



Australian Government



Australian
Charities and
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Commission

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Business Set-Up and Closure in Australia
Productivity Commission
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SUBMISSION ON PRODUCTIVITY COMMISSION ISSUES PAPER: BUSINESS SET-UP, TRANSFER AND CLOSURE

The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the Business Set-up, Transfer and Closure Issues Paper (**Issues Paper**). This submission relates both to charities and the wider NFP sector, and draws on the ACNC's experience during its first two years of operation.

1. ACNC experience

The ACNC was established as Australia's first specialist charity regulator on 3 December 2012. The ACNC furthers the following three objects of the Australian Charities and Not-for-Profits Commission Act 2012 (**ACNC Act**):

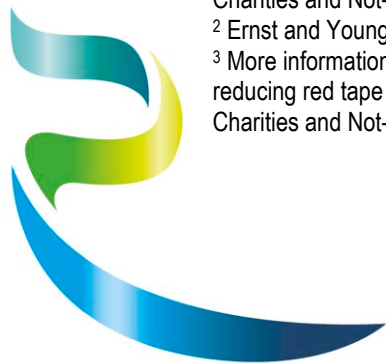
- to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

This submission draws on the ACNC's experience in regulating charities as well as two significant pieces of research the ACNC has commissioned – the Curtin University *Australian Charities 2013* report¹ and Ernst & Young's *Research into Commonwealth Regulatory and Reporting Burdens on the Charity Sector*²).³

¹ Knight P.As and D.J.Gilchrist, *Australian Charities 2013: The First Report on Charities Registered with the Australian Charities and Not-for-profits Commission*, Report for the Australian Charities and Not-for-profits Commission, 2014.

² Ernst and Young, *Research into Commonwealth Regulatory and Reporting Burdens on the Charity Sector*, 2014.

³ More information about the ACNC, its role in reducing red tape and the potential for an expanded role (for example, in reducing red tape associated with fundraising) is contained in its [submission](#) to the Senate Inquiry into the Australian Charities and Not-for-profits Commission (Repeal Bill) (No. 1) Bill 2014.





2. The importance and economic contribution of the NFP sector

NFPs are estimated to comprise some 600,000 organisations⁴, just under 60,000 of which are charities registered with the ACNC.⁵ NFPs are a significant employer, with the Australian Bureau of Statistics estimating that the 56,894 economically significant NFPs employed over a million people in 2012-13 (1,081,900, or 9.3% of the Australian workforce).⁶ In 2006–07, 4.6 million volunteers, with a wage equivalent value of \$15 billion, worked with NFPs.⁷ In 2010, 36% of Australians aged 18 years and over participated in voluntary work.⁸

The income of the charities submitting their 2013 Annual Information Statements to the ACNC has been estimated by Curtin University to be over \$100bn a year (excluding donations).⁹ Of this amount, the charity sector receives approximately \$28bn in government funding alone. Much of this government funding is provided for service delivery, and charities often operate in the same industry alongside businesses carrying out similar activities for profit.

As well as accounting for approximately 4% of GDP (which does not include the contribution of volunteers), the NFP sector is estimated to be growing at around 6% each year in real terms, exceeding the mining industry in relative growth.¹⁰ Increased economic efficiency in the NFP sector will contribute to an overall more productive economy.

3. Diversity of the NFP sector

Just like for-profit businesses, there is considerable diversity among the NFP sector. Approximately 17% of charities have annual revenue of over \$1 million, while 67% have turnover of less than \$250,000.¹¹ Nearly 13% of charities operate in more than one state or territory of Australia, with a considerable number being involved overseas.¹²

Approximately 41% of charities are associations incorporated with a state or territory. Twelve per cent are companies limited by guarantee, and 12% are trusts. A third of charities do not have a separate legal identity but are unincorporated associations.¹³ Charities undertake a wide spectrum of activities, including operating in industries with high reporting obligations such as education, aged care and health care.

⁴ Productivity Commission 2010, *Contribution of the Not-for-Profit Sector*, Research Report, Canberra

⁵ As at 13 February, there were 59,447 charities registered with the ACNC.

⁶ Australian Bureau of Statistics, 2012-13 Australian National Accounts: Non-Profit Institutions Satellite Account, Canberra, June 2014.

⁷ McGregor-Lowndes, M., ACPNS Current Issues Information Sheet 2014/4, *The Not for Profit Sector in Australia: Fact Sheet*, August 2014, [http://eprints.qut.edu.au/75397/4/75397\(updated\).pdf](http://eprints.qut.edu.au/75397/4/75397(updated).pdf). Accessed 20 February 2015.

⁸ Ibid.

⁹ As above, 1 p. 10

¹⁰ As above, 6.

¹¹ As above, 1 p. 7

¹² As above, 1 p. 37-38

¹³ As above, 1 p. 51



The considerable diversity of the sector in legal structure, activities and revenue, means that there is not one set of barriers to charity set-up and closure that applies to the whole sector. However, common attributes of charities result in some consistent barriers.

4. Rate of charity set-up and closures

Since 1990, the number of charities has grown at a steady rate of approximately 2% per year.¹⁴ Within this growth a significant number of charities are set up and closed each year. From the time that it commenced operations on 3 December 2012, the ACNC has registered approximately 5,100 charities. In this same time period, approximately 1,500 charities have voluntarily revoked their registration, with a further 1,400 being revoked by the ACNC on the grounds that they are no longer operating. Because a significant number of charities start up and close each year, removing any barriers to these processes will assist efficiency in this part of the economy.

