



Submission to The Treasury

Australian Charities External Conduct Standards

September 2018

Introduction

This submission outlines key areas of opportunity and concern for the Community Council for Australia (CCA) in relation to the proposed Australian Charities External Conduct Standards.

CCA welcomes the opportunity to engage with The Treasury on this very important issue.

CCA has also consulted with other members (see listing in appendix 1) in framing this submission, however, it is important to note that this submission does not override the policy positions outlined in any individual submissions from CCA members.

The content of this submission includes: a brief background to CCA; an overview of the current context for the broader charities and not-for-profit (NFP) sector; a discussion of key issues relating to the inquiry terms of reference; and a conclusion.

CCA welcomes this opportunity to provide input into this consultation and is willing to participate in further discussion as the proposed regulations are finalised.

The Community Council for Australia

The Community Council for Australia is an independent non-political member-based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and NFP organisations relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

Background context: the not-for-profit sector

The NFP sector encompasses over 600,000 organisations - from large to very small - and employs well over one million staff (around 10% of all employees in Australia). Australia's 54,000 charities collectively turn over more than \$130 billion each year and hold over \$260 billion in assets. In the last decade, sector growth has continued at more than 7% a year, a figure that is higher than any other industry group.

These facts tell only a small part of the story. The real value of the NFP sector is often in the unmeasured contribution to Australian quality of life. NFPs are at the heart of our communities; building connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians. Collectively, they make us a more resilient society.

The importance of the NFP sector is now being internationally recognised with many governments putting in place measures to increase NFP investment and productivity. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement, social entrepreneurship and productivity within the NFP sector.

The establishment of the Australian Charities and Not-for-profit Commission (ACNC) is the first time the NFP sector has had an independent regulator dedicated to serving their needs and enhancing their capacity. It has proved to be a positive step towards red tape reductions, increased transparency, and trust in the community by prospective volunteers and donors. The national charities register has also provided invaluable information.

While the recent history of the NFP sector is framed by growth and reform, new issues are emerging. The level of volunteering and individual philanthropic giving as a percentage of income has still not recovered to the highs of 2009. At the same time, revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations. Competition for fundraising and services has increased.

Given the size of the sector and its critical role in our community, Government can achieve real economic and social benefits if it chooses to strategically invest in strengthening our communities and our NFPs. There have been numerous reports and recommendations relating to the NFP sector over the last decade, but relatively few have been acted upon.

The inability of governments to streamline their own regulatory processes, their tendering processes, contract management and programs monitoring has consistently been identified as a major barrier to improving productivity in the not-for-profit sector in Australia. The lack of certainty in the government regulatory environment, funding and contracting processes also undermines performance and ongoing investment in improving outcomes. For the sector to be more effective, these issues must be addressed.

Positive change often requires increased collaboration, recognition of shared goals and shared ways of achieving outcomes. Given the size of the NFP sector and its critical role in improving Australian well-being, there is scope to boost productivity by working constructively with the NFP sector in developing more responsive and effective programs and services, seeking to achieve shared goals and outcomes.

Key Issues with the Proposed Australian Charities External Conduct Standards

The potential net widening impact

There are thousands of charities across Australia that engage in some way with international organisations. This activity often benefits Australia in multiple ways and should be encouraged. Most of these charities should not be subject to external conduct standards.

CCA understands and accepts that charities engaged primarily in international activities should be required to provide a measure of accountability and transparency for their activities to ensure they are appropriate and directly related to their charitable purpose.

The use of the term 'incidental' as a way of excluding those charities that mostly operate within Australia seems somewhat vague. What is an incidental activity?

If an Australian orchestra conducts an annual tour of Asia, a sporting group sponsors an international tour from a school team, a drug and alcohol treatment agency offers training in Asia and sponsors international trainees to come to Australia for internships, if an on-line campaign in Australia attracts some foreign engagement, are these activities incidental? The answer is almost certainly yes, but how do we know?

CCA believes the external conduct standards should apply only when an organisation is clearly focused on working internationally as their main activity.

While this may be the intent of the proposed regulations, the reality is that within the term 'incidental' there is a high level of uncertainty leading to potential net widening beyond what CCA and most charities see as reasonable.

This is further compounded by the very broad definition of an arrangement, collaboration and third parties that operate outside of Australia.

Australia needs to facilitate rather than stifle international collaborations, particularly between charities that have common goals of delivering public benefit within their own countries.

The explanatory notes cite three examples where the activity is considered incidental. CCA thinks these examples are useful but would also like to see this section include examples where the entity would be captured by the provisions of these regulations – i.e. organisations that operate mostly in Australia that would be captured by the regulations.

