



Queensland University of Technology
Brisbane Australia

This may be the author's version of a work that was submitted/accepted for publication in the following source:

[Artiach, Tracy, Irvine, Helen, Mack, Janet, & Ryan, Chris](#)
(2016)

The legitimising processes of a new regulator: The case of the Australian Charities and Not-for-profits Commission.

Accounting, Auditing and Accountability Journal, 29(5), pp. 802-827.

This file was downloaded from: <https://eprints.qut.edu.au/221307/>

© Consult author(s) regarding copyright matters

This work is covered by copyright. Unless the document is being made available under a Creative Commons Licence, you must assume that re-use is limited to personal use and that permission from the copyright owner must be obtained for all other uses. If the document is available under a Creative Commons License (or other specified license) then refer to the Licence for details of permitted re-use. It is a condition of access that users recognise and abide by the legal requirements associated with these rights. If you believe that this work infringes copyright please provide details by email to qut.copyright@qut.edu.au

Notice: *Please note that this document may not be the Version of Record (i.e. published version) of the work. Author manuscript versions (as Submitted for peer review or as Accepted for publication after peer review) can be identified by an absence of publisher branding and/or typeset appearance. If there is any doubt, please refer to the published source.*

<https://doi.org/10.1108/AAAJ-10-2014-1850>

THE LEGITIMISING PROCESSES OF A NEW REGULATOR: THE CASE OF THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION

Abstract

Purpose - This paper strengthens our theoretical understanding of the processes through which a new regulator seeks to gain legitimacy within an existing regulatory space. We do this by investigating the case of the Australian Charities and Not-for-profit Commission (ACNC).

Method - Synthesising legitimacy theory with the concept of regulatory space, we analyse formal public discourse surrounding the establishment and operations of the ACNC.

Findings - Regulation is essentially a context-bound political process in which a new regulator needs to establish legitimacy to ensure its survival. It must convince its constituents that it has developed processes to operate effectively and professionally in addressing constituents' needs, to bargain authoritatively with other regulators in establishing its operational boundaries, and to engage politically with government and constituents. Over a relatively short time, the ACNC built legitimacy, despite the political threats to its formal regulatory authority.

Research limitations – Our conclusions are based on our analysis of one case. There is scope for further investigations of the processes by which new regulators establish their legitimacy in different contexts.

Practical implications – The potential for a political threat to the authority of a new regulator, and the difficulty of achieving regulatory reform, particularly in a federated system such as Australia, highlight the necessity for a new regulator to develop a compelling discourse of legitimacy.

Originality/value - We synthesise regulatory space and legitimacy perspectives, contributing to an understanding of the processes of regulation.

Keywords - Regulation; Regulatory space; Legitimacy; Not-for-profit; Australian Charities and Not-for-profits Commission (ACNC)

Article classification Research Paper

THE LEGITIMISING PROCESSES OF A NEW REGULATOR: THE CASE OF THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION

1. Introduction

There has been a great deal of interest in recent years in the issue of regulation (Thornburg and Roberts, 2008; Humphrey *et al.*, 2009; Malsch and Gendron, 2011; Irvine and Ryan, 2013; Connolly *et al.*, 2015), much of which concentrates on the effect of specific regulations rather than the processes of regulation (MacDonald and Richardson, 2004; Shafer and Gendron, 2005; Canning and O'Dwyer, 2013; Khan and Ahmed, 2015). This paper responds to calls to extend research on the processes through which regulation is developed (see, for example, Young, 1994, 1995; Malsch and Gendron, 2001; MacDonald and Richardson, 2004; Canning and O'Dwyer, 2013). One aspect of the process of regulation that deserves attention is the means by which a new regulator develops its legitimacy. MacDonald and Richardson (2004, p. 492) argue that the use of the regulatory space concept "is particularly useful for analysing the entry of a new regulatory body into an institutional field". In this paper we examine the legitimising processes surrounding the establishment of a new regulatory body in an existing regulatory space.

Hancher and Moran (1989) portray regulation in an advanced capitalist economy as occurring in a conceptual regulatory space. This concept of regulatory space is particularly useful for exposing the dynamic nature of regulation and the development of regulatory processes by actors and organisations as they juggle political power and establish their right to occupy a position within the regulatory arena at a particular point in time (Hancher and Moran, 1989; Young, 1994, 1995; Canning and O'Dwyer, 2013; Irvine and Ryan, 2013). Further, if organisations are to operate within society, they must attain a state of legitimacy, whereby their actions are seen to be "desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions" (Suchman, 1995, p. 574). Thus, any new regulator, in establishing its legitimacy must attempt to influence the formal public discourse surrounding its operations if it is to work successfully within the regulatory space. The building of regulatory consensus between the regulator and the regulated is a dynamic process (Nicholls, 2010) as the regulator seeks to negotiate and establish the practical meaning of its enabling legislation (MacDonald and Richardson, 2004). Thus a new regulator must build its legitimacy in the regulatory space and "simultaneously negotiate its identity" (MacDonald and Richardson, 2004, p. 493).

The twin lenses of Hancher and Moran's (1989) regulatory space and Suchman's (1995) conceptualisation of legitimacy are useful to examine the processes by which a new regulator establishes legitimacy in an existing regulatory space. Both these theories are based on the notion that reality is socially constructed. Regulatory space, focusing on the unique situations and dynamics in the development of regulation, acknowledges the political processes at play in the process of regulation, thereby implying legitimacy. Similarly, legitimacy theory emphasises the potential of an organisation to influence, and be influenced by, stakeholders' perceptions of its fitness to operate in society, and thereby construct its image. The synthesis of these theories enables us to illustrate the dynamic and complex nature of the regulatory process, and the need for a regulator, particularly a new regulator, to legitimise its regulatory authority. This approach will contribute to an enhanced understanding of the regulatory process and enable us to address our research question: What are the processes by which a new regulator establishes legitimacy in an existing regulatory space? We address this question by examining the case of the Australian Charities and Not-for-profit Commission.

As a consequence of existing regulation at the Federal and State government levels^[1], the regulation of the Australian Not-for-profit (NFP) sector has been congested and fragmented (Saj, 2015a).^[2] From the 1990s, the sector has been the subject of numerous inquiries by successive governments (see for example: Industry Commission, 1995; Australian Treasury, 2001; Senate Standing Committee on Economics, 2008; Productivity Commission, 2010). Consistent themes emerging from the inquiries were the need for "legislative and regulatory reform" (Butcher, 2015, p. 5), and the need for a national regulator for the NFP sector to provide a coherent national regulatory framework (Commonwealth of Australia, 2014) and reduce the regulatory and compliance burden (red tape). For this to occur, it was acknowledged that disparate NFP legislation between the various State governments would need to be aligned, which would result in a radical change of the participants and their power base in the NFP regulatory space.

