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**Submission to:**

 **The Parliamentary Joint Committee on Corporations and Financial Services**

**Inquiry into whistleblower protections in the corporate, public and not-for-profit sectors**

**February 2017**

**Introduction**

This submission outlines five key areas of concern for the Community Council for Australia (CCA) in relation to whistleblower protections and the associated inquiry by the Parliamentary Joint Committee on Corporations and Financial Services.

CCA is particularly interested in the terms of reference relating to the development and implementation of whistleblower protections for the charities and not-for-profit sector (NFPs).

CCA has consulted with 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 NFP sector; a listing of five key issues associated with whistleblower protections as they might apply across the charities and not-for-profit sector.

CCA welcomes this opportunity to provide input into this Inquiry and is keen to engage in detailed discussion about any proposals arising from the Inquiry.

**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 not-for-profits 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.

**Context: not-for-profit reform**

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.

In Australia there are currently various initiatives seeking to: promote social enterprise; reduce compliance costs for NFPs; encourage a diversification of financing options to build a more sustainable funding base; streamline and refine the regulation of NFPs and charities; establish less bureaucratic reporting requirements while building community transparency; increase volunteering and philanthropy; improve relationships between government and the NFP sector; promote impact investing; and increase sector performance measurement. CCA supports all these activities.

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 already 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 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. In the context of recent changes, the NFP sector is slowly but surely finding its voice - building its collective power and seeking real reform that will provide substantial savings to government as well as tangible benefits to the community.

Given the size of the sector and its critical role in our community, the Federal 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.

In seeking to enhance public trust and confidence in charities and NFPs, it has been important to encourage those with any concerns or knowledge of wrongdoing to come forward and raise their concerns.

The primary avenue for raising concerns once options within organisations have been explored is often the ACNC, but there are several other options that relate to the specific area in which an NFP might be operating. Despite these various mechanisms, it is not clear that appropriate whistleblower protections are in place across the NFP sector.

**Key issues relating to whistleblower protections and the NFP sector**

1. **Support for whistleblowers**

There are few, if any, NFPs who do not support the importance of ensuring whistleblowers are encouraged to come forward and identify inappropriate practices within their organisations. Of course, the principle of supporting whistleblowers and the practice may not always align.

The NFP sector has a good track record in supporting transparency and accountability. The NFP sector strongly supported and endorsed the establishment of the ACNC partly because NFPs recognize that ridding the sector of bad practices strengthens the sector.

CCA strongly supports the goal of providing appropriate protections to whistleblowers raising concerns in relation to the practices of NFPs.

1. **Existing practice – the need to identify good and bad policy**

It is not at all clear that there are good whistleblower protections for all people working within or as part of the NFP sector. This is not to say no protections exist, but the nature of those protections seems to vary considerably from well-developed codes of conduct (an example of this might be the Australian Council for International Development Code of Conduct) to almost no documented protections at all. Many NFPs operate within areas such as education or health where the application of broader whistleblower protection obligations are integral to employment practices.

There is no doubt that good practice already exists in some areas, just as there is no doubt inadequate provisions apply in some parts of the NFP sector.

Prior to developing and imposing whistleblower protections on the NFP sector, CCA believe it is necessary to engage in an extensive consultation to identify the extent and nature of existing whistleblower provisions. Developing and imposing new protections without taking current practice into account risks creating less effective protections for some whistleblowers.

1. **Scaling the response**

One of the major concerns for many across the NFP sector is the appropriate scaling of requirements not only in relation to whistleblower protections but also in relation to other areas of reporting and accountability.

The vast majority of NFPs have a total income of less than $100,000. While most of us are aware of the outstanding work of many big-name charities, it is important to remember that these larger national charities are the exception. The top 10% of charities receive 90% of the income earned by all charities.

Small organisations who may or may not have paid staff should not have to fulfill unrealistic requirements.

CCA strongly believe any proposal to implement new whistleblower protection requirements across the whole NFP sector needs to allow for appropriate scale and size to be taken into account when setting obligations.

1. **The role of regulators**

The NFP sector strongly supports the role of the ACNC. The performance of the ACNC to date suggests that many with concerns about inappropriate practices in Australian charities are prepared to use the ACNC to raise their concerns. Over 1000 complaints have been made. There is considerable work to be done around how information about these complaints and their investigation by the ACNC is reported publicly, particularly if the ACNC is to better contribute to enhancing public trust and confidence in charities. While the current secrecy provisions around complaints seem to offer some protections to whistleblowers who rise their concerns with the ACNC, the policies in relation to protection of whistleblowers are not fully formed or well communicated. The ACNC has a role in providing an avenue to whistleblowers, there is work to be done about ensuring it is an effective avenue for whistleblowers.

1. **Next steps**

CCA is very interested in ensuring any whistleblower protections are going to improve the situation for whistleblowers without having a detrimental impact on the capacity of organisations to continue to serve their communities.

This can be a fine line when we consider the limited capacity in many small NFPs. CCA believes NFPs must be actively engaged in the proposed process for developing any new provisions.

CCA will only support new requirements for whistleblower protections if there is appropriate scope for NFPs to have a significant input into their development and the way they are to be implemented.

**Conclusion**

CCA strongly supports the role of whistleblowers in improving the capacity of the sector to better serve their communities.

This does not mean CCA supports the creation of new or onerous reporting or monitoring requirements on all NFPs.

