



## Australian Government

### Not-For-Profit Sector Reform Council

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Dr Ian Holland, Senate Standing Committee on Community Affairs, Legislation Committee  
Dr Richard Grant, Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretaries

As the Chair of the Not-for-Profit Sector Reform Council (Reform Council), I am pleased to provide you with a submission to the inquiries on the Australian Charities and Not-for-profits Commission (ACNC) Bills. The Reform Council unanimously supports the Bills and the establishment of the ACNC and urges both the House of Representatives and the Senate to support the passage of the legislation. Please note that individual members of the Reform Council may make submissions separately on behalf of their organisations.

The Reform Council support the objects of the ACNC Bill: to maintain, protect and enhance the public trust and confidence in the not-for-profit (NFP) sector; to support and sustain a robust, vibrant, independent and innovative NFP sector; and to promote the reduction of unnecessary regulatory obligations on the NFP sector. The Reform Council believe these clearly articulate the original intent of the ACNC and will continue working with the ACNC to ensure these objects are upheld.

As noted in our submission ([Attachment A](#)) to the House of Representatives' Standing Committee on Economics (the House Committee), the NFP sector has been calling for an independent, specialist, national regulator through six major reviews since 1995. We strongly urge you to pass the Bills and welcome the commencement of the ACNC from 1 October 2012.

The Reform Council endorses the ACNC Bill which has benefited from the Government's significant amendments in response to the recommendations of the House Committee, as well as feedback from the sector and state and territory governments.

In the drafting of the Bills, the Government has maintained an open dialogue with the Reform Council. We believe this has contributed to an ACNC Bill that represents a good starting point for Commonwealth regulation and provides a framework for national regulatory arrangements.

The inclusion of a third object into the ACNC Bill to promote the reduction of unnecessary regulatory obligations on the NFP sector strengthens the ACNC's role in this regard and reflects the original intent of a national regulator. Some of the criticism levelled against the ACNC raises doubts about its ability to reduce 'red tape' for the sector. The Reform Council is satisfied that there will be a reduction in red tape and compliance costs at the Commonwealth level, and we call on the states and territories to work actively with the Commonwealth to achieve a truly national model of regulation for the sector as this will deliver the greatest reduction in regulatory burden. For example, if all states and territories agreed that charities registered with the ACNC were automatically authorised for charitable collections, an immediate reduction in red tape for both government and the NFP sector would be realised.

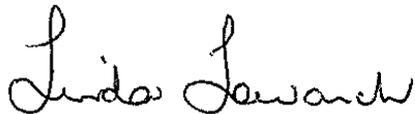
The Committees should also note that, while the ACNC is the centrepiece of the Government's NFP reform agenda, there are a number of other initiatives aimed at reducing red tape for the sector. These include the simplification and standardisation of Commonwealth contract procurement and grants processes and the consideration of a national approach to fundraising regulation, and a common definition of charitable purpose by the Council of Australian Governments.

Finally the Reform Council notes that the issues raised in our submission to the House Committee on penalties, directors' liability and the role of the ACNC have been addressed in the amended ACNC Bills. We note the Government's decision however not to raise the income thresholds for reporting. However, we are still concerned the tiers are too low and

encourage ongoing monitoring and review of these thresholds and for the Commonwealth to continue working with the state and territory governments to ensure a coordinated approach to increase the tiers.

The Reform Council looks forward to working with the Government on the development of regulations on financial reporting and governance standards, expected to be made in early 2013 and to take effect from 1 July 2013. Collaboration with the sector will be critical to achieving an appropriate balance between accountability and effectiveness, and in the future, will be critical to addressing the inevitable modifications that will be required.

Yours sincerely

A handwritten signature in black ink that reads "Linda Lavarch". The signature is written in a cursive, flowing style.

Linda Lavarch  
Chair, NFP Reform Council

31 August 2012



**Australian Government**

**Not-For-Profit Sector Reform Council**

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Committee Secretary

Standing Committee on Economics

PO Box 6021

Parliament House

CANBERRA ACT 2600

Dear Committee Secretary,

As the Chair of the Not-for-Profit Sector Reform Council (Reform Council), I am pleased to provide you with a submission to the Inquiry into the Australian Charities and Not-for-profits Commission (ACNC) Exposure Draft Bill.

Individual members of the Reform Council may submit separate submissions on behalf of their organisations. Details of the Reform Council are at [Attachment A](#).