It was in response to these reports that the Australian Charities and Not-for-profit Commission (ACNC) was formed as a new national regulatory body in 2011. The overarching objectives of the ACNC were “to maintain, protect and enhance public trust and confidence in the sector through increased accountability and transparency; support and sustain an independent and innovative not-for-profit sector; and to promote the reduction of unnecessary regulatory obligations on the sector” (ACNC, 2014). However, the ACNC was established without the transfer of any of the existing specialised functions or harmonisation of State legislation, as had been recommended in previous inquiries. As a consequence, the creation of the ACNC with these structural impediments had the potential to impose additional regulatory compliance burdens on the sector. Thus, from its establishment, the fledgling regulator was faced with the challenging task of establishing its legitimacy as a viable organization and worthy regulator in a space which now became more congested and fragmented. This task became more challenging when the government changed on 7 September 2013.^[3]

In this qualitative study, we examine the public discourse surrounding the formation of the ACNC. We analyse the content of publicly available documents, to identify the processes through which the new regulator developed a “discourse of legitimacy” (Zhu and McKenna, 2012, p. 525) with its constituents as it sought to interpret and operationalise the practical meaning of its enabling legislation. In doing this, we contribute to the literature that acknowledges the importance of strong regulation for the NFP sector (Connolly and Hyndman, 2013) and the potential of Government as a stakeholder in ensuring regulation is strengthened (Hyndman and McMahon, 2011). Our particular focus is on the process of regulation, in particular focusing on how “organizations in regulatory regimes ... seek to build legitimacy in complex and dynamic situations” (Black, 2008, p. 137). We demonstrate that the mere passing of legislation, while it endows a body with regulatory authority, is not sufficient to ensure its legitimacy. A new regulator must forge its own identity and demonstrate and gain legitimacy, in the process of carving out a niche in the existing regulatory environment. As this process takes place, political debate on the effectiveness of the regulator may be a catalyst for operational changes, or even for legislative changes which could further clarify the authority of the regulator.⁴

The remainder of the paper is structured as follows. Section two outlines our theoretical approach and demonstrates its applicability to this case. In Section three we describe the context and method by which the study was conducted. Following this, in Section four, we apply this approach to the case study. Finally, in Section five, we draw inferences about the political processes of regulation, discuss the implications and conclude by identifying the contribution of the study and providing suggestions for future research.

2. Regulatory space and legitimacy

According to Hancher and Moran (1989, p. 4), regulation is “indisputably a political process” and as such it involves the contest for power between actors in a notional regulatory space which is available for occupation. Further, although there could be many actors in the space, some will be major and others minor. Relative power will be distributed unevenly and the boundaries of the particular space will be determined by the issues under consideration. The shape of the regulatory space and the distribution of power between actors within that space is best understood with reference to “the terms under which organisations enter the regulatory space, and *defend* their position within it” (Hancher and Moran, 1989, p. 279, emphasis added). This implies the need for a new regulator to establish its legitimacy (Tornikoski and Newbert, 2007) as it adapts to and negotiates the various factors that determine the shape of the space: place, timing, organisational structure, interdependencies and issues (Hancher and Moran, 1989).

Place is determined by “the boundaries of the nation-state”, and because significant differences occur between jurisdictions, this can determine “whether regulation happens at all, its scope ... and how far the struggles for competitive advantage” go (Hancher and Moran, 1989, p. 280). It also determines who gains entry into the regulatory space, the terms of entry, and how they “challenge the existing distribution of power within the common regulatory space” (Hancher and Moran, 1989, p. 282). *Timing* is important, as the moment and circumstances surrounding the origin of regulation can determine the subsequent policy outcomes, with regulation largely a matter of “organizational routine[s] ... [and] institutionalized procedures” (Hancher and Moran, 1989, p. 284).

Structurally, “regulation inevitably becomes a co-operative matter” when large organisations dominate the regulatory space (Hancher and Moran, 1989, p. 287). Organisational structural characteristics are strongly linked to *interdependencies*, evident in the development and institutionalisation of networks and linkages (Hancher and Moran, 1989). These networks are essential in a regulatory space occupied by powerful and dominant players, for without their cooperation a new and small regulator could not establish its position. Within the boundaries of regulatory space, different regulators have diverse purposes (Breen, 2013; Phillips, 2013) and interact in response to *issues* identified as important (Nicholls, 2010).

In addition, as MacDonald and Richardson (2004, p. 493) argue, a new regulator’s successful establishment relies on its ability to demonstrate its legitimacy to both existing organisations and regulators who operate within the regulatory space, in effect to “simultaneously negotiate its identity and engage in actions that other agents in the space will accept as appropriate to that identity”. Suchman’s (1995) proposition that at different stages in its life, an organisation may need to gain, maintain and/or repair its legitimacy suggests that for a new regulator, the principal task is to gain legitimacy. While the path to legitimacy is socially constructed and needs to be created subjectively (Suchman, 1995; Scott, 2001; Black, 2008) whether an organization has achieved a state of legitimacy depends on perceptions by constituents as to its validity, which can be objectively assessed (Shafer and Gendron, 2005). If organisations are judged to be legitimate, they receive the resources needed to pursue their objectives, so they undertake legitimizing activities, including the development of a legitimizing discourse, to move them to a state of legitimacy (Dowling and Pfeffer, 1975; Suchman, 1995; Brown and Deegan, 1998). Relevant to this endeavour, Suchman (1995) acknowledges a duality between what he identifies as strategic and institutional legitimacy.

Strategic legitimacy focuses on the management of “symbolic relationships with demanding constituents”, and envisages managers “looking ‘out’”, while institutional legitimacy, in contrast, takes account of the “constitutive” nature of an organization’s environment, envisaging society “looking ‘in’” (Suchman, 1995, p. 577). Taking a “middle course” between these two approaches, Suchman (1995, p. 577) proposes three types of legitimacy, pragmatic, moral and cognitive. These acknowledge both the capacity of management to adopt legitimising and strategic discourses, and the power of constituent discourse to influence organizational behaviour, implying the interactive nature of legitimacy, which has been identified as being granted to organisations when they adhere to the social contract.

Pragmatic legitimacy is evident when organisations demonstrate that they meet the needs of their community and bring benefits to constituents (Shafer and Gendron, 2005). *Moral* legitimacy is achieved when societally acceptable structures are adopted, including professional and democratic processes and stakeholder consultation. Pragmatic and moral legitimacy can be managed strategically, but are less resilient than cognitive legitimacy, the most difficult yet powerful type of legitimacy to achieve (Zucker, 1987; Suchman, 1995; Black, 2008). *Cognitive* legitimacy is evident when an organization has societal acceptance and its existence is taken for granted, its influence is apparent and it demonstrates persistence (Zucker, 1987; Suchman, 1995). In this sense, longevity contributes powerfully to legitimacy, although mere “legal validity” is not necessarily indicative of legitimacy (Black, 2008, p. 144). Perhaps the most prevalent use of legitimacy theory in accounting research is in corporate social responsibility literature (see, for example, O’Donovan, 2002; Mobus, 2005; Tilling and Tilt, 2010), although it has also been used in studies of accounting standard setting (Durocher *et al.*, 2007), accounting’s contribution to NGO legitimacy (Goddard and Assad, 2006), and accounting professional bodies (Shafer and Gendron, 2005; Carnegie and O’Connell, 2012). It has not previously been used with regulatory space, an approach which we argue provides valuable insights into the processes of regulation.

In synthesising the construct of regulatory space and a legitimacy framework, we take an approach similar to that of Shafer and Gendron (2005), Durocher *et al.* (2007) and Carnegie and O’Connell (2012), who also combine Suchman’s (1995) legitimacy framework with another theory that is “different, yet compatible” (Carnegie and O’Connell, 2012, p. 862). Shafer and Gendron (2005) synthesised legitimacy theory with the theory of professions to investigate the AICPA’s promotion of a new global credential. Durocher *et al.* (2007) developed an integrated model comprising power, legitimacy and expectancy theories to interpret users’ participation in the accounting standard setting process. In their study of the way Australian professional accounting bodies responded to a crisis, Carnegie and O’Connell (2012) integrated legitimacy with theory about occupational groups.

In this study our focus is on the establishment of a new organization, and we identify the gaining of legitimacy as particularly crucial in that context, since if a new organization is to survive in a competitive environment (Baum and Oliver, 1996), it must establish a niche (Katz and Gartner, 1988) and demonstrate its credibility (Tornikoski and Newbert, 2007). In the case of a new organization that enters a regulatory space in which there are existing “power relations and cultural conceptions” (Larsson, 2005, p. 128), these challenges are magnified. Not only does the organization have to overcome the “liability of newness” (Singh *et al.*, 1986), but it also has to negotiate and maintain a position of influence within the regulatory space by demonstrating politically astute behaviour (Thornburg and Roberts, 2008) and managing the rhetoric of those who oppose it (Shafer and Gendron, 2005).