While agreeing with the policy goal of better enabling and protecting whistleblowers, CCA would be concerned if new policies or practices are going to be forced on all NFPs without consultation in the name of protecting whistleblowers. There needs to be further consultation around what works well across the NFP sector and what is not working. Any attempt to improve whistleblower protections needs to be grounded in a well-informed understanding of what will work in practice across the NFP sector to better support whistleblowers.

Given the size of the sector, the fact that it is now administering over $130 billion in income each year and managing over 1.1 million Australian employees, ensuring whistleblower protection works in this sector should be a policy priority. Achieving better protections for whistleblowers in the NFP sector will require considerably more than producing a set of well-intentioned guidelines.

Current Membership – Community Council for Australia ***Attachment A***

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| **Organisation** |
| Access Australia's National Infertility Network | Sandra | Dill | CEO |
| Access Housing | Gary | Ellender | CEO |
| Adult Learning Australia | Jenny | Macaffer | CEO |
| Alcohol, Tobacco and Other Drugs Association ACT | Carrie  | Fowlie | Executive Officer |
| Arab Council Australia | Randa | Kattan | CEO |
| Arthritis Australia | Ainslie | Cahill | CEO |
| Australian Charities Fund | Jenny | Geddes | CEO |
| Australian Council for International Development | Marc  | Purcell  | CEO |
| Australian Healthcare and Hospitals Association | Alison  | Verhoeven | CEO |
| Australian Indigenous Leadership Centre | Belinda | Gibb | CEO |
| Australian Institute of Superannuation Trustees | Tom | Garcia | CEO |
| Australian Major Performing Arts Group | Bethwyn  | Serow  | CEO |
| Australian Women Donors Network | Julie  | Reilly | CEO |
| Benevolent Society  | Joanne | Toohey | CEO |
| Business Council of Cooperatives and Mutuals | Melina  | Morrison | CEO |
| Carers Australia | Ara | Cresswell | CEO |
| Centre for Social Impact | Andrew  | Young | CEO |
| Church Communities Australia | Chris  | Voll | CEO |
| Churches of Christ Vic and Tas | Gabriel | Hingley | Exec Director |
| Community Based Support (Tas) | Murray  | Coates | CEO |
| Community Broadcasting Association of Australia | Jon | Bisset | CEO |
| Community Colleges Australia | Don | Perlgut | CEO |
| Connecting Up | Anne  | Gawen | CEO |
| Drug Arm Australasia | Dennis | Young | CEO |
| Emotion 21 | Claire | Vissenga | CEO |
| Ethical Jobs | Michael  | Cebon | CEO |
| Everyman | Greg  | Aldridge | CEO |
| Foresters Community Finance | Rhyll | Gardner | CEO |
| Foundation for Alcohol Research and Education | Michael  | Thorn  | CEO |
| Foundation for Young Australians | Jan | Owen | CEO |
| Fragile X Association of Australia | Wendy | Bruce | CEO |
| Fundraising Institute of Australia | Rob | Edwards | CEO |
| Good Samaritan Foundation | Catherine | Cresswell | Executive Director |
| **Organisation** |
| Good to Give | Lisa | Grinham | CEO |
| Hammondcare | Stephen  | Judd | CEO |
| Hillsong Church | George  | Aghajanian | CEO |
| Justice Connect | Fiona | McLeay | CEO |
| Life Without Barriers | Claire | Robbs | CEO |
| Mater Foundation | Nigel | Harris | CEO |
| Mission Australia | Catherine | Yeomans | CEO |
| Missions Interlink | Pam  | Thyer | CEO |
| Musica Viva Australia | Mary Jo | Capps  | CEO |
| Non Profit Alliance | Kelly | Beaumont | CEO |
| Our Community | Denis | Moriarty | Managing Director |
| Palliative Care Australia | Liz | Callaghan | CEO |
| Philanthropy Australia | Sarah | Davies | CEO |
| Playgroup Qld | Ian | Coombe | CEO |
| Port Phillip Housing Association | Haleh | Homaei | CEO |
| Power Housing Australia | Nicholas | Proud | CEO |
| Probono Australia | Karen  | Mahlab | CEO |
| Queensland Water & Land Carers | Darryl | Ebenezer | CEO |
| Reach Foundation | Chris  | Naish | CEO |
| RSPCA Australia | Heather  | Neil  | CEO |
| SANE | Jack | Heath | CEO |
| SARRAH | Rod | Wellington | CEO |
| Save the Children | Paul  | Ronalds  | CEO |
| Scope | Jennifer  | Fitzgerald | CEO |
| Settlement Services International | Violet | Roumeliotis | CEO |
| Smith Family | Lisa | O'Brien | CEO |
| Social Ventures Australia | Rob | Koczkar | CEO |
| St John Ambulance | Robert | Hunt | CEO |
| Starlight Foundation | Louise  | Baxter | CEO |
| Ted Noffs Foundation | Matthew | Noffs | CEO |
| Touched by Olivia | Bec | Ho | CEO |
| Variety Australia | Neil  | Wykes  | Company Secretary  |
| Volunteering Australia | Brett  | Williamson | CEO |
| Wesley Mission | Keith  | Garner | CEO |
| White Ribbon Australia | Libby | Davies | CEO |
| World Vision | Tim | Costello | Chief Advocate |
| YMCA Australia | Melinda | Crole | CEO a/c |
| Youth Off the Streets | Father Chris  | Riley  | CEO |