
World Vision Australia Response to Review of Australian Charities and Not-for-profits Commission legislation

28 February 2018

This paper sets out the submission of World Vision Australia (**WVA**) in response to the issues raised in Terms of Reference dated 20 December 2017 with respect to the Review of Australian Charities and Not-for-profits Commission legislation by Treasury (**ACNC Review**).

This submission primarily addresses matters that are important and relevant to WVA as well as noting other matters which we consider would be of concern to the charities and not-for-profit sector generally.

We have set out below:

- Background information in respect of WVA at heading 1.
- Our recommendations at heading 2.
- The basis for our recommendations, including our responses to relevant questions raised in the Terms of Reference, at heading 3.

I. Background

World Vision Australia

WVA is a Christian relief, development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice. It is part of the World Vision International Partnership, which operates in more than 90 countries. WVA is Australia's largest overseas aid and development organisation, operating primarily to assist overseas communities living in poverty. It also carries out development work in Australia with Indigenous communities, working collaboratively with both government and non-government organisations in Australia.

What is WVA's charity and tax status?

WVA is registered as a charity under the *Australian Charities and Not-for-profit Commission Act 2012* (Cth) (**ACNC Act**), and is registered with the entity sub-type of public benevolent institution (**PBI**).

As a PBI, WVA is endorsed as a whole as a deductible gift recipient (**DGR**). In addition to this, WVA is endorsed as a DGR for the operation of an overseas aid fund and a necessitous circumstances fund. We have previously been endorsed as a DGR for the operation of a developed country disaster relief fund for the Japan Earthquake and Tsunami in 2011.

As Australia's largest overseas aid and development charity (with a growing domestic program), our registration with the ACNC enables us to more effectively perform vital functions both overseas and in Australia, to have greater impact and to more effectively achieve our mission. Our access to the relevant tax concessions, including our ability to provide tax deductible receipts, is crucial to encouraging and sustaining public donations to support our work.

2. **WVA reform recommendations**

Our recommendations are as follows:

- 1) Acknowledging the good work of the ACNC to-date, retain the ACNC's objects in their current form and continue its regulatory approach.
- 2) Develop the external conduct standards in the ACNC regulations, in a manner that is consistent with good practice already within the sector (ACFID, OAGDS).
- 3) Empower the ACNC to continue its efforts in red-tape reduction, particularly in relation to fundraising legislation.
- 4) Extend the remit of the ACNC.

3. **Basis for WVA reform recommendations**

In the below section, we have set out a detailed explanation of the basis for our recommendations. In doing so, we address certain questions posed in the Terms of Reference dated 20 December 2017, focusing on the questions relevant to our work, as well as broader reform questions that are important for the not-for-profit sector.

Recommendation 1: Acknowledging the good work of the ACNC to-date, embed its current regulatory approach and retain the ACNC's current objects

The ACNC has been a good and effective regulator over the past five years, despite considerable uncertainty regarding its continued existence for much of that time. The decision to not abolish the ACNC, announced by the government in March 2016, was widely welcomed by the sector and this reaction is a testament the positive contribution that ACNC has made in its first few years and the fact that the ACNC legislation has generally been administered effectively.

In particular, the ACNC has promoted greater transparency and accountability across the sector, and considerably deepened government and public understanding and appreciation of the size and contribution of the sector. The ACNC has also provided invaluable resources and education to improve governance amongst charities, with the ACNC governance standards now being accepted as standard practice.

In light of this success, we support the recommendation of the ACNC Advisory Board that the ACNC Act 'aint broke' and echo its concerns that any reforms to the legislation need to be balanced against the uncertainty of changing a legislative regime that is effective and still in its infancy.

However, this effectiveness in administering the ACNC legislation is largely attributed to the regulatory approach adopted by the ACNC. This approach is informed by the ACNC's five key values of Fairness, Accountability and Transparency, Independence, Integrity and Respect, and the ACNC's regulatory principles of necessity, reflecting risk and proportionate regulation.¹ In our opinion, this approach has struck an ideal balance in providing education and support for the diverse range of organisations it regulates.

This balanced regulatory approach needs to continue and is fundamental to:

¹ See: ACNC Regulatory Approach Statement published on the ACNC website as at November 2015: https://www.acnc.gov.au/ACNC/About_ACNC/Regulatory_app/ACNC/Regulatory/Reg_approach.aspx?hkey=8251156f-f3c9-41bb-800a-304c2485be09.

- fostering transparency of the sector for the Australian public (in line with the first object of the ACNC to ‘*maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector*’); and
- the continuous improvement of the sector (in line with the second object of the ACNC to ‘*support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector*’).

For this reason, we recommend that the ACNC’s regulatory approach be acknowledged and recognised as effective and successful, and an approach that should be continued.

Further, in relation to the current objects of the ACNC, as set out in section 15-5 of the ACNC Act, we recommend that these be retained in their current form. These objects are appropriate and apt for the sector in Australia, and no further change is needed.

In this regard, we do not support the recommendation in the ACNC’s own Submission on the ACNC Review to consider the addition of two more objects in section 15-5 of the ACNC Act of promoting ‘the effective use of the resources’ of charities and enhancing the ‘accountability’ of charities to donors, beneficiaries and the public.

These two additional objects are not necessary, given the breadth of the existing objects. Moreover, extending the objects of the ACNC to require the regulator to be concerned with the effectiveness of charities and the use of their resources risks regulatory overreach. In our opinion, the role of the regulator is to facilitate the good work of the sector, to build trust and confidence, and to regulate against fraud and mismanagement; any steps to assess and interfere in the operations of a charity and to be the “judge” of the use of its resources is a step too far. Such an object is not necessary nor appropriate for the Australian context, in which an increasingly well informed public will themselves decide which charity they wish to support through donations of funds, time and effort, and other resources.