Recognising that much regulation literature pays attention to the process by which *regulations* are developed, we identify as important the issue of how *regulators* are established, and in particular, how new regulators are established and gain a foothold in regulatory space. Consequently, we apply the synthesised concepts of regulatory space and legitimacy to address the question: What are the processes by which a new regulator establishes legitimacy in an existing regulatory space?

We examine the case of the ACNC. The ACNC entered the Australian NFP regulatory space as a result of a political decision made at a particular point of time, in this case following the Australian government’s commitment at the 2010 Australian general election, to implement a major reform of the NFP sector (Saj, 2015a). The new regulator was confronted with the need to work within the structural boundaries of the Australian federated system, develop co-operative relationships with established regulators, and demonstrate its effectiveness in addressing issues perceived by the NFP sector as important. As outlined in the next section, we analyse the ACNC’s efforts to establish itself as a legitimate regulatory authority, from the “historical moment” (Hancher and Moran, 1989, p. 284) when the decision to establish it as a taskforce was made, through its legislative establishment and operation, until the release of a Senate report on its proposed abolition. We focus both on the ACNC’s efforts to look out, strategically demonstrating its legitimacy to constituents, and on societal responses to these efforts, reflecting the institutional perspective of looking in on the new regulator.

3. Context and Method

The establishment and operations of the ACNC are characterised by a number of key events covering the period July 2011 to 16 June 2014 which defines the parameters of this case analysis. The events commence with the ACNC’s regulatory operations as a Taskforce in July 2011 as legislation was prepared for its legislative enablement (ACNC, 2012b). Then, on 3 December 2012, the ACNC Act received Royal Assent, and the ACNC was officially formed, although, for all intents and purposes, it had been acting as the regulator of the sector since July 2011. However, in December 2013, a new government was elected and indicated its intent to repeal the ACNC Bill. The ACNC Repeal Bill was referred to the Senate Economics Legislation Committee to ascertain the level of public support for the regulator. The Committee released its report on 16 June 2014, recommending the passing of the proposed legislation, and therefore the abolition of the ACNC.

Our approach in conducting this archival study is to trace the discourse which emanated from the historic reference points surrounding the establishment and operation of the ACNC. In that discourse, we examine the processes by which the new regulator established its legitimacy with existing stakeholders in the regulatory space and the way in which it sought to establish the practical meaning of its legislation. We identify the discourse as a “discourse of legitimacy” (Zhu and McKenna, 2012), involving both the ACNC’s portrayal of its own strategic legitimacy (the regulator looking out to its constituents) and perceptions by constituents of the ACNC’s institutional legitimacy (constituents looking in at the regulator) as outlined in Table 1.

[Insert Table 1 about here]

We examine this discourse as expressed in formal publicly available documents either produced by or about the ACNC, against the backdrop of key discursive events which define the regulatory transition of the case analysis. As listed in Table 1, these documents include the ACNC’s Implementation Design Discussion Paper (ACNC, 2011); constituent responses to this Discussion Paper (ACNC, 2012a); the ACNC’s Implementation Report (ACNC, 2012b), which outlined the regulator’s response to feedback on

its Discussion paper; Commissioner's Columns over a year between the passing of the ACNC Act and the announcement by the new government that it intended repealing the ACNC legislation (Commissioner's Columns 2012, 2013); and public feedback to the Senate Economics Legislation Committee (2014b) regarding the proposed repeal legislation. In analysing the various documents, we developed schema appropriate to each, with the resultant analysis conducted and checked by co-authors.

As summarised in Table 1, we analyse five legitimising discourse activities relevant to the ACNC's regulatory position over the period of the study, from its establishment as a Taskforce in July 2011, through to the June 2014 release of the Senate Economics Legislation Committee's (2014c) Report. We portray these as part of a constitutive discourse process that acknowledges the need for a regulator with legislated authority to gain legitimacy (MacDonald and Richardson, 2004) and reflects both strategic (*looking out*) and institutional (*looking in*) forms of legitimacy (Suchman, 1995). Three of the discourse activities represent the ACNC's strategic efforts to outwardly promote its legitimacy as a regulator (proposing a mode of operations; managing symbolic relationships; defending regulatory authority). The remaining two represent the perceptions of constituents about the ACNC's institutional legitimacy (feedback *to* the regulator, and feedback *on* the regulator).

In the first instance, we examine the ACNC's discourse with its stakeholders by identifying the operational proposals advanced in its Implementation Design Discussion Paper (ACNC, 2011) issued on 9 December, 2011. This document posed 15 questions on eight issues relating to the ACNC's design and operation (see Appendix). This discourse illustrates the way the ACNC 'looked out' to society to establish its legitimacy (Suchman, 1995, p. 577) in proposing a mode of operation.

The second discourse is an examination of the way the ACNC's constituents 'looked in', as evident in the public feedback to the proposed mode of operation. We content analysed the 114 stakeholder responses^[5] to the 15 questions of the ACNC Implementation Design Discussion Paper (ACNC, 2011), including qualitative comments, to identify where stakeholders believed the ACNC's proposed mode of operations was workable and could provide benefits for the sector.^[6] A schema identifying the method of coding was developed by the co-authors for each of the questions. The resultant manual analysis using Excel was then randomly checked by co-authors for reliability. The analysis is provided in the Appendix.

In June 2012, the ACNC's Implementation Report (ACNC, 2012b) was issued, representing the ACNC's response to stakeholders' comments on its Implementation Design Discussion Paper (ACNC, 2011). As the basis of the third discourse, we analysed the report to discern whether it aligned with our analysis of responses in the second discourse, for evidence of the ACNC's claims to legitimacy as it presented itself to its constituents. The manual cross-content analysis using Excel was carried out collectively by the co-authors to ensure the reliability of the analysis.

On 3 December 2012, the ACNC Act received Royal Assent (Saj, 2015a), formalising the point at which ACNC moved from acting as a regulatory Taskforce to operating with formal legislative authority. In this fourth discourse, we analysed all 31 issues of the regular ACNC Commissioner's Columns (2012, 2013) issued from December 2012 to December 2013, to investigate the way the ACNC 'looked out' to society to establish its legitimacy (Suchman, 1995, p. 577). We identified a thematic coding schema according to Suchman's (1995) guidelines to identify evidence of pragmatic, moral and cognitive legitimacy (see Table 1) and manually coded each of the columns according to this schema. The resultant manual analysis was cross checked for reliability. This analysis provides evidence of how the ACNC interpreted and operationalised its role, and how it communicated this to its constituents. We specifically identified reports of its interactions with other regulators, and its claims to pragmatic legitimacy (ACNC's reputation, achievements and the benefits to NFP stakeholders), moral legitimacy (the establishment of professional structures and practices) and cognitive legitimacy (persistence, widening influence and the formulation of plans for the future).

