Australian charities are well regulated, but changes are needed to cut red tape

Charities exist to benefit the public and do vital work across Australia. They therefore receive support from both governments and the community.

This leads to an expectation that they will be subject to some form of regulation to ensure they are transparent and accountable, and operating for charitable purposes.

Because of the high regard the community has for charities, there is often widespread anger when charities do the wrong thing. Effective regulation is therefore needed to preserve and enhance the community’s trust and confidence in charities.

Ireland is a good example of what happens when effective charity regulation is lacking. A scandal in 2014, which involved a major disability charity using donations to pay senior staff exorbitant salaries, prompted the fast-tracked establishment of an Irish charities regulator.

Who is Australia’s charity regulator?

The Australian Charities and Not-for-profits Commission (ACNC) is the independent national regulator of charities. It was established in 2012.

Unlike in Ireland, the Australian regulator didn’t come about as a reaction to a scandal. Instead, it was a proactive reform that aimed to help prevent such crises in the first place. Its creation reflected a growing view globally that having an independent and dedicated charities regulator represents best practice.

The ACNC registers organisations as charities and helps them understand and meet their obligations. It also maintains a free and searchable public register. This contains a wide range of information about registered charities. Anybody can access financial information and governing documents, as well as a record of any enforcement action the ACNC may have taken against a charity.

Charities registered with the ACNC have several ongoing obligations, such as annual reporting and meeting governance standards.

People can contact the ACNC when they have concerns about charities. It also receives referrals from other government agencies. In addition, it identifies systemic risks, such as charities being used to finance terrorism.

The ACNC examines all concerns raised with it and can investigate charities further and take compliance action if needed. It released its most recent compliance report this week: this examined the ACNC’s compliance activities in 2015-16 and outlined its compliance focus for the year ahead.

Various compliance actions have been undertaken. So far, 28 charities have had their charitable status revoked.

Further reform is needed

Federally, the ACNC regulatory framework is broadly working well. However, one issue that needs to be tackled is the limitation placed on what the ACNC can say about its compliance decisions.

Under the existing legislation, the ACNC may revoke an organisation’s charitable status or take some other form of compliance action – but secrecy provisions mean it can’t explain why it did so.
The ACNC’s secrecy provisions were based on those used by the Australian Taxation Office to protect taxpayers’ privacy. But what may work in the case of taxpayer information doesn’t transfer well to charity regulation.

Australians’ confidence in charities will be strengthened if they know why the ACNC takes compliance action. The ACNC should be able to confirm or deny whether it is investigating a charity, and to provide a statement of reasons for decisions resulting from investigations.

The ACNC legislation must be reviewed within five years of its commencement; this review is due in 2017. This will provide an opportunity to examine the secrecy provisions and other issues, and hopefully pave the way for the necessary amendments to be made.

More broadly, charity regulation in Australia is complicated because of the federation. Two reforms could greatly simplify matters for charities in this regard.

First, more than 40% of charities are incorporated associations. These are organisational structures that create a separate legal identity for the charity, and are regulated by the states and territories.

As has happened in South Australia, other states and territories should no longer require charities that are incorporated associations to report separately to them as well as to the ACNC. State and territory regulators will still have access to the reports they need from the ACNC, but the duplicated reporting by charities will end.

Second, fundraising regulation is a major irritation for Australian charities. Some form of regulation is necessary, but it is very complicated and varies considerably across every state and territory. Charities that fundraise across Australia – even if just through a website – are burdened with complying with this red tape.

Note: The NT has no specific fundraising regulation. Community Council for Australia

A coalition of organisations is calling for reform to this situation. It wants fundraising to be regulated consistently across Australia under the Australian Consumer Law, with the inconsistent state and territory laws repealed.

A review of the Australian Consumer Law is being finalised. This review is an opportunity to tackle a complicated and outdated fundraising regulation framework, and to ensure donors are protected but charities aren’t burdened with unnecessary red tape.

You can catch up on other pieces in our Charities in Australia series here.