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# ‘Australian Charities and Not-for-Profits Commission Legislation Review’

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Oxfam Australia Submission

**9 MARCH 2018**

## About Oxfam Australia

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Oxfam Australia is a registered Australian charity, an independent, not-for-profit, secular development agency whose vision is of a just world without poverty. Oxfam Australia:

- undertakes long-term development programs;
- provides emergency response during disaster and conflict;
- undertakes research, advocacy and campaigns to advance the rights of poor and marginalised people, including women, and works with them to achieve equality; and
- promotes fair trade, supporting local artisans and producers throughout shops and Fairtrade food brand.

We are a long-term Australian Government development partner. In our 2016-17 financial year, Oxfam Australia directly reached more than 1.8 million people of a total of 19.2 million people in 80 countries that Oxfam reached around the world. Oxfam Australia is a member of Oxfam International, a global confederation of organisations that work together. In partnership with our Oxfam affiliates, we supported almost 11.1 million people affected by disaster or conflict. Through our advocacy and policy work, we have reached millions more.

Oxfam Shops also support hundreds of producer partners and artisans in countries around the world, including Indigenous Australian producers and businesses. More than half a million Australians annually support Oxfam Australia by contributing skills, time and financial support to advance our work.

## Contact

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## 1. Introduction

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Oxfam welcomes the opportunity to make a submission to the Review of the Australian Charities and Not-for-Profits Commission Legislation.

Oxfam's experience of the Australian Charities and Not-for-Profits Commission (ACNC) has been positive.

The ACNC managers and staff have been professional, knowledgeable, responsive and accessible and the materials developed have been useful, useable and supportive. The Commissioner Interpretation Statements and consultative approach have been welcome. Oxfam staff have valued the opportunity to participate in educational seminars and formal and informal consultations with the ACNC. The ACNC's guides assist charities to navigate a complex maze of laws and strengthen charity compliance.

In preparing this response Oxfam has had the benefit of reading several detailed submissions, including the Law Council of Australia's submission: Oxfam agrees with the matters and recommendations set out in that submission<sup>1</sup>.

Oxfam makes additional comments in response to selected questions posed in the Terms of Reference.

## 2. Response to Discussion Questions

### 1. Are the objects of the ACNC still contemporary?

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Yes, the current objects of the ACNC Act are appropriate.

Oxfam notes the ACNC's Submission proposes two additional objects<sup>2</sup> and considers these additional objects to be unnecessary and potentially confusing, given the diversity of models and funding streams across the sector. An organisation's stakeholders bring their own judgement and motivations to determine whether or not a charity has delivered its outcomes whilst making '...effective use of resources'.

The ACNC already supports stakeholders who wish to conduct due diligence or monitor and compare charities and groups of charities, for example, through the free and searchable Charity Register where charities can be sorted and filtered by type, geography and other attributes.

### 2. Are there gaps in the current regulatory framework that prevent the objects of the Act being met?

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Yes, there is a need for certainty and consistency in the regulatory framework for fundraising. At present the variations between the State based laws creates hazards for organisations who may find

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<sup>1</sup> Law Council of Australia Review of Australian Charity and Not-for-profits Commission Legislation 28 February 2018

<sup>2</sup> The proposed objects are: Promoting the effective use of the resources of Not-for-profit entities; and Enhancing the accountability of the Not-for-profit entities to donors, beneficiaries and the public.

them confusing to understand and apply. Many of the submissions speak comprehensively to this issue and Justice Connect's submission presents a useful model for improvement<sup>3</sup>.

Even though the ACNC has not had a direct regulatory responsibility it has supported the sector by developing free and simple webinars and guides and it has raised awareness about the application of laws affecting charities.

Regulation of fundraising would be an effective way for the ACNC to fulfil its objects, with a focus on an educative role to support the sector, in collaboration with State based regulators and the Australian Competition and Consumer Commission<sup>4</sup>. In addition, useable guides and tools support compliance and, in turn, the public. The ACNC can also partner with charities and member organisations to drive the development of standards, as another means of fulfilling the ACNC's objects.

The interaction with the *Corporations Act 2001 (Cth)* is another area for attention: Oxfam endorses the comprehensive discussion and suggested areas for immediate attention in the Law Council of Australia submission<sup>5</sup>.

We also note the potential to develop ACNC external conduct standards for all charities that operate overseas. Ideally, and for consistency, the standards could be aligned with the principles in the *Code of Conduct* published by the Australian Council for International Aid and Development (ACFID) and the Department of Foreign Affairs and Trade's Overseas Aid Gift Deduction Scheme (OAGDS) guidelines.

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

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The ACNC's Public Trust and Confidence Report (2017) is referred to in Justice Connect's submission, which notes the high level of trust in charities<sup>6</sup>. Justice Connect's role provides it with an authoritative perspective and Oxfam shares its views about the public's concern with mismanagement of funds or the redirection of funds for private use.

In addition to financial management, organisations have a profound responsibility to the communities they support and Oxfam holds the view that it must be vigilant to consistently improve its processes, and to work with others, to drive sector wide standards improvement.

The ACNC Governance Standards are an appropriate guide to charities and not-for-profits in support of the maintenance of processes and standards.

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

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Oxfam agrees with the Law Council of Australia submission and concludes that broadly yes, there is sufficient transparency.

When the public has concerns, there are many ways for the public to raise these issues. Large charities often have multiple channels through which the public or stakeholders can engage and seek information. Charity's communications with the public benefit from new digital tools and data

<sup>3</sup> For example see Justice Connect's prominent 2016/2017 campaign *#fixfundraising* on how the Australian Consumer Law could support better fundraising practice.

<sup>4</sup> Law Council of Australia submission p. 16 para 44, 45 and 46.

<sup>5</sup> Ibid, p. 8

<sup>6</sup> Justice Connect Submission p. 15

management that enable a charity's supporters to tailor, select and receive relevant and specific information from their charity. Charities can match their supporter's needs with digital and targeted information – this may be more useful to supporters and stakeholders as it can offer a more engaged dialogue, and avoid the risk that relevant areas of interest will be lost in an overwhelming amount of content.

**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?**

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Oxfam considers the ACNC approach has led to improved practice in the sector through the promotion of guides and education, and a proportionate regulatory approach.

**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?**

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The current powers of the ACNC are adequate.

There is some concern about the public reporting of an ACNC investigation. On the other hand there may also be an educational benefit in sharing the outcomes for charities and not-for-profits, although this can also be addressed by appropriate guidance material from the ACNC after an investigation. Careful consideration and appropriate consultation should occur before any changes are considered in this area so as to avoid unintended consequences.

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

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While there has been some progress in reducing duplicative reporting, a significant source of red tape for charities relates to permits to fundraise which must be sourced State by State, campaign by campaign. There has been little progress towards reducing these administrative costs. Also, charities who carry out due diligence on commercial service providers, in some areas of operation, such as fundraising, may be duplicating work done by another charity with the same supplier. There is scope for a central agency to assess and endorse suitable commercial providers, to reduce these transaction costs.

Other areas for improvement (under the *Corporations Act*) have been addressed above under Question 2.

Oxfam appreciates the opportunity to make this submission and would be pleased to expand on them.

**[END]**