In December 2013, with the election of a new government critical of the "heavy handed" approach of the ACNC (Ferguson, 2013), and intent on repealing the ACNC legislation, the ACNC entered into a new phase of uncertainty. The ACNC Repeal Bill was referred to a committee for inquiry and report (Senate Economics Legislation Committee, 2014a). The Inquiry attracted a reported 155 submissions.^[7] A public hearing was held on 23 May 2014, with the Committee's Report released on 16 June 2014.^[8] The Inquiry

simply asked respondents for their opinion about whether the ACNC Bill should be repealed or not, and in effect whether the ACNC should be abolished.^[9] This forms the basis of the fifth discourse, in which we examined the direct perceptions of stakeholders about the ACNC's effectiveness as a regulator, reflecting the fact that "legitimacy is dependent on a collective audience" (Suchman, 1995, p. 574). Using content analysis, based on a collectively developed schema, we manually analysed the submissions. First, we identified support for the repeal bill, categorising responses as yes, no, or uncertain. Next, using thematic analysis once again based on a collectively developed schema, we examined the responses to ascertain the extent to which stakeholders accepted the ACNC's authority and legitimacy as a national NFP regulator, identifying the issues they raised as being important for the future of charity regulation in Australia. Our analysis revealed several themes: direct expressions of support for the ACNC's legitimacy; comments about the ACNC's effectiveness in addressing multiple State legislative requirements; the ACNC's achievements in reducing red tape; comments about future paths for charity regulation in Australia; and the political environment in which the ACNC operates. We then compared the recommendations of the committee with these submissions, identifying dissenting opinions.

In the next section, we present the results of our analysis of these five legitimacy discourses, to address the research question: What are the processes by which a new regulator establishes legitimacy in an existing regulatory space?

4. The interactive processes of establishing regulatory legitimacy.

Strategic legitimacy: proposing a mode of operations

The establishment of the ACNC as a national NFP regulator was an initiative of the Labor Government and represented a political response to years of inactivity on the recommendation of earlier reports (Butcher, 2015). However, as already highlighted, structural impediments in the form of overlapping regulatory requirements between State governments had not been resolved. It was therefore important from the beginning, for the ACNC to enrol the support of the sector by demonstrating its fitness to identify and conduct an appropriate mode of operations as they negotiated the operational boundaries of their legislation (Macdonald and Richardson, 2004). Consequently, we examine the ACNC's operational proposals advanced in its Implementation Design Discussion Paper (ACNC, 2011). This document provided a clear outline of the way the ACNC interpreted the scope of its regulatory authority and its operational model. It identified three regulatory topic areas: the reporting framework, the portal, and education and guidance. These are outlined below, with details included in the Appendix.

Many of the proposals regarding the ACNC's Reporting Framework had the potential to have an impact on the specialised functions of other regulators (for example, the Australian Accounting Standards Board, State regulators and the Australian Taxation Office), indicating the ACNC's need to establish cooperative, interdependent relationships with other regulators. Reflecting this need, the ACNC proposed the introduction of The Charity Passport. This was a consolidated set of baseline information that different levels of governments agreed were essential in their dealings over grant funding arrangements, service agreements and contracts (ACNC, 2011, p. 12). This was to be recorded through the ACNC's internet-based portal. Question 1 of the Discussion Paper, related to the Charity Passport, sought constituents' opinion on whether the proposed framework would reduce reporting obligations, and what obstacles may arise in its implementation. This question went to the heart of the ACNC's stated intention, important to the sector, of reducing red tape, and was vital to the new regulator's achievement of pragmatic legitimacy.

Also, under the new reporting framework, the ACNC proposed that all registered charities be required to submit financial and narrative information in an Annual Information Statement (Questions 2, 3 and 4), and sought feedback (Question 5) on whether Standard Business Reporting, a government initiative which was designed to streamline business-to-government reporting through accounting/payroll software, would be an appropriate taxonomy (ACNC, 2011, p.123). In this it indicated its intention of working with the existing frameworks used by large and powerful regulators. Further, acknowledging concerns about the key issue of regulatory burden, the ACNC proposed that reporting requirements of charities would be 'tiered' for the purposes of determining the amount of information required in the Annual Information Statement (Question 6), identified issues relating to accounting standards (Questions 7 and 8), and outlined transitional arrangements for charities registering with the ACNC (Question 9).

The ACNC's Portal was proposed as a channel (website) for online services and information exchange (ACNC, 2011, p. 17). It related to the mechanism for collecting information, rather than the information content (Questions 10, 11 and 12). In addition, the ACNC outlined and invited comment on its proposals regarding its education and guidance role, stating it planned to provide "education and general advice" to the public and charities to ensure an understanding of and compliance with its regulatory processes (Questions 13, 14 and 15) (ACNC, 2011, p. 21).

A key feature of the activities of the ACNC during this time revolved around establishing its operational boundaries, proposing methods of operating which would address constituents' needs, and also on bargaining with the other regulators in the regulatory space to establish its position. Hancher and Moran (1984) argue that the networks and interdependencies established by new entrants into the space are crucial, for without cooperation a new regulator cannot secure its position. The ACNC was also seeking to define its identity through "engaging in actions that other agents in the space" accepted as appropriate (Macdonald and Richardson (2004, p493).

Institutional legitimacy: constituents' feedback to the regulator

Our analysis of the 114 responses to the ACNC's Discussion Paper is also summarised in the Appendix. These responses enabled us to assess how well the ACNC had anticipated the needs and wishes of the sector and whether it was perceived by respondents to be a legitimate regulator. Since a key issue identified in the NFP regulatory space was the reduction of red tape, in our content analysis we looked, in particular, for indications of pragmatic legitimacy, i.e. whether stakeholders believed the ACNC could provide benefits for the sector and therefore justify its role as a national regulator.

Responses to Questions 1 to 9, relating to the proposed reporting framework, called into question the ACNC's ability to pre-empt the sector's information needs and to meet its objective of reducing unnecessary regulatory compliance (red tape), in the transitional period when it operated as a taskforce, and on an ongoing basis. It would be difficult to conclude that the ACNC would find these responses encouraging and this could be viewed as being detrimental to its attempts to gain legitimacy. It would be expected that for the ACNC to gain legitimacy there would need to be significant support for the Charity Passport, a key operational strategy. While 38% believed it would not reduce reporting obligations, 62% of the 74 respondents either believed the Charity Passport would reduce reporting obligations or had the potential to do so. Eighty-four respondents provided details of obstacles, with 88% of those identifying the most significant obstacle being the unresolved issue of the harmonisation of Federal and State Territory regulations. This difficulty would mean the Charity Passport would be unable to collect information that would sufficiently meet the needs of other regulators, thereby resulting in more, rather than less, reporting. Despite some stakeholder ambivalence in response to the first part of this question, we inferred a high level of support for the notion of a national NFP regulator, based on content analysis of the narrative responses.

Regarding the proposed Annual Information Statement (Questions 2, 3 and 4), it is difficult to conclude that the ACNC had general support on its form, structure and content, with 70% of respondents indicating that it was not appropriate for achieving transparency and accountability. There was, however, a clear endorsement by respondents (87%) for the inclusion of narrative reporting (Question 4). Only 43% of respondents supported the adoption of the proposed Standard Business Reporting taxonomy, while 66% of respondents did not believe the information collected through the Annual Information Statement was appropriate for each reporting tier. Forty-six entities, representing both 'no' and 'yes' votes, provided further explanation of other issues, including the necessity for alignment with the information needs of other regulatory bodies (26%). Also, as tabulated in the Appendix, there was strong opposition (85%) to alternate accounting years being at the discretion of the Commissioner, indicating the sector's overwhelming opinion that the decision to select the appropriate financial year should be that of the entity not the ACNC.

One would expect that if the ACNC were to gain a strong sense of support and acceptance for its proposed reforms, there would need to be a high degree of clarity in the transitional arrangements, however only 28% of respondents believed the arrangements were clear (Question 9). Narrative comments were provided by 42 respondents who collectively expressed concerns over several key issues, including the

timing of the process and readiness of entities (40%); the need for greater clarity around guidelines, definitions and specific Annual Information Statement items (40%); the lack of sector awareness and confusion due to lack of broad consultation (31%); the continued reporting obligations under other government agencies (17%); and finally the lack of clarity around the statutory definition of a charity (20%).

