20 October 2026

Law Council
OF AUSTRALIA

Legal Practice Section

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Parliament House
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Cc: SCAGSecretariat@ag.gov.au

Dear Attorney-General and Assistant Minister

Harmonisation of charity laws and regulatory oversight

1. This submission has been prepared by the Charities and Not-for-profits Committee of the Law Council of Australia's Legal Practice Section (**Committee**).

2. The Committee refers to the Productivity Commission's 2024 Inquiry Report, *Future Foundations for Giving* (Inquiry Report No. 104, 10 May 2024) (**PC Report**).

3. The Committee requests that Recommendations 7.2 and 7.3 of the PC Report are implemented as a priority.

PC Report

4. The PC Report arose from an inquiry which sought to understand the "trends in philanthropic giving in Australia, the underlying drivers of these trends, and to identify opportunities and obstacles to increasing such giving". [1] In addition, its purpose was to provide recommendations to Government "to address barriers to giving and harness opportunities to grow it further" and "to support high levels of trust and confidence in the sector".[2]

5. The PC Report identified the need for harmonisation of laws to improve the simplicity and effectiveness of charity regulation across Australia as well as the need to work with state and territory governments to ensure the Commissioner of the Australian

1 *Future foundations for giving* (Inquiry report No. 104, 10 May 2024) iv.
2 Ibid.

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Charities and Not-for-profits Commission (**ACNC**) has the necessary enforcement powers to fulfil their role within the regulatory framework for charities.

6. Recommendation 7.3 of the PC Report provides:

> *The Australian Government should refer an inquiry to the Australian Law Reform Commission to examine:*
>
> - *the scope and coverage of Australian, state and territory charities laws focused on opportunities to simplify and harmonise laws across jurisdictions*
> - *the roles and responsibilities of state and territory Attorneys-General and other relevant regulators in relation to oversight of charities, including charitable trusts.*[3]

7. Recommendation 7.2 includes as its third dot point:

> *The Australian Government should … work with state and territory governments to ensure the Commissioner of the ACNC has the necessary enforcement powers to fulfil their role within the regulatory framework for charities. This should include implementing or reforming laws, where necessary, to confirm that the Commissioner of the ACNC has standing to make applications in a state or territory Supreme Court for orders regarding the administration of charities, including the protection of assets held in trust for charitable purposes, regardless of a charity's structure*

8. The PC Report recommends that, in respect of Recommendation 7.3, the Australian Government should develop the terms of reference for the inquiry it refers to the Australian Law Reform Commission (**ALRC**) in consultation with the Standing Council of Attorneys-General.

9. The Committee requests that the Australian Government action the above recommendations by:

   (a) developing the terms of reference for an inquiry in consultation with the Standing Council of Attorneys-General encompassing recommendation 7.3 and the third dot point in recommendation 7.2; and

   (b) referring the inquiry to the ALRC.

Need for harmonisation of laws and regulation for charities

10. Implementing these recommendations from the PC Report is a necessary step to ensuring that there is a "sound regulatory framework" that promotes trust and confidence in the charitable sector.[4]

11. The Committee agrees with the PC Report that existing discrepancies in:

   (a) the scope and coverage of existing state and territory charities laws;

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[3] Ibid 252.
[4] Ibid 16.

(b) the roles and responsibilities of state and territory Attorneys-General within the regulatory framework; and

(c) the definition of 'charity' across jurisdictions,

are resulting in "compliance burdens for charities and administrative complexities for regulators, potentially leading to inconsistent treatment of entities across jurisdictions".[5]

12. Given this administrative burden and uncertainty falls largely on volunteer directors and management teams that are either unfamiliar, or do not have the resources to stay updated, with "complex taxation laws and variations across jurisdictions",[6] the case for harmonisation of laws and regulation remains both compelling and necessary.

13. Examination of overlapping roles and responsibilities should also have regard to the United Kingdom Law Commission's 2017 report: *Technical Issues in Charity Law* (Law Com No 375) and its proposals for more efficiently allocating responsibility for approving the reform of charitable purposes.[7] That is because recent research suggests that court approval processes for charitable purpose reform are very costly, with little practical impact.[8]

14. These discrepancies are obstructing the realisation of the Australian Government's objective of doubling philanthropic giving by 2030,[9] including by undermining the efficiency of the charity sector in Australia, and consequently, donor confidence in the same.

15. The Committee would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact Alice Macdougall, Chair, [redacted]

Yours sincerely



Greg McIntyre SC
Chair, Legal Practice Section

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5 Ibid 251.
6 Jonathan Malone, 'Harmonisation Update – Pitfalls and Possibilities' (Paper presented at the Not-for-profit Tax Intensive, The Tax Institute, 21 June 2023) 3.
7 https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/12/Technical-Issues-in-Charity-Law-Final-report.pdf
8 See, eg, Ian Murray and Natalie Silver, 'Use of Cy-Près and Administrative Schemes by Australian Higher Education Providers to End Dead Hand Control of Charitable Assets' (2024) 45(2) *Adelaide Law Review* 362.
9 Philanthropy – support to double philanthropic giving by 2030 | Australian Taxation Office.