



Australian Government



Australian  
**Charities** and  
Not-for-profits  
Commission

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Committee Secretary  
Economics and Governance Committee  
Parliament House  
George Street  
Brisbane QLD 4000

**BY EMAIL: [egc@parliament.qld.gov.au](mailto:egc@parliament.qld.gov.au)**

**Submission to the Economics and Governance Committee on the Revenue and Other Legislation Amendment Bill 2018**

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to the Economics and Governance Committee (**Committee**) in regards to the *Revenue and Other Legislation Amendment Bill 2018 (the Bill)*.
2. The ACNC will confine its comments to Part 8 of the Bill, which amends the *Taxation Administration Act 2001 (Qld) (the TAA)*. Specifically, the ACNC is commenting on the amendments to the definition of charitable institutions in Part 11A of the TAA.

**The ACNC's role**

3. The ACNC was established on 3 December 2012 by the *Australian Charities and Not-for-Profits Commission Act 2012 (Cth) (ACNC Act)*. The objects of the ACNC Act are to:
  - maintain protect and enhance public trust and confidence in the Australian not-for-profit (NFP) sector;
  - support and sustain a robust, vibrant, independent and innovative Australian NFP sector; and
  - promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.
4. The ACNC registers charities, as defined by the *Charities Act 2013 (Cth) (Charities Act)* and regulates registered charities. The Charities Act requires that to be a charity, an entity must be a not-for-profit entity, but does not define 'not-for-profit' or mandate how a charity must demonstrate this in its governing rules. The ACNC has developed a template constitution for companies limited by guarantee and template rules for unincorporated associations which contain not-for-profit and winding up clauses.<sup>1</sup>

<sup>1</sup> <https://www.acnc.gov.au/ACNC/Publications/Templates/ConstitutionTemplate.aspx>



4. As at 5 September, there were 56,426 charities registered with the ACNC. Of these, 15% were located in Queensland.

### Suggested Amendments

5. Section 149C(2)-(4) of the TAA sets out the types of institutions that can be registered as a charitable institution for the purpose of access to certain State revenue concessions. Section 149C(5) then provides:

*(5) However an institution, other than an institution or trustee of an institution mentioned in subsection (2)(a) or (c), must not be registered unless, under its constitution, however described—*

*(a) its income and property are used solely for promoting its objects; and*

*(b) no part of its income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members; and*

*(c) on its dissolution, the assets remaining after satisfying all debts and liabilities must be transferred—*

*(i) to an institution that, under this section, may be registered; or*

*(ii) to an institution the commissioner is satisfied has a principal object or pursuit mentioned in subsection (3)(a); or*

*(iii) for a purpose the commissioner is satisfied is charitable or for the promotion of the public good.*

6. The Bill amends s149C(5) by replacing '*unless under its constitution, however described*' with '*unless its constitution, however described, expressly provides that*'. This change appears to require that an institution's constitution must contain provisions that use the wording in s149C(5)(a) to (c).
7. Many charitable institutions will be required to change their constitutions to comply with this requirement. In many instances this would be an unnecessary regulatory burden as the institution's constitution may well have clauses which deliver the same result, but do not use the requisite words.
8. Further, there are differences in wording between relevant provisions in the ACNC template governing documents referred to above and s 149C(5). These differences are likely to raise questions for Queensland charitable institutions that have adopted an ACNC template document as to whether amending its constitution to comply with s 149C(5) will have an adverse effect on its registration with the ACNC.
9. If the amendment remains in its current form, the ACNC suggests that the transition period be longer than the six months provided for in the Bill (see clause 84). Six months is a very short period for charities to ascertain if a change is required and then



have the changes approved at a general meeting. This is particularly true for small charities or charities operated solely by volunteers.<sup>2</sup>

### **Common definition of charity**

10. The ACNC notes that by imposing this requirement to be registered as a charitable institution under the TAA, the Bill creates further points of difference between the definitions of 'charity' in the Charities Act and the TAA. The ACNC is of the view that a single definition of charity would greatly benefit the sector and lead to a reduction in confusion and unnecessary regulation.
11. The ACNC would draw the Committee's attention to a paper the ACNC prepared for the 16<sup>th</sup> Annual States' Taxation Conference in July 2016.<sup>3</sup> This paper surveys existing definitions in each jurisdiction and then proposes a common definition of charity in all Australian jurisdictions based on the definition of charity in the Charities Act. Such a common definition would not, of course, impinge on the ability of states and territories to set and control tax concessions. The paper provides more detail on how such an approach could work.
12. The ACNC is still supportive of the approach outlined in this paper and will continue working with all jurisdictions to reduce the regulatory burden for charities.

### **Further information**

13. The ACNC can provide further information on any the above, should this be useful to the Committee. Contact information is provided below.

Contact: [REDACTED] Policy Manager, Legal and Policy

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<sup>2</sup> The [2016 Australian Charities Report](#) highlighted that 67% of charities were small, earning less than \$250,000 in revenue per annum, and that 50% of charities were operated solely by volunteers.

<sup>3</sup> [https://www.acnc.gov.au/ACNC/Report/Common\\_charity.aspx](https://www.acnc.gov.au/ACNC/Report/Common_charity.aspx)