It is thus difficult to conclude that the ACNC had widespread support for the proposed operation of its Reporting Framework, with responses indicating a significant degree of scepticism surrounding the proposals and concerns about the lack of harmonisation of existing regulation. This suggested that the ACNC would need additional time to determine the information it would require the sector to provide and to demonstrate its ability to meet the needs of the sector.

Two key issues emerged in relation to the ACNC's proposed portal. In response to Question 10, 61% of respondents indicated the need for more support for the sector. In response to Questions 11 and 12, there were clear perceptions of significant barriers to using the ACNC's Portal. Given the Portal would be the operating mechanism through which the ACNC would connect with the sector and the community, the identification of these barriers, while perhaps not perceived to be unsurmountable in the eyes of the ACNC, does highlight a significant level of unease or disquiet within the sector.

Also, as evident in the Appendix, there was widespread support for proposals (85% for Question 13 and 65% for Question 15) relating to the nature and scope of the ACNC's education and guidance role, an area not impinging on the functions of any other regulator. Support for the ACNC's proposal (Question 15) to endorse education and guidance materials provided by other entities indicated the desirability of establishing cooperative relationships with other regulators. While overall there was significant support for the proposed educational focus, there were reservations, with issues raised in response to Question 14 including the need for the ACNC to fund education, to listen to the sector and to have an increased awareness of the diverse stakeholders including cultural and linguistic diversity. In addition, it was indicated that the ACNC should stay within its mandate and scope as a regulator, produce educational materials and be awarded sufficient funding and resources to achieve its objectives.

Overall, our analysis of responses to the ACNC's Discussion Paper revealed that the new regulator was viewed somewhat sceptically by the sector, thus jeopardising its ability to demonstrate pragmatic legitimacy. At this stage of its life, the regulator was trying to negotiate its operational boundaries (Hancher and Moran, 1984) and was also attempting to build its legitimacy with the other regulators and its constituents. Although the perception of constituents was ambivalent towards the ACNC at this stage, it continued to build its profile in order to create a successful identity.

Strategic legitimacy: managing symbolic relationships

In June 2012, while still operating as a Taskforce, and less than four months after receiving stakeholder feedback on its Discussion Paper, the ACNC issued its Implementation Report (ACNC, 2012b). This report was a continuation of the ACNC's process of interpreting its operational boundaries, and provided an opportunity for the ACNC to build legitimacy by demonstrating the way it was meeting the needs and perceptions of NFP stakeholders and adopting structures and approaches consistent with institutional norms. In this context, a response to each question of the discussion paper may have been expected. Instead, the Report was structured in a manner which obscured direct accountability by not reporting the responses to each of the fifteen questions outlined in the Discussion Paper.

Hence, because of this lack of specific analysis, the Report does not give any indication of the depth of positive or negative responses that our analysis has revealed, presenting the responses in a more favourable light. Language such as "overall support" and "overwhelming support" was used and any hint of dissent or criticism was couched in generally soft language, for example, highlighting "concerns" raised by some stakeholders (ACNC, 2012b). In contrast to this, as already identified, our analysis found strong negative responses and perceived barriers to the key operational mechanisms to be introduced by the ACNC, in particular the Charity Passport, the Annual Information Statement and the ACNC Portal.

On the basis of our analysis of the Implementation Report, therefore, we argue that despite the ACNC's receiving a modest level of support for its proposals regarding the proposed scope and nature of its

operations, it crafted its response carefully to maximise its legitimacy (Suchman 1995). As a new organisation, it was attempting to establish its niche (Katz and Gartner 1988), and from the ACNC's viewpoint, it promoted itself as enjoying the sector's support for its initiatives. It was quite clearly managing the rhetoric of those who were opposing it at this stage of its life (Shafer and Gendron, 2005).

Strategic legitimacy: defining regulatory authority

The ACNC had only been operating for a few months with full legislative authority (see Table 1) when the Federal Opposition foreshadowed its intention to repeal the ACNC Act if elected^[10], an intention which was formally confirmed in December 2014, shortly after it formed government (Ferguson, 2013). Through its discourse with constituents in the Commissioner's Columns (see Table 1), the ACNC clearly enunciated its mode of operations and achievements, its interactions and negotiations with other regulators as it developed co-operative interdependencies. We identified extensive and detailed statements indicating pragmatic and moral legitimacy in all 31 Columns analysed, and brief references to cognitive legitimacy in 22.

Evidence of pragmatic legitimacy was provided by promoting the benefits the ACNC brought to its constituents. The principal benefit, frequently mentioned, was the reduction of red tape and the reporting burden on the sector, which was a key issue in the NFP arena (see, for example, Commissioner's Columns, 2013, 7 January, 13 March, 13 May, 19 June, 7 October). Constant reminders of progress in streamlining the reporting burden on the sector focused, for example, on the benefits of the Charity Passport (Commissioner's Columns, 2013, 13 May), negotiations with other regulatory bodies to establish boundaries and streamline regulatory requirements (see, for example, Commissioner's Columns, 2012, 10 December and 2013, 7 January and 19 June), the introduction of bulk registrations (see, for example, Commissioner's Columns, 2013, 14 January, 11 February, 12 September), the contribution of the Annual Information Statement to a "report once, use often approach" (Commissioner's Columns, 2013, 7 October), and the ACNC's efforts on governance and fraud protection (Commissioner's Columns, 2013, 16 July).

Claims of moral legitimacy, also evident in every one of the Commission's Columns, included information on the establishment of professional structures and practices, and the building of esteem: clarification about systems and expectations, guidance to charities about how to register, and meet regulatory requirements, particularly relating to lodgement of the Annual Information Statement. Ongoing information about access to ACNC personnel, and the availability of help and resources reinforced the ACNC's professional approach as a "customer focussed" organisation (Commissioner's Columns, 2013, 18 February), responsive to stakeholder concerns (Commissioner's Columns, 2013, 13 May). Reminders that the ACNC was working "to support and sustain robust, vibrant, independent and innovative Australian charities" (Commissioner's Columns, 2012, 3 December, 10 December), and of the "overarching objectives" that were to "shape and focus" its work (Commissioner's Columns, 2012, 10 December) offered assurance to constituents that although the ACNC was a new regulator, it was founded on principled ideals.

Throughout the period, as indicated, briefer and less frequent claims were made about the ACNC's cognitive legitimacy. Comments on the extension of its influence through its cooperative consultations and meetings with various government and regulatory bodies were reflective of Hancher and Moran's (1989) emphasis on the need for co-operative relationships and interdependencies between regulators^[11] (see, for example, Commissioner's Columns, 2012, 17 December, 2013, 7 January, 28 January). These connections were reinforced by evidence of extensive stakeholder engagement through national community presentations (Commissioner's Columns, 2012, 17 December, 2013, 4 February), social networking discussions (Commissioner's Columns, 2013, 30 April), formal submissions (Commissioner's Columns, 2013, 13 May), and information sessions (Commissioner's Columns, 2013, 30 July). The ACNC's progress towards harmonising State and Territory legislation with Federal legislation, identified as a barrier to its effectiveness (see our analysis above), provided a positive picture of the ACNC's ability to negotiate the boundaries of its regulatory authority (Commissioner's Columns, 2013, 4 July), while its "ongoing plans for the future" (Commissioner's Columns, 2013, 26 November), including its 2012-2015 Strategic Plan (see, for example, Commissioner's Columns, 2013, 28 January, 18 February, 8 April), reinforced its longer term aspirations.

Together these strategic discourses illustrated the ACNC's claims to all three forms of legitimacy, pragmatic, moral and cognitive, as it established its credentials and reputation, demonstrated its ability to enrol the support of a wide variety of stakeholders, conducted consultations in a professional manner, and extended its influence.

