

2nd March 2018

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

Re : The Wilderness Society (Ltd) Submission to the Review of Australian Charities and Not for Profits Commission (ACNC) legislation.

Dear Mr Crowe

We thank you for the opportunity to provide this submission to inform the required 5 year review of the operation of the ACNC legislation.

About the Wilderness Society

The Wilderness Society Ltd is an Australian, community-based, not-for-profit, non-governmental environmental advocacy organisation with charitable status.

We were formed in 1976 by a small group of concerned Australians who came together to protect the wild Franklin River in south west Tasmania from ill conceived proposals generated by the political equivalents of Senator Canavan in the then Tasmanian Government to dam the wild Franklin River.

This campaign was ultimately successful and the Franklin River is now securely protected within the Tasmanian Wilderness World Heritage Area.

We have a membership of 34,000 Australians. Our members have voting rights and set the direction of the organisation through election to our governing board (the Board of Directors) who oversee the operation of the national organisation.

The Wilderness Society is a federation including some separately incorporated state based organisations working together for the protection of nature and wilderness. These incorporated organisations are run by volunteer Management Committees elected by members from that state.

Our shared organisational purpose is to protect, promote and restore wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth.

Our organisational vision is an Australian society that protects and respects the natural world to create a vibrant, healthy continent with positive connections between land, water, people and wildlife.

The Wilderness Society has adopted a series of values that guide our operations which include:

- A passion for our purpose,
- The power of people to make change,
- Organisational independence and integrity,
- Compassion, and
- A commitment to success in protecting the environment

The Wilderness Society Ltd (TWS Ltd) is a public company limited by guarantee, a registered charity, an Income Tax Exempt Charity and a Deductible Gift Recipient. . Donations to its public fund, the Wilderness Fund, are tax deductible. The Wilderness Society Ltd has been listed on the Register of Environment Organisations since 11th June 1993.

Ninety six percent of our funding is provided through individual donors who pay annual membership fees and also contribute regular donations to support our work, and supporters who donate to specific appeals. Other funds come from bequests and online and retail sales of merchandise.

Support for the ACNC

The Wilderness Society supported the establishment of the ACNC via the ACNC Acts as a practical and important step in achieving a nationwide and consistent approach to supporting and regulating the charitable and not-for-profit sector.

Since the establishment of the ACNC, significant trust and a culture of open communication has been developed between the sector and the regulator. The ACNC has provided invaluable guidance to The Wilderness Society in the development of guidelines and has provided analysis, policy and guidance more broadly across the sector.

The Wilderness Society continues to support the ACNC, the existing framework in which the regulator operates and its scope of operation with some further modifications to ensure all three of the ACNC's existing objects can be addressed and that it is adequately resourced to support charities and not for profits in achieving these objects.

Overall, we support the constructive feedback and recommendations contained in the submission to this review provided by the ACNC Advisory Board, but wish to provide some further comment in relation to certain issues relevant to the review.

The ACNC's objects

The objects of the ACNC are:

- (a) to maintain, protect and enhance public trust and confidence in the Australian notforprofit sector; and
- (b) to support and sustain a robust, vibrant, independent and innovative Australian notforprofit sector; and
- (c) to promote the reduction of unnecessary regulatory obligations on the Australian notforprofit sector.

Recommendation 2 of the ACNC's submission to the Review Panel suggests the objects of the ACNC be expanded to:

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

The Wilderness Society does not support the expansion of the ACNC's objects in this way. Whilst undoubtedly well intentioned, we believe that the introduction of the two additional objects would involve the over extension of regulatory reach into the actual strategies and day to day operation of charities. Australian charities and not-for-profits pursue a diverse array of purposes and it is difficult to see how an objective standard of effectiveness could be developed and applied to them. The Wilderness Society strongly believes it is rightfully the domain of Boards and Members to determine how their organisations should best apply their resources to achieve their purposes.

The Wilderness Society instead recommends a renewed focus upon achieving objects b) and c) of the Act to "support and sustain a robust, vibrant, independent and innovative sector" and "to reduce

unnecessary regulatory obligations for the sector". If extra capacity is available to the regulator, it is argued that this should be used to better achieving these objects rather than further expanding the reach of the Act.

Supporting a vibrant sector

To date, the focus of the ACNC has been to regulate and support the charity sector but has not managed to bring the wider not for profit sector within the regulatory framework. We believe that this should be a priority for the next period of evolution of the ACNC together with the further strengthening of the good governance and successful operation of the existing charity sector.

The success and long term effectiveness of the ACNC laws and the role of the regulator depend on the creation of a national system of registration and shared practice across the entire charity and not for profit sector. To achieve this unity of purpose and approach, it is important that efforts are made to bring all charities, including basic religious charities and not for profit organisations, within the remit of the ACNC.

Reducing regulatory burden

The regulator has achieved much and still has some way to go to reduce unnecessary regulatory obligations upon the sector.

The red tape reduction has been an important initiative but many in the sector, including The Wilderness Society, continue to contend with several layers of regulation and duplication across jurisdictions especially in respect of state fundraising laws. We believe that the introduction of a uniform system of regulation in respect of fundraising would undoubtedly support the sector but would also increase the public's trust and confidence in charities and their ability to apply a greater proportion of their resources to the achievement of their purposes.

Further action to reduce the regulatory overlap and duplication is strongly supported as actions consistent with the existing objects of the Acts. In this regard, The Wilderness Society endorses Recommendation 6 of Justice Connect's submission to the Review Panel.

The Register

Recommendation 5 of the ACNC's submission to the Review Panel suggests that the Commissioner be given discretion to extract information from a charity's Annual Information Statement and display it on the face of the Register, and display information on the Register in a text or graphical format.

The Wilderness Society agrees that charities should be transparent but does not support this recommendation, which could see the Register lose its uniformity and create the potential for users to make misleading comparisons between charities.

Responsible persons

The Wilderness Society supports Recommendation 9(a) of the ACNC's submission to the Review Panel which proposes to disqualify those responsible persons who have been convicted of terrorism, terrorism financing or money laundering offences.

However, the Wilderness Society does not support Recommendation 9(b) which proposes disqualification for "relevant offences", nor does it see the necessity for the Commissioner to have increased powers to collect information about the involvement of a responsible person in "unlawful activity" as per Recommendation 8(b).

The ACNC's Governance Standard 4 already requires charities to ensure that their responsible persons are not disqualified from acting in their roles, including because they have been convicted of certain offences. The Governance Standard is clear about which kinds of offences disqualify a person, but on the contrary the phrase "relevant offence" is ambiguous and open to interpretation, as is "involvement in unlawful activity". These ambiguities, in addition to a lack of guidance as to how the discretions may be exercised, create uncertainty for charities about how these powers might be exercised in practice and therefore what precautions they need to take to be compliant with the law.

Supporting good governance

In the opinion of The Wilderness Society, the biggest threat to the reputation of the charity and not for profit sector is poor governance. A focus by the regulator to support the building of strong governance frameworks and practice across the entire charity and not for profit sector is required. We support the allocation by the Australian Government of additional resources to support good governance across the sector through training and support.

We thank you for the opportunity to provide comment upon this important matter.

Yours Sincerely



Lyndon Schneiders
National Director