distribution of government monies, and yet they are considered a large organisation with the consequent compliance and reporting requirements.

We believe there needs to be a realignment of what is commonly accepted in the sector as being small, medium and large organisations, and the structure and resources they generally have to undertake appropriate compliance and reporting.

**Our recommendation is that the categories should be amended to revenue levels of:**

- \* **Small less than \$5M**
- \* **Medium \$5-15M**
- \* **Large over \$15M**

2. **Should the ACNC be permitted to report on investigations they are working on before finalisation of an outcome?** The concern with the ACNC making any statements during an investigation is the potential impact on the reputation of an NFP. Whilst there may be others (such as social media or the press) expressing concerns, it takes it to a new level if the ACNC as the Regulator starts trying to manage media and public information about investigations before they are finalised.

There should be a presumption of innocence and confidentiality until a matter is concluded. We noted earlier, that last year there were only 26 NFPs deregistered, and yet it is highly likely there were considerably more investigations. If all were reported on, and some subsequently found to be remediable or unsubstantiated, the unintended consequences could be irreparable damage to an organisation's reputation.

**We recommend that there be no changes to the ACNC's authority to report on investigations.**

3. **Harmonisation of legislation and reporting.** Generally we are supportive of harmonisation and the report once use often concept. The Charity Passport was/is intended to help address that and simplification and reduction of reporting would be welcomed by NFPs. We do note however that this would be on the basis that there is no increased reporting requirement for any NFPs. For example, we wouldn't want to see a situation where in order to implement a national system, there is increased reporting in Western Australia to bring it in to line with other states. The principal of not being worse off should inform all changes.

**We are supportive of harmonisation across the States on the basis that there is no increase in reporting or compliance obligations.**

We thank you for the opportunity to provide input to the review process and look forward to seeing your draft recommendations.

Yours sincerely,

John Bouffler  
Executive Director

# APPENDIX 1

## CEWA MEMBERSHIP AS AT 1 JANUARY 2018

Aboriginal Legal Services of WA Inc  
Accessibility WA  
Accordwest  
Activ Foundation Inc  
Advocacy South West Inc  
Advocare  
Albany Youth Support Association  
Alzheimer's Australia WA  
Anglicare WA Inc  
Armadale Community Family Centre  
Association for Services to Torture & Trauma Survivors (ASeTTS)  
Asthma Foundation WA Inc  
Australian Red Cross WA  
Avivo  
Baptistcare  
Beehive Industries of WA  
Black Swan Health Ltd  
Bladder and Bowel Health WA  
Bluesky Community Group  
Brightwater Care Group  
Bunbury Community Legal Centre  
Burdekin – Youth in Action  
Cahoots Org  
Calvary Youth Services Mandurah Inc  
Cancer Council WA  
Centacare Employment and Training  
Centacare Family Services  
Centrecare Inc  
Child Inclusive Learning and Development Australia Inc (CHILD Australia)  
Chorus  
Coeliac Western Australia  
Communicare  
Community Legal Centres Association (WA)  
Community Vision Inc  
ConnectGroups  
Consumer Credit Legal Service WA Inc  
Consumers of Mental Health WA  
Cyrenian House  
Derbarl Yerrigan Health Services Inc  
Desert Blue Connect  
Diversity South  
Employment Law Centre of WA  
Enable WA  
Escare Inc  
Ethnic Communities Council of WA  
Ethnic Disability Advocacy Centre

Family Inclusion Network (WA)  
Family Support WA Inc  
Financial Counsellors Association of WA Inc  
Foodbank WA  
55 Central  
Fremantle Multicultural Centre Inc  
Fremantle Women's Health Centre  
Goldfields Individual and Family support Association  
Good Samaritan Industries  
Gosnells Women's Health Service  
Headwest  
Health Consumers Council (WA) Inc  
Helping Minds  
Holyoake The Australian Institute For Alcohol & Drug Addiction Resolutions  
Hope Community Services  
Identity WA  
Indigo Junction  
Interchange WA  
Ishar Multicultural Women's Health Centre Inc  
Key Assets WA Inc  
Koolkuna (The Eastern Region Domestic Violence Services Network Inc)  
LAMP Inc  
Lifeline WA  
Linkwest  
Margaret River Community Resource Centre  
Meath Care Inc  
Melville Cares Inc  
MercyCare  
Metropolitan Migrant Resource Centre  
MIFWA  
Mission Australia  
Mosaic Community Care Inc  
Multicultural Services Centre of Western Australia Inc  
National Disability Services WA  
Ngala Family Resource Centre  
Nulsen  
Outcare  
Palmerston Association Inc  
Parkerville Children Youth Care Inc  
Pathways Southwest  
Pat Thomas Memorial Community House Inc.  
Patricia Giles Centre  
Peel Volunteer Resource Centres  
People with Disabilities (WA)  
Perth Inner City Youth Service  
Pivot Support Services  
Relationships Australia (Western Australia) Inc  
Richmond Wellbeing  
Rise Network  
Rocky Bay Inc  
Ruah Community Services

SECCA  
Sexual Health Quarters  
Shelter WA  
Silver Chain  
SMP Personnel  
South Coastal Women's Health Services  
South West Refuge Inc  
Southcare Inc  
Southern Cross Care (WA) Inc  
Southside Care  
Starick Support Services  
St Bartholomew's House  
St John of God Outreach Services  
St Patrick's Community Support Centre  
St Vincent de Paul Society  
Sudbury Community House Association  
Swan City Youth Service  
Technology Assisting Disability WA  
Tenancy WA  
The Gowrie (WA) Inc  
The Salvation Army  
The Spiers Centre Inc  
The WA Aids Council  
Therapy Focus Inc  
360 Health & Community  
Uniting Aid  
UnitingCare West  
Uniting Church in the City  
Visability  
Volunteering WA  
WA Blue Sky Inc  
WA No Interest Loans Inc.  
WANADA  
Wanslea Family Services Inc  
Westcare Inc  
Western Australian Association for Mental Health  
Western Australian Council of Social Service  
Women's Council for DFV Services (WA)  
Women's Health and Family Services  
Yaandina Family Centre  
YACWA  
YMCA Perth  
Youth Focus  
Youth Futures WA