However, the ACNC did not display similar effectiveness in negotiating the political landscape in which it operated, consistently taking a politically neutral stance. There was no evidence that it strategically managed its relationship with the Federal Opposition (which later became the government), which was openly critical of its formation. While regulatory boundaries could be negotiated with other bodies in the regulatory space, political negotiations appeared to be more difficult. It was noted as the Federal election drew near that the ACNC was in "caretaker mode" (Commissioner's Columns, 2013, 26 August), and that it was moderating its social media to remove political overtones. The Commissioner observed that at this time it would be "business as usual", reinforcing the reliability and consistency of the regulator's operations. No mention of the Federal election was made in the Commissioner's Columns (2013, 12 September) immediately after the election, but in the following issue, public speculation about the future of the ACNC was addressed directly, offering assurance that the regulator would continue to operate in a professional manner, establish a good working relationship with the new government, and deliver benefits to the sector:

... reports of our death have been greatly exaggerated. The ACNC is very much alive and implementing its statutory obligations. The ACNC was created by an Act of Parliament, and unless and until that Act is amended or repealed, the Commissioner is expected to implement the Act ... (Commissioner's Columns, 2013, 23 September).

Significantly, this discussion was very lengthy in comparison with other issues of the Column, indicating the serious nature of the uncertainties that the Commissioner was addressing, and the importance of assurances that were offered that the ACNC would continue its operations, particularly in "reducing red tape for the sector" (Commissioner's Columns, 2013, 23 September). Also of significance is that this statement filled a void of political comment as a reactive, rather than proactive response to what had been an uncertain political environment for many months.

In response to the Government's announcement on 4 December (see Figure 1), the Commissioner's final Column for 2013 addressed the "ambiguity" of the ACNC's role, given the Government's policy to return the ACNC regulatory function to the Australian Taxation Office:

There will be ongoing regulation of charities, and it will reflect the Government's policy priorities. Until such changes are introduced, and until the ACNC Act is amended or repealed, we at the ACNC will continue to administer the ACNC Act and the Charities Act 2013 (Commissioner's Columns, 2013, 16 December).

The Commissioner's Columns revealed a recognition on the part of the Commissioner of the ongoing need to manage operational boundaries through negotiations and agreements with other regulatory bodies and to provide and promote evidence of its legitimacy as a regulator. Its regulatory boundaries overlapped with those of major Federal and State regulators, but the political arena appeared to be outside its range of influence. While the Columns provided an outward, one-way conversation, they were a response to institutional expectations about how the new regulator would conduct itself, reflecting Suchman's (1995) integration of the strategic and institutional aspects of legitimacy theory. They illustrate the usefulness of Hancher and Moran's (1989) identification of the characteristics of regulatory space, particularly the interdependence of regulators, and confirm MacDonald and Richardson's (2004) identification of the need for a new regulator to attain legitimacy.

Institutional legitimacy: constituents' feedback on the regulator

The ACNC had been formed for just short of three years when the Senate Economics Legislation Committee was charged with conducting an Inquiry into its operations. Our analysis of the responses to this Committee's Inquiry revealed a high level of support for leaving the ACNC legislation in place, with a variety of opinions about the ACNC's achievements to date, the political environment in which it operated, and what strategies would be needed if it were to establish itself as an effective charity and NFP

regulator. Overall, of the 153 responses received (Senate Economics Legislation Committee, 2014b), only 10.5% were in favour of repealing the ACNC legislation, whilst 75.8% were against. Further, 13.7% were undecided, generally preferring to state the implications of the possible repeal of the ACNC legislation and the necessity of ensuring effective NFP regulation and not losing the momentum the ACNC had developed.

Frequent references were made in the submissions to the ACNC's high standing in the NFP community. One respondent even expressed surprise that the ACNC's legitimacy was being called into question.^[12] The strong support for the regulator from a wide cross section of the sector was evident, with references to its value, its success in building strong relationships and establishing its credibility. Respondents also highlighted the need for it to be able to continue its vital and critical role, and suggested that its demise was premature and would be detrimental to the sector, adversely affecting confidence and causing unnecessary disruption. These sentiments were commonly expressed by respondents who opposed the repeal of the ACNC legislation.^[13] One respondent forcefully denounced the proposed repeal^[14] and a peak body offered its very strong support for the regulator from its membership of over 55,000.^[15]

Allied to these were numerous observations that despite the original proposed five year review, the ACNC had not had sufficient time to establish its usefulness and effectiveness. It was important not to squander the resources and goodwill built over the last two years, highlighting uncertainty about alternate regulators.^[16] Reflecting the fact that only 10.5% of respondents were in favour of the repeal legislation, opinions about the ACNC's lack of legitimacy were much less frequently expressed. Consistent with the importance of place, timing, structure, interdependence and issues (Hancher and Moran, 1989), they focused on the ACNC's lack of applicability to NFP organisations that are not charities, the lack of justification for its formation, and the threat to its legitimacy as a Federal regulator when State and Territory legislation had not been harmonised.^[17]

This structural impediment, the absence of the harmonisation of State fundraising, was a recurring theme in the submissions. At least 45 respondents were critical of the haphazard and piecemeal NFP legal environment, which was described as a "mishmash"^[18] of various State and Federal legislation under which Australian NFP organisations operate. This system of multiple compliance and uncoordinated regimes was perceived to be contradictory or fractured, leading to unreasonable reporting demands.^[19] While the harmonisation of state legislation was seen as a worthy goal, it was acknowledged to be challenging. Although roughly half of these 45 respondents identified some progress by the ACNC in moving towards reducing red tape through consultations with State governments^[20], the Committee overlooked this progress when making its recommendation (Saj, 2015b).

Despite this fragmented legislative environment, there was extensive acknowledgement that the ACNC had made "significant achievements", and achieved "extraordinary success" in its relatively short life.^[21] Key amongst these were the establishment of a single portal for charities with a publicly accessible national register of charities and an Annual Information Statement, and the ACNC's achievements in promoting transparency and accountability in the sector, and enhancing governance and education.^[22] In addition, and also important in relation to the ACNC's objectives, the reduction of red tape was highlighted by respondents who praised the ACNC's efficiency in dealing with lodgements and enquiries, the enhanced web presence it provided to charities, and the capture of data that would enhance both research into the sector and information for donors.^[23]

More than half the respondents referred to alternate regulators, criticising the lack of clarity about future regulation of the sector.^[24] It was evident in at least 30 of the responses that the ACNC was perceived to be operating in a highly political environment, caught between the government which had established it, and the newly elected government which was committed to its abolition.^[25] One respondent summed the opinions of other respondents that the sector deserves better than to be treated as it is, as a "political football".^[26]

The ACNC's own submission^[27] to the Inquiry was a comprehensive document detailing its achievements in its first 16 months. These included the establishment of the National Charity Register, reducing red tape, its progress in harmonising the fragmented and "inadequate" NFP legislative environment, the sector specificity of its approach based on an understanding of the sector's unique characteristics and needs, and

its “tailored” approach to compliance and governance. Of overarching concern was the possibility that the Repeal Bill may be passed without a “suitable successor model”²⁸, which would result in a loss in public trust and confidence, impacting the sector’s ongoing sustainability.