5. Barriers faced by the charity and broader NFP sector in set-up and closure

Many charities are reliant on volunteers, particularly at the important stage of considering setting up or closing. Any undue complexity in dealing with government can be a particular disincentive to taking action for volunteers. Even for larger charities that have the assistance of staff or professional advice, the cost of setting up or closing charities may act as a barrier.

During the set-up phase, most charities need to apply for incorporation with at least one state or territory regulator, and possibly apply as a Registered Australian Body to the Australian Securities and Investments Commission (**ASIC**). Alternatively, charities may apply to ASIC to set up as a company limited by guarantee. To obtain Commonwealth charitable taxation concessions, charities register with the ACNC for eligibility and have their application for concessions processed by the Australian Taxation Office (**ATO**). To obtain state or territory tax concessions, charities currently need to apply separately to state and territory regulators. To raise funds from the public, charities need to apply for a fundraising license from each state or territory in which they plan to operate. Achieving national fundraising reform ranked as the top priority for the sector in the 2013 Pro Bono Australia sector survey.¹⁵

Not-for-profits (including charities) also face difficulties in accessing finance for social and other investment purposes. In particular, NFPs often lack a steady revenue stream, and may be very reliant on grant capital. They also may lack collateral to guarantee loans, and do not have an organisational structure that is suitable for raising equity capital. The

¹⁴ As above, 1, p. 48.

¹⁵ See 'Red Tape & Compliance Key NFP Issues - Sector Survey Results', *Pro Bono Australia*, 15 April 2014, www.probonoaustralia.com.au/news/2013/08/red-tape-compliance-key-nfp-issues-sector-survey-results, accessed 19 February 2015



Productivity Commission noted in 2010 that this difficulty in obtaining funding and finance can limit productivity and innovation.¹⁶

When charities close, they may need to cancel their registration with multiple regulators. They must also ensure all assets are distributed to another suitable NFP organisation. When considering closure, the requirement to locate a suitable NFP to direct assets to is a barrier that is unique to the sector.

6. Reducing barriers to set-up and closure

As outlined above, charities currently need to interact with multiple regulators and may be required to provide information to one that they have already provided to another. This problem was highlighted in the 2010 Productivity Commission report on the Contribution of the Not-for-profit Sector. The National Commission of Audit also recognised the cost and burden of the 'repeated provision of the same information'.¹⁷ The establishment of one-stop shops can significantly reduce burden and barriers to set-up for both for-profit businesses and not-for-profit organisations.

One of the central reasons for the establishment of the ACNC was to create a one-stop shop for charity registration and reporting across the country. The ACNC's 'report once, use often' reporting framework, as recommended by the Productivity Commission in 2010, has the potential to significantly reduce barriers to set-up and closure for charities. The benefits of the ACNC model are becoming evident, however for maximum benefit cooperation from other government agencies at the Commonwealth and state and territory levels is critical.

Through its one-stop shop service, the ACNC receives 98.5% of registration applications through a single online form. When a charity is approved for registration or notifies the ACNC they have changed purposes or ceased operating, the ACNC notifies the ATO on the charity's behalf. These notifications could be extended to other government agencies.

The ACNC also shares charity information with other Commonwealth and state departments through the Charity Passport. Under the Commonwealth Grants Rules and Guidelines¹⁸, Commonwealth entities must have regard to information made available by other regulators and should not seek this information from grant applicants or recipients. The Charity Passport model facilitates the use of charity data by multiple agencies, and considerable efficiencies could be gained by more agencies using the tool or by similar tools being introduced in other agencies.

The ACNC is dedicated to working to eliminate duplication and harmonise registration requirements with those of other regulators. For example, in 2013 South Australia consulted on an exposure draft of legislation which proposed to eliminate regulatory duplication for charities registered with the ACNC and to recognise them as authorised to

¹⁶ As above, 4, p. 155

¹⁷ National Commission of Audit, *Towards Responsible Government*, see Appendix Vol. 2, p. 242

¹⁸ Department of Finance, *Commonwealth Grants Rules and Guidelines*, p. 18



fundraise in SA.¹⁹ Significant further opportunities for harmonisation and information sharing exist with fundraising, incorporated associations and state taxation regulators in other jurisdictions.

As a specialist regulator of the sector, the ACNC also provides charities with education and guidance about starting and winding up charities, both online and by telephone. Also, the ACNC Register gives charities visibility from the time they start up. For those charities winding up, the ACNC Register can help them to find alternative charities where they can disperse their assets.

There is a continuing need to improve access to capital and finance for charities and other not-for-profit organisations. In 2011, the Senate Economics Committee examined the barriers and options available to develop a mature capital market for the social economy sector.²⁰ Their recommendation was that a Social Finance Taskforce be established; however, no taskforce has yet been established. The ACNC recommends that this or another measure be taken to address the barrier that a lack of access to finance or capital can present.

6. Final comment

The underlying theme of this submission is that charities are a significant contributor to economic activity and employment. Like businesses, they also face barriers to set-up and closure, particularly in accessing funding. Continuing work is necessary to reduce regulation costs for charities, including continuing to pursue harmonisation of registration and reporting requirements between state and Commonwealth governments, and pursuing initiatives to share information between government agencies. The ACNC one-stop shop model and the Charity Passport are good examples of how barriers to set-up and closure for organisations can be reduced.

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¹⁹ For more information on the draft *Statutes Amendment (Commonwealth Registered Entities) Bill 2013 (SA)*, see www.charities.sa.gov.au

²⁰ Senate Economics References Committee, *Investing for good: the development of a capital market for the not-for-profit sector in Australia*, November 2011.