Note: This recommendation addresses the following questions in the Terms of Reference: *Question 1. Are the objects of the ACNC Act still contemporary? Question 9. 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?*

Recommendation 2: External Conduct Standards

The ACNC’s external conduct standards are yet to be enacted in the ACNC regulations (notwithstanding that they were due to commence on 1 July 2013).² We understand that the intended purpose of the external conduct standards (as described in the explanatory memorandum to the ACNC Act) are to be principle-based minimum standards which:

- regulate funds sent by registered entities outside Australia and activities engaged in by such entities outside Australia; and
- empower the ACNC Commissioner to take enforcement action in relation to any registered entity’s operations offshore where there is a contravention of these standards (and such enforcement action could include giving warnings and directions, seeking enforceable undertakings, seeking injunctions, or suspending or removing responsible persons).

It is our view that the opportunity now is to ensure that the external conduct standards do form a sound integrity mechanism for applying a consistent standard for all charities that operate overseas. We would encourage those promulgating these standards to have regard to the principles in the Code of Conduct of the Australian Council for International Aid and Development (**ACFID**) and under the Department of Foreign Affairs and Trade’s Overseas Aid Gift Deduction Scheme (**OAGDS**) guidelines which together reflect the principles of good aid and development which have emerge over the past 5-6 decades. Currently, those registered charities that receive grants from the Commonwealth government or that operate DGR endorsed overseas aid funds are subject to the ACFID Code of Conduct and/or OAGDS Guidelines. These are contemporary ‘instruments’ which incorporate internationally recognised best practice around how

² According to the explanatory memorandum to the ACNC Bill 2011 at paragraph 1.59.

humanitarian aid and development activities should be carried out and also legal obligations around the current areas of high risks such as child protection, counter terrorism financing, money laundering and fraud generally.

Our view is that a robust set of standards is necessary to undergird the overseas activities of the increasing numbers of PBLs that operate overseas and that do not currently need to comply with the same sort of principles as set by the ACFID Code of Conduct or the OAGDS Guidelines. The standards to be promulgated should however be balanced: we recommend that they should be consistent with existing requirements about 'external conduct' as found in the ACFID Code of Conduct and the OAGDS Guidelines and also be proportionate for the range of registered charities undertaking overseas activities.

Note: This recommendation addresses Question 2 in the Terms of Reference: *Are there gaps in the current regulatory framework that prevent the objects of the Act being met?*

Recommendation 3: Red-tape reduction

In its first five years, the ACNC has made significant progress with red-tape reduction. The key areas of opportunity where we believe further stream-lining would assist the sector include the following:

- Regulation of fundraising, currently in the hands of State and Territory regulators that administer seven pieces of legislation which are inconsistent (as to what is regulated and the extent of regulation and reporting requirements) and outdated in many respects. We have made many submissions on this point to various government enquiries and review panels over the years.
- Harmonisation of the myriad definitions or understandings of what is a "charity" in Commonwealth, State and Territory legislation, notwithstanding the enactment of the *Charities Act 2012*. This leads to differing treatments around indirect taxes (stamp duty, for example).

The above will involve reform of laws other than ACNC legislation but in our view, the ACNC is best placed to champion the need for consistency and modernisation of existing laws.

Further, we also support recommendation 20 in the ACNC's own Submission on the ACNC Review that the Commonwealth government promote the use of the ACNC's charity passport by Commonwealth, State and Territory agencies so as to reduce the regulatory burden on charities. This would significantly contribute to the reduction in red-tape that must be navigated by charities interacting with government.

We also urge greater consultation and cooperation between Commonwealth government departments, the ACNC and charities where law reform is proposed which will impact on charities. The reaction of charities and the ACNC itself to the current package of electoral law reform (which includes another registration and disclosure regime, ignoring that the ACNC Charity Register was intended to be the single source of easily accessible public information about registered charities) is an example of the challenges which emerge when the ACNC and charities are not consulted and the sector is not well understood by those proposing reform.

Note: This recommendation addresses the Question 8 in the Terms of Reference: *Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further reduce regulatory burden?*

Recommendation 4: Extend the scope of the ACNC

We recommend two extensions to the remit of the ACNC.

First, at present, the ACNC only has regulatory and enforcement powers in relation to charities registered with the ACNC. In our opinion, the ACNC should have regulatory and enforcement powers over all charities and not-for-profit entities within the sector, including those that are not currently registered with the ACNC. The public interest is better served if these other organisations are also subject to the same governance standards as registered charities.

Secondly, the ACNC's current regulatory and enforcement powers do not extend to charities that voluntarily revoke their charity registration or have their registration revoked. This inhibits the ability of the ACNC to protect charitable assets and ensure that those assets are applied for the purposes for which they were intended, for example, in the wake of significant governance failure that leads to de-registration. The review of ACNC legislation is a timely opportunity to address this gap in the legislation, and we support the recommendation

(recommendation 1) in the ACNC's own submission to consider what measures could be introduced to better protect against the wastage of charitable assets following deregistration.

Note: This recommendation addresses the following questions in the Terms of Reference: *Question 6. Have the risks of misconduct by charities and not-for-profits, or those that work with them, been appropriately addressed by the ACNC legislation and the establishment of the ACNC? Question 7. 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?*

* * *

If you have any queries regarding this submission, please contact Quinton Clements (Government Relations Manager) at quinton.clements@worldvision.com.au.

A handwritten signature in black ink, appearing to read 'Claire Rogers', written in a cursive style.

Claire Rogers
CEO, World Vision Australia