The generally high level of approval of the ACNC, albeit with suggestions for improvement, was in marked contrast to the Committee’s recommendation that “the [repeal] Bill be passed” (Senate Economics Legislation Committee, 2014c, p. 29). The Committee based its recommendation on written submissions and a public inquiry, and articulated three specific issues. First, the ACNC Act had “significantly and unnecessarily increased red tape for many charities”, with a “low probability” of achieving “nationally consistent legislation” (Senate Economics Legislation Committee, 2014c, p. 18). Second, the ACNC had made attempts to harmonise charity regulation, and this work should be built on by another Commonwealth agency. Third, regarding the power of the ACNC, it was proposed that a Commonwealth charity regulator should not have the power “to remove or suspend directors and trustees without court proceedings”^[29] (Senate Economics Legislation Committee, 2014c, p. 25). Dissenting reports by three senators, who recommended that the repeal legislation not be passed, were based on their assessment of the strong support that the ACNC enjoyed despite its relatively short life, but also acknowledged areas in which it could improve its performance. The Committee’s recommendation was criticised by Saj (2015b, p. 132), who alleged the consultation process was subjective, and failed to take into account “the overwhelming consensus view of the sector, its professional advisors, knowledgeable academics and others”.

The vast majority of submissions to the Inquiry expressed support for the continuation of the ACNC and indicated it had established its authority and achievements in a very short time period, thereby gaining a certain level of legitimacy as a viable regulator. This support was not unqualified, however, with numerous suggestions for improvements and future actions that would reinforce and further build the ACNC’s legitimacy and authority. Obstacles to be overcome centred primarily on the current lack of harmonisation of NFP-related State legislation, which, according to earlier inquiries, should have been aligned prior to the establishment of a national regulator. However despite the strength of support from the sector, the official report restated and reinforced the new government’s view, espoused since before it was elected, that Australia does not need an independent national NFP regulator, and that the ACNC (Repeal) Bill should be passed. We argue that this result reinforces the political nature of the regulatory process.

Our empirical evidence thus supports our contention that less than three years after it had been established, the ACNC had garnered the popular support of its constituents, who were keen to ensure its survival. We identified it as having defended its position in the regulatory space (Hancher and Moran, 1984), demonstrating pragmatic and moral legitimacy, and arguably being well on the way to achieving some degree of cognitive legitimacy.

These five instances of the public constitutive legitimacy discourse surrounding the ACNC’s establishment and operations over a period of less than three years as a regulator illustrate the interactive processes by which the new regulator sought to negotiate and establish its operational boundaries in an existing regulatory space. Strategically looking out, the ACNC sought to demonstrate its pragmatic, moral and cognitive legitimacy, while looking in, stakeholders provided their opinion about the extent to which the ACNC had achieved institutional legitimacy. We are therefore able to draw some inferences about the regulatory and political limits of the ACNC’s legitimacy and therefore of its viability as an independent national NFP regulator.

5. Discussion and Conclusion

This paper extends prior research on the processes through which regulation is developed. We have taken the unique approach of synthesising the theoretical concepts of regulatory space and legitimacy to identify the processes by which a new regulator establishes legitimacy in an existing regulatory space. The synthesis of these two concepts and their application to the establishment of the ACNC enables us to contextualise the regulatory space in which a new regulator began its operations, and to examine the means by which it demonstrated its claims to legitimacy. Through our analysis of the formal public discourse surrounding the establishment and operation of the ACNC, we have identified the processes a

new regulator needs to establish in order to garner the popular support and legitimacy necessary for its survival.

Our analysis of five discourse events relating to the ACNC enables us to identify two insights into the processes of regulation. First, a new regulator needs to develop processes that will enable it to operate effectively and professionally in addressing the needs of its constituents. In the case of the ACNC, initially stakeholders appeared to be sceptical of the regulator's ability to deliver on its promise of reducing the regulatory burdens of the sector. This was largely because of the lack of harmonisation of State legislation, which initially resulted in an increase in the regulatory requirements. The ACNC attempted to mitigate these initial negative perceptions and garner stakeholder support by consistently demonstrating pragmatic and moral legitimacy through the proposal and adoption of practical and professionally competent processes, which to a large extent overcame criticism of its activities. This was evident in the submissions to the Senate Inquiry (Senate Economics Legislation Committee, 2014b). While acknowledging the need for some improvements, constituents demonstrated strong support for the continuation of the ACNC, indicating its effectiveness in influencing public opinion, and consequently, political opinion. Faced with a political threat to its existence, while this public support was not reflected in the Senate Committee's report, the establishment of legitimacy may have been a contributing factor in the government's deferral of the proposed repeal legislation.

Second, a new regulator needs to be able to bargain authoritatively with existing regulators in the regulatory space, in order to establish its operational boundaries. Hancher and Moran's (1989) identification of the importance of place and structure in particular reflects the unique contextual characteristics of the regulatory environment, the potential disparity between large and small regulators operating within regulatory space, and the need for cooperative interdependence between regulators. As a consequence of diffuse and contested boundaries within the regulatory space (Hancher and Moran, 1989; MacDonald and Richardson, 2004; Black, 2008; Nicholls, 2010), the ACNC's regulatory authority was impaired structurally. Despite its authority being granted by the Federal government, the ACNC had no authority regarding State governments, which has provided a considerable challenge. However, the ACNC did achieve some success in its negotiations with Federal, State and other regulators, as evident in both Commissioner's Columns, and in submissions to the Senate Inquiry (Senate Economics Legislation Committee, 2014b).

We introduce the importance of legitimacy in a regulatory context through synthesising the analytical constructs of Hancher and Moran (1989) and Suchman (1995). It is this synthesis and the findings that come from it that form our contribution to the literature on the processes involved in the establishment of a new regulator. We argue that the achievement of legitimacy is integral to the exercise of regulatory authority (Black, 2008), particularly in the case of a new regulator entering an already established regulatory space. However we also highlight that legitimacy alone will not be a sufficient condition for a regulator to exercise authority, but that political support is also essential. This highlights the practical challenges in attempting regulatory reform in a federated political system, as illustrated in the case of the ACNC. Its legitimacy and authority were impaired structurally and politically, despite strong expressions of support from the majority of its constituents.

This study is uniquely contextualised, and therefore does not claim to provide a complete picture of the evolution of the ACNC as a regulator, due to our theoretical interpretations, our reliance only on formal, publicly available documents and the chronological parameters which of necessity define our analysis. Nevertheless, the synthesis of legitimacy theory and a regulatory space approach has the potential to unlock insights about the complexity and contextual nature of regulatory arrangements in other contexts, particularly the challenges facing a new regulator as it seeks to establish its legitimacy within a politicised regulatory space. Our findings suggest several potentially profitable areas for further research. First, research which incorporates both documentary analysis and interviews of key personnel could reveal the motivations behind various actions and decisions and the role of individuals in the process of regulation. Second, further investigations could explore the potential of political critiques about regulators or regulation to effect further legislative change. Third, our study concluded with the Senate Committee's Inquiry Report in June 2014, but that does not mark the end of political activity concerning the ACNC's future. The Liberal Government has faced a continual political battle to advance its legislative agenda through the Senate, and consequently has announced the deferral of its plans to repeal the ACNC. This

circumstance provides the ACNC with an opportunity to strengthen its legitimacy and provides opportunities for future research that could extend the chronological parameters of our study by tracing the evolution of the regulator.

