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Senator the Hon. David Bushby
Chair
Senate Economics Legislation Committee
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Dear Chair,

Australian charities and Not-for-profits Commission (Repeal) (No.1) Bill 2014

The Australian Institute of Company Directors (Company Directors) welcomes the opportunity to comment on the Bill to repeal the Australian Charities and Not-for-profits Commission (ACNC) Act (2012).

Company Directors is the second largest member-based director association worldwide, with over 34,000 individual members from a wide range of corporations: publicly-listed companies, private companies, not-for-profit organisations (NFPs), government and semi-government bodies. As the principal professional body representing a diverse membership of directors, we offer world class education services and provide a broad-based director perspective on current director issues in policy debates.

The NFP sector continues to be a priority focus area for Company Directors. Our activities include tailored educational services, events, published materials, research and facilitation of dialogue among members and others on NFP issues. Additionally, we have participated in NFP policy reform discussions and lodged numerous submissions, which we have developed in consultation with our membership. We estimate that over 50 per cent of our members hold at least one directorship of an NFP, with many holding multiple roles.

Our goal is to improve the quality of governance for the betterment of the economy and society, and our leadership approach in the NFP sector supports this goal.

1. Summary

We are concerned that despite the lack of information and detail provided about an alternative regulator for the NFP sector, the Government is committed to abolishing the ACNC. While we acknowledge that the ACNC has yet to achieve the objectives under which it was established, it had commenced down a path to achieve this. As such, until the Government releases sufficient detail as to the proposed alternative model of regulation, we do not support the abolition of the ACNC.

Since the commencement of the NFP Reform in 2010/2011 and through a range of submissions, Company Directors has consistently repeated its view that the charity (and the broader NFP sector) would benefit from:

1. A reduction of red-tape
2. A harmonisation of Federal, State and Territory regulations
3. A "one-stop-shop" for reporting to government(s)

We note that in the Regulatory Impact Statement attached to the Bill that the “abolition of the ACNC is part of the broader Government red tape reduction and deregulation agendas”. Company Directors wholeheartedly supports these broader objectives.

However, it is unclear, from the information provided so far, how the abolition of the ACNC and the introduction of a *National Centre for Excellence*¹ will achieve these objectives.

2. Regulatory Framework

As with all sectors, the NFP sector deserves an independent regulatory framework that is appropriate to ensure public trust and confidence. The framework must also be appropriate to cater for the diversity in size and scope of the organisations within the sector.

We supported the establishment of a national regulatory system for not-for-profit entities that promoted good governance, accountability and transparency to maintain, protect and enhance public trust and confidence in the not-for-profit sector. The ACNC was established under these principles and was in stark contrast to the commencement of many other international charity regulators which commenced after some form of scandal had occurred. Fortunately, Australia has been spared such a scenario.

During the establishment of the ACNC, Company Directors argued strongly that the duties of directors of NFPs should be as consistent as possible with, but no more onerous than, those in the *Corporations Act 2001* (C’th). We believe the final arrangements for NFP directors under the ACNC are appropriate and we are concerned by statements being made that assert directors are somehow ‘worse off’ under the ACNC.

In our February 2011 submission to the *Scoping Study for a National Not-for-Profit Regulator* we agreed with the objectives regarding regulation to:

- place minimal costs on NFPs in order to allow better direction of NFP resources to philanthropic objectives;
- remove current regulatory duplication;
- streamline requirements, including reporting, so as to provide consistency and minimise compliance costs;
- provide a ‘one-stop shop’ for NFP entities, to assist all NFP entities to more easily access information that helps them understand and comply with their regulatory obligations;
- be simple, transparent and flexible;
- provide NFP entities with certainty as to their rights and responsibilities; and
- be proportional to the size and complexity of NFP entities, and to the public monies and risks associated with NFP entities.

We are of the view that simply abolishing the ACNC without providing certainty or clarity as to the alternative regulatory regime, will not achieve these objectives. For us to support the abolition of the ACNC, the Government must provide more detail on how these objectives are to be met by the proposed *National Centre for Excellence* and other regulatory arrangements.

The *National Centre for Excellence* could, for example, have an objective of working with the States and Territories to standardise legislation across borders in areas such as fundraising and volunteer accreditation.

¹ Speech by the Hon. Kevin Andrews MP to the Australian Institute of Company Directors, Melbourne, 29 January 2014, <http://kevinandrews.dss.gov.au/speeches/45>

3. Reporting Environment

While appropriate regulation is critical for all sectors, one of the greatest challenges for NFPs is the reporting requirements imposed by multiple levels of government. The objective of the ACNC, to be a one-stop shop for reporting, was sound, and if it is to be abolished, this objective should remain in any replacement regime.

Much of the focus on reporting has been around the Annual Information Statements provided to the ACNC and the duplication of this to any relevant State or Territory regulator. While these statements could be simplified, a greater issue is the requirement by a range of government departments for acquittal reporting which is often inconsistent, overly complicated and unnecessary.

Attempts by the Federal Government (such as the guidelines produced by the then Department of Finance and Deregulation) to reduce this inconsistency should be applauded. We contend that any ACNC replacement should pursue this issue with urgency.

4. Consultation

Company Directors was often highly critical of the previous Federal Government's approach to consultation and submissions at the start of the 2010/2011 NFP Reform process. We consistently re-iterated our concerns at the lack of time and resources available for the sector to appropriately respond to consultation papers.

These calls were understood by the ACNC, and upon its establishment, it engaged particularly well with the sector and stakeholders. This engagement generated a great deal of trust in the Commission and its team.

In our view the current Government has reverted to the previous Government's approach and conducted insufficient consultation with the sector on the proposed changes. While we acknowledge this submission forms part of a consultation approach, it comes at a much later point in the decision-making process than desired.

Without a clearly articulated replacement option we are unable to form a view with any certainty that the future regulatory environment for directors of NFP organisations and the governance framework to be adapted will be appropriate.

5. Conclusion

Company Directors is committed to its long-term goal of working to improve the quality of governance in NFP organisations. Similarly we are committed to working with governments at all levels to ensure that the regulatory and reporting framework is appropriate for this highly diverse and vitally important sector.

To this extent, we believe until the Government fully discloses all of the information regarding a proposed alternative framework for independent regulation, which is endorsed by the sector, the ACNC should remain in its current form and press ahead with achieving its objectives.

We hope that our comments will be of assistance to the Committee. Please do not hesitate to contact me on (02) 8248 6627 if you would like to discuss.

Yours sincerely,



Steve Burrell
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