

Regulatory Policy
Department of Treasury and Finance
GPO Box 1045
Adelaide SA 500

Via email: regulatorypolicy@sa.gov.au

Re: Statutes Amendment (Commonwealth Registered Entities) Bill 2013

As the peak body for the community services sector in South Australia, the South Australian Council of Social Service represents member groups who are charities providing a range of health and community services. We are also a charity in our own right and registered with the ACNC. SACOSS therefore have a particular interest in this legislation and in the regulation of the not-for-profit sector more generally.

SACOSS has followed closely the Commonwealth regulatory reforms and has supported the establishment of the ACNC. This support reflects the views of our sector which long campaigned for such a regulator. A recent Pro Bono Australia survey of 1500 not-for-profit organisations nationally found that there was an overwhelming 81% support for the ACNC and that regulation by the ACNC was 7 times more popular than the previous regime of regulation by the ATO. However, we have always recognised that without amendment to state regulation, the ACNC would add to rather than reduce the regulatory burden on the sector. **Accordingly, we welcome the proposed legislation as a positive step towards removing duplication and reducing red tape in our sector**, thus allowing us to get on with providing vital services to the community.

Given this, we believe that ***it is important that this legislation be passed by the SA parliament, notwithstanding the change of government at the Federal level.*** While the new Federal government does not support the ACNC's regulatory role, the ACNC is established by legislation and it is not clear when or if the government will have the necessary parliamentary support to change that legislation. The ACNC continues to operate and our sector retains all the reporting obligations under that regulation, and therefore we continue to want the removal of regulatory duplication that this SA legislation brings about.

Beyond our general support for the proposed legislation, there are three specific issues we wish to comment on.

Firstly, we note that the amendments to the *Collections for Charitable Purposes Act 1939* remove the need for a separate s7 licence for fundraising events (by subsuming it into the generic s6 licence). This is not strictly required by

accommodation of the ACNC regulation, but is a welcome piece of red tape reduction in its own right – as is the more general deeming of Commonwealth registered entities to hold s6 licences as per s8(2) of the proposed legislation.

The second specific issue with the proposed legislation is at s7(2) which adds the words “assistance or support” to the definition of a charitable purpose in relation to poverty relief so that the definition would now include:

the affording of relief, *assistance or support* to diseased, disabled, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons, or to the dependents of any such persons;

The addition of “assistance or support” significantly widens the definition. In our reading it could incorporate a range of indirect services such as advocacy, training and job support which would previously not have been included. This is in keeping with the approach of many charities and reflects decisions in tax law and ATO rulings, as well as the direction of the Commonwealth statutory definition. We therefore support this in principle, but ***some clarity around the extent of this definition would be useful***. For instance, while SACOSS has not previously had a fundraising licence as we do not provide “relief”, our peak body work towards “justice, opportunity and shared wealth for all South Australians” is clearly aimed at providing assistance and support for those classes of people – through supporting direct service providers and advocating for policy which will assist those groups.

If “assistance and support” in the proposed definition is not meant to include such peak body functions, but is only aimed at more direct service provision which provides such assistance (eg. job support) then this needs to be made clear. Either way, given that the proposed changes may require a range of organisations who do not currently need a fundraising licence to apply for such a licence or to notify the Minister of fundraising, and to adhere to the disclosure requirements in relation to collecting, ***some outreach work will be needed to advise those entities of any new requirements***.

The final issue we would like to raise is our concern around the powers of the Minister proposed in s17 of the bill to require the Commissioner of Police to disclose information about an applicant or holder of a licence. There is no objection to the release of their prior convictions, but the proposed provision extends to any information that might be relevant to the person's character or antecedents. This is very wide and could include offences that the person has been found not guilty of, matters that are currently under investigation or any prior investigations that did not lead to prosecution. If this is taken account of in any denial of a fundraising licence, it amounts to a punishment without trial and conviction.

These powers are also concerning in light of the powers of disclosure under s20 of the bill (inserting a new s17B into the Act), which would enable confidential and potentially highly prejudicial information to be disclosed to others at the Minister's discretion. Such information may not be relevant to any fundraising application, and may mean that the Police effectively lose control of information they have gathered and that in worst case scenarios, such police information could be used for political purposes.

SACOSS believes that these powers should be constrained, either by limiting the extent of information required to be provided as part of “criminal history” (proposed s14A(2)), or by limiting or putting in place safeguards in relation to the publication of any such information under the proposed new s17B.

Overall however, SACOSS welcomes the proposed legislation and again encourages its passage through the parliament.

If you would like further comment or have any questions regarding any issues raised in this submission, please contact me on 8305 4229 or by email at greg@sacoss.org.au.

Yours,

A handwritten signature in black ink that reads "G. Ogle". The signature is written in a cursive, slightly slanted style.

Dr Greg Ogle
Senior Policy and Research Analyst

1 October 2013