Most importantly CCA believes these regulations should be framed by a very clear statement that Australia seeks to encourage and foster greater international collaboration, particularly across the charities sector, and that the purpose of these regulations is not to impede or impose onerous new reporting requirements on charities that operate primarily in Australia.

The goal of increased transparency and accountability is supported, but additional reporting is not required for the thousands of charities that operate mostly in Australia and already provide appropriate levels of public reporting and disclosure to the Australian Charities and Not-for-profit Commission.

Proportionate reporting requirements

The explanatory materials for the regulations refer to 'reasonable record keeping' but also provide a comprehensive listing of information that may be required including:

- *the kinds of operations and activities that the registered entity conducted outside Australia, on a country-by-country basis;*
- *details of how the registered entity's operations and activities outside Australia enabled it to pursue and achieve its purpose, on a country-by-country basis;*
- *details of all expenditure relating to its operations and activities outside Australia (on a country-by-country basis);*
- *details of any procedures and processes that the registered entity used to monitor its overseas operations and activities;*
- *a list of the third parties that the registered entity worked with outside Australia; and*
- *details of any documented claims of inappropriate behaviour by the registered entity's employees or responsible entities outside Australia, and subsequent actions taken by the registered entity as a result.*

CCA understands that the exact nature of the reporting requirements is yet to be finalised and that the Australian Charities and Not-for-profit Commission will provide more details at some point in the future.

CCA is concerned that the reporting requirements may be overly onerous and lack proportionality.

It is fundamentally important that the scale or size of activities, the scope and the relative risk be taken into account in framing the transparency or reporting requirements.

A small Australian volunteer organisation engaged in helping construct a new library in Indonesia should not be subject to the same reporting requirements as a major international development organisation spending millions of dollars working in terrorist held provinces in Libya and Afghanistan.

Conclusion

CCA supports the concept of having clear external conduct standards for Australian charities whose primary work is international. The charities sector generally supports transparency and accountability.

The concern outlined in this submission is that thousands of Australian charities engage in international activities, often hosting visiting international experts, offering training, master classes, mentoring, special tours and events in Australia and overseas. These charities, whose work is predominantly in Australia, should not be required to satisfy the same additional regulatory imposts and record keeping expected of charities whose work is largely international.

CCA is also concerned that the scope of administrative record keeping outlined in the proposed external conduct standards seems overly comprehensive. It is to be hoped that a reasonable and proportionate approach will be applied in relation to the records required of organisations operating internationally.

Current Membership – Community Council for Australia *Appendix 1*

Access Australia's National Infertility Network
Adult Learning Australia
Alcohol, Tobacco and Other Drugs Association ACT
Arab Council Australia
Australian Community Support Organisation (ACSO)
Australian Council for International Development, Marc Purcell, CEO (CCA Board Director)
Australian Institute of Superannuation Trustees
Australian Major Performing Arts Group
Australian Research Alliance for Children and Youth
Australian Women Donors Network
Business Council of Cooperatives and Mutuals
Carers Australia
Centre for Social Impact
Church Communities Australia
Churches of Christ Vic and Tas
Community Based Support (Tas)
Community Broadcasting Association of Australia
Community Colleges Australia
Connecting Up
Ethical Jobs
Everyman
Foresters Community Finance
Foundation for Alcohol Research and Education
Foundation for Young Australians
Fragile X Association of Australia
Fundraising Institute Australia
Good Samaritan Foundation
Good2Give
Hammondcare
Healthy Options Australia
Hillsong Church, George Aghajanian, CEO (CCA Board Director)
Justice Connect
Life Without Barriers, Claire Robbs, CEO (CCA Board Director)
Lock the Gate
Mater Foundation
Menslink

Mission Australia
Missions Interlink
Musica Viva Australia, Mary Jo Capps, CEO (CCA Board Director)
Non Profit Alliance
Our Community
OzHarvest
Painaustralia
Palliative Care Australia
Philanthropy Australia
Housing First
Pro Bono Australia
Queensland Water & Land Carers
RSPCA Australia, Heather Neil, CEO (CCA Board Director)
SANE
SARRAH
Save the Children, Paul Ronalds, CEO (CCA Board Director)
Settlement Services International
Smith Family, Lisa O'Brien, CEO (CCA Board Director)
Social Ventures Australia
St John Ambulance
Starlight Foundation
Ted Noffs Foundation
The Lost Dogs' Home
Touched by Olivia
Variety Australia
Volunteering Australia
Wesley Mission, Keith Garner, CEO (CCA Board Director)
White Ribbon Australia
Work Place Giving Australia
World Vision, Tim Costello, Chief Advocate (Chair CCA Board)
World Wide Fund for Nature Australia
YMCA Australia