This submission provides details on the importance of an independent, specialist, national regulator that provides a one-stop-shop reporting function, as well as assists the sector meet its compliance obligations.

The implementation of the ACNC is one component of a suite of reforms for the NFP sector that the Government has committed to. These reforms can broadly be classified as improving the way Government and the sector work together, streamlining and simplifying regulation, and promoting the long-term sustainability of the NFP sector. We broadly support the initiative of the Government for committing to these reforms which most in the NFP sector have been calling for since the mid 1990’s.

The calls for reform in the NFP sector have been supported by six major inquiries since 1995. The most significant was the Productivity Commission's 2010 report on the *Contribution of the Not-for-Profit Sector*. Through this, the Productivity Commission recommended an independent 'one-stop shop' for Commonwealth regulation which would be achieved by consolidating various regulatory functions into a new national registrar.

Both the sector and those undertaking the reviews have called for an independent, national regulator to align with the objectives of accountability and transparency that would support a stronger and more sustainable NFP sector. The call for an independent regulator was supported by the Australian Taxation Office (ATO) in their submission to the *Inquiry into the Definition of Charities and Related Organisations*, January 2001 where they stated *it is also our view that administration would be better served by a single, independent common point of decision making on definitions leading to conclusions about whether organisations are charitable or non-profit, such as occurs with the Charities Commission in the UK for example.*

Since appointment, we have worked closely with officials from the Office for the Not-for-Profit Sector, Commonwealth Treasury, and the ACNC implementation taskforce to ensure the ACNC legislation and its implementation aligns with the objectives outlined in the *Consultation Paper for the Scoping Study for a National NFP Regulator*. We believe that the draft Bill broadly meets these aims.

### **Preamble / Objects of the Bill**

The preamble of the ACNC Bill suggests that the primary purpose of implementing a national regulator is to promote good governance, accountability and transparency for not-for-profit entities to maintain, protect and enhance public trust and confidence in the not-for-profit sector.

Similarly, the Objects of the draft Bill are:

- to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.

We are concerned that the Preamble and the Objects do not reflect one of the original intentions of the ACNC which is to reduce red tape for the NFP sector. The focus of the current draft does not provide any detail on how the reporting burden for registered organisations would be reduced. As an example, the Bill could include the fact that organisations registered with the ACNC and in receipt of a Commonwealth grant would not be required to submit financial acquittals for the Commonwealth grants if as an organisation they submitted audited financial statements to the ACNC.

The sector has been asking for an independent national regulator even though there has been no major scandal or corrupt behaviour, as they believe this will lead to reduced reporting requirements as well as increase trust in them and their work. These two things together would allow organisations to operate more efficiently and would potentially broaden the base from which they can source funds.

There is some concern within the NFP sector that small charities that rely on volunteers may have their reporting requirements increased under the ACNC. More generally, it is acknowledged that further reforms will be needed in order to reduce unnecessary red tape, for example, through the adoption of appropriate governance standards, or the transfer of powers from the states and territories. The powers of the ACNC need to be exercised by reference to this core objective.

### **ACNC independence**

We are strongly supportive of having the ACNC independent of the ATO. We consider the NFP sector's current engagement with the ATO is narrow with the focus predominately on compliance. This is not conducive to building productive and empowering relationships. It is not appropriate that the organisation responsible for

maximising the Government's revenue (the ATO) is also responsible for determining whether the organisations receive charitable status.

### **Education**

It is important that the ACNC has a clear educative role with the Australian public and the NFP sector, especially in terms of governance and reporting standards and encouraging an understanding of and compliance with regulatory arrangements. We support a proportional regulatory approach, as it will equip charities with the information and tools to manage and meet their compliance obligations and reduce the need for the regulator to intervene.

Regulators often require standardised reports to minimise the risk of organisations not complying with the regulations. If the sector is better informed of its obligations, there could be scope to have reduced reporting requirements.

### **Advocacy**

However, the ACNC should balance the need to provide information to the public and the sector with its principal role of being a regulator. As mentioned in the Final Report on the *Consultation Paper for the Scoping Study for a National NFP Regulator*, overseas experience suggests that regulation is compromised when a regulator develops too great an interest in the outcomes of a particular regulated entity. It is for this reason that we would not support the ACNC having an advocacy function, as this is best done by peak bodies that are not responsible for regulating the sector.

### **Tiers for reporting**

Whilst we applaud the establishment of three tiers to minimise the compliance for smaller organisations, we are of the opinion that the income thresholds as outlined in the Explanatory Memorandum are too low. The three tiers are less than \$250,000; between \$250,001 and \$1,000,000; and above \$1,000,000. According to the latest data from the ATO, around 35 per cent of charities would be considered a medium sized charity and 11 per cent would be considered a large charity. While we acknowledge these tiers are consistent with current reporting required by the Australian Securities

and Investments Corporation for Companies Limited by Guarantee as well as some states and territories, we believe that increasing the thresholds for these tiers would further reduce the reporting burden on smaller charities. As a comparison, a small business for tax purposes is defined to have a turnover of less than \$2 million.

We also acknowledge and support the discretion provided to the Commissioner to treat an organisation as small, medium, or large based on previous years' revenue, as well as the powers of the Commissioner to work with individual organisations to tailor solutions allowing them to address specific regulatory concerns.

### **National Regulator**

Removing current regulatory duplication and providing a 'one-stop-shop' for NFP's can only be achieved through collaboration between the Commonwealth, state, and territory governments. We note that work is being progressed through the Council of Australian Governments, but wish to reiterate that real change can only be achieved if all governments and government agencies are on board.

Given that, we welcome the establishment of the ACNC as the Commonwealth regulator from 1 October 2012 as a first step in this process.

### **Penalties**

Whilst we acknowledge the need for the regulator to have the power to impose fines on organisations for failure to comply with reporting and regulation requirements, we are also conscious that unlike the for-profit sector, a vast majority of directors in the NFP sector are acting in a voluntary capacity. We are concerned that this is not reflected in the draft Bill. Any increase in liability for Directors could result in individuals refraining from taking on these roles.

**Further consultation**

In May 2012, the Government announced that the governance standards and external conduct standards would be set out in regulations. These would be subject to further consultation and would commence from 1 July 2013. In order for these to meet the requirements of the sector, we recommend that these are developed in consultation with the NFP sector and specifically the Reform Council and the Charities Consultative Committee.

Yours sincerely

A handwritten signature in black ink, reading "Linda Lavarch". The signature is written in a cursive style with a large initial 'L'.

Linda Lavarch

Chair, NFP Reform Council

The Reform Council was established in December 2010 following a nomination process that attracted around 300 nominations from across the NFP sector. Details of the members are below.

Our role is to provide:

- support to the Office for the Not-for-Profit Sector (Office) in its role to drive and coordinate the Commonwealth Government's NFP reform agenda;
- advice to the Government on specific issues including, examining the scope of a national 'one-stop shop' regulator for the sector including its role, feasibility and structure; streamlining Commonwealth Government funding arrangements for Government-funded NFP organisations; and nationally consistent approaches to fundraising and other Commonwealth, state and territory laws.
- advice on the Productivity Commission's report into the NFP sector and other related reviews; and
- support in implementing the National Compact.

The Reform Council has established working groups to consider specific issues in depth. At the time of writing there are six working group that are providing advice on issues including:

- tax concessions;
- future workforce pressures;
- regulation and fundraising, including the implementation of the ACNC;
- reducing red tape;
- implementation of the National Compact; and
- volunteer workplace health and safety.

External representatives are co-opted to working groups as required, for specialist expertise.

## **NOT-FOR-PROFIT REFORM COUNCIL MEMBERS**

1. Linda Lavarch (Chair), Australian Centre for Philanthropy and Nonprofit Studies, QUT
2. Anne Robinson (Deputy Chair), Prolegis Lawyers
3. Frank Quinlan, Mental Health Council of Australia
4. Dr Ken Baker, National Disability Services Limited
5. David Crosbie, Community Council for Australia
6. Kasy Chambers, Anglicare Australia
7. Dr Cassandra Goldie, Australian Council of Social Service
8. Sandy Blackburn-Wright, Westpac, Community Development
9. Michael Coleman, Chairman, Planet Ark Environmental Foundation
10. Evelyn O'Loughlin, Volunteering SA and NT
11. Glenn Appleyard, Salvation Army Advisory Board (Tasmania)
12. Ron Edwards, The Polly Farmer Foundation
13. Suzie Haslehurst, Community Development Shire of Broome
14. Robert Fitzgerald AM, Productivity Commission