References

- Australian Charities and Not-for-profits Commission (ACNC). (2011), “*Implementation Design Discussion Paper*”, available at: http://www.acnctaskforce.treasury.gov.au/content/communityengagement/downloads/Discussion_Paper.pdf.
- Australian Charities and Not-for-profits Commission (ACNC). (2012a), *Public responses to the Implementation Design Discussion Paper*, available at: http://www.acnc.gov.au/ACNC/Pblctns/Rpts/Imp_rep/App_B/ACNC/Publications/Imp_Rep/AppB.aspx.
- Australian Charities and Not-for-profits Commission (ACNC). (2012b), “*Implementation Report*. June. ACNC Implementation Taskforce”, available at: http://www.acnc.gov.au/ACNC/Pblctns/Rpts/Imp_rep/ACNC/Publications/Imp_Rep/ImpRep_TOC.aspx.
- Australian Charities and Not-for-profits Commission (ACNC). 2014, “About ACNC”, available at: www.acnc.gov.au/ACNC/About_ACNC”.
- Australian Treasury. (2001), “*Report on the Inquiry into the Definition of Charities and Related Organisations*”, Commonwealth of Australia, ACT, available at: http://www.cdi.gov.au/report/pdf/Charities_final.pdf.
- Baum, J. A. C. and Oliver, C. (1996), “Toward an institutional ecology of organizational founding”, *Academy of Management Journal*, Vol. 39 No. 5, pp. 1378-1427.
- Black, J. (2008), “Constructing and contesting legitimacy and accountability in polycentric regulatory regimes”, *Regulation and Governance*, Vol. 2 No. 2, pp. 137-164.
- Breen, O. B. (2013), “The disclosure panacea: A comparative perspective on charity financial reporting”, *Voluntas, International Journal of Voluntary and Nonprofit Organizations*, Vol. 24 No. 3, pp. 852 – 880.
- Brown, N. and Deegan, C. (1998), “The public disclosure of environmental performance information – A dual test of media agenda setting theory and legitimacy theory”, *Accounting and Business Research*, Vol. 29 No. 1, pp. 21-41.
- Butcher, J. (2015), “The third sector and government in Australia: Not-for-profit reform under Labor, 2007-13”, *Australian Journal of Political Science*, Vol. 50, No. 1, pp. 148 – 163.
- Canning, M. and O’Dwyer, B. (2013), “The dynamics of a regulatory space realignment: Strategic responses in a local context”, *Accounting, Organizations and Society*, Vol. 38 No. 3, pp. 169-194.
- Carnegie, G. D. and O’Connell, B. T. (2012), “Understanding the responses of professional accounting bodies to crises”, *Accounting, Auditing and Accountability Journal*, Vol. 25 No. 5, pp. 835 – 875.
- Commissioner’s Columns. (2012), Australian Charities and Not-for-profits Commission, available at: http://www.acnc.gov.au/ACNC/Pblctns/Media_centre/Com_Col/ACNC/Comms/CC_list.aspx
- Commissioner’s Columns. (2013), Australian Charities and Not-for-profits Commission, available at: http://www.acnc.gov.au/ACNC/Pblctns/Media_centre/Com_Col/ACNC/Comms/CC_list.aspx
- Commonwealth of Australia. (2014) BILLS DIGEST NO. 68, 2013-14, 12 MAY 2014 Australian Charities and Not-for-profits Commission (Repeal) (No 1) Bill 2014. Canberra: Department of Parliamentary Services.
- Connolly, C. and Hyndman, N. (2010), “Charity accountability in the UK: through the eyes of the donor”, *Qualitative Research in Accounting & Management*, Vol. 10, No. 3/4, pp. 259 – 278.
- Connolly, C., Hyndman, N. and McConville, D. (2015), “UK Charity Accounting: Developments, Issues and Recent Research”, in Hoque, Z. and Parker, L. (eds.) “Performance Management in Nonprofit Organizations”, Routledge Studies in the Management of Voluntary and Non-Profit Organizations.
- Dowling, J. and Pfeffer, J. (1975), “Organisational legitimacy: Social values and organisational behavior”, *Pacific Sociological Review*, 18(1), 122-136.
- Durocher, S., Fortin, A. and Côté, L. (2007), “Users’ participation in the accounting standard-setting process: a theory-building study”, *Accounting, Organizations and Society*, Vol. 32 Nos. 1/2, pp. 29 – 59.

- Ferguson, F. (2013), "Andrews Announces Move to End ACNC", *ProBono Australia News*. 5 December, available at: <http://www.probonoaustralia.com.au/news/2013/12/andrews-announces-move-end-acnc>.
- Gendron, Y., Cooper, D. J. and Townley, B. (2001), "In the name of accountability. State auditing, independence and new public management", *Accounting, Auditing & Accountability Journal*, Vol. 14, No. 3, pp. 278 – 310.
- Goddard, A. and Assad, M. J. (2006), "Accounting and navigating legitimacy in Tanzanian NGOs", *Accounting, Auditing and Accountability Journal*, Vol. 19 No. 3, pp. 377 – 404.
- Hancher, L. and Moran, M. (1989), *Capitalism, Culture, and Economic Regulation*. Oxford, England: Clarendon Press Oxford.
- Humphrey, C., Loft, A. and Woods, M. (2009), "The global audit profession and the international financial architecture: Understanding regulatory relationships at a time of financial crisis", *Accounting, Organizations and Society*, Vol. 34 Nos 6/7, pp. 810-825.
- Hyndman, N. and McMahon, D. (2011), "The hand of government in shaping accounting and reporting in the UK charity sector", *Public Money & Management*, Vol. 31, No. 3, pp. 167 – 174.
- Industry Commission. (1995), "*Charitable Organisations in Australia*" Commonwealth Government, available at <http://www.pc.gov.au/ic/inquiry/45charit>.
- Irvine, H. and Ryan, C. (2013), "Accounting regulation for charities: International responses to IFRS adoption", *Pacific Accounting Review*, Vol. 25 No. 2, pp. 124-144.
- Jacks, T., (2014) "Scott Morrison puts bill to abolish charity regulator on backburner", *The Sydney Morning Herald*, 7 February 2015.
- Khan, R. and Ahmed, K. (2015), "Regulations and Financial Reporting Practices of Micro-finance Institutions in Bangladesh", in Hoque, Z. and Parker, L. (eds.) "Performance Management in Nonprofit Organizations", Routledge Studies in the Management of Voluntary and Non-Profit Organizations.
- Katz, J. and Gartner, W. (1988), "Properties of emerging organizations", *Academy of Management Review*, Vol. 13 No. 3, pp. 429-442.
- Larsson, B. (2005), "Auditor regulation and economic crime policy in Sweden, 1965 – 2000", *Accounting, Organizations and Society*, Vol. 30 No. 2, pp. 127-144.
- MacDonald, L. D. and Richardson, A. J. (2004), "Identity, appropriateness and the construction of regulatory space: The formation of the Public Accountant's Council of Ontario", *Accounting, Organizations and Society*, Vol. 29 Nos. 5/6, pp. 489-524.
- Malsch, B. and Gendron, Y. (2011), "Reining in auditors: On the dynamics of power surrounding an "innovation" in the regulatory space", *Accounting, Organizations and Society*, Vol. 36 No. 6, pp. 456-476.
- Mobus, J. F. (2005), "Mandatory environmental disclosures in a legitimacy theory context", *Accounting, Auditing and Accountability Journal*, Vol. 18 No. 4, pp. 492 – 517.
- Nicholls, A. (2010), "Institutionalizing social entrepreneurship in regulatory space: Reporting and disclosure by community interest companies", *Accounting, Organizations and Society*, Vol. 35 No. 4, pp. 394-415.
- O'Donovan, G. (2002), "Environmental disclosures in the annual report", *Accounting, Auditing and Accountability Journal*, Vol. 15 No. 3, pp. 344 – 371.
- Phillips, S. D. (2013), "Shining light on charities or looking in the wrong place? Regulation-by-Transparency in Canada", *Voluntas, International Journal of Voluntary and Nonprofit Organizations*, Vol. 24 No. 3, pp. 881 – 905.
- Productivity Commission. (2010), "*Contribution of the Not-for-profit Sector*, January. Australian Government Productivity Commission, available at: http://www.pc.gov.au/_data/assets/pdf_file/0003/94548/not-for-profit-report.pdf.

- Saj, P. (2015a), "Australian Charity Reporting Reforms: Serving Private or Public Interests?" in Hoque, Z. and Parker, L. (eds.) "Performance Management in Nonprofit Organizations", Routledge Studies in the Management of Voluntary and Non-Profit Organizations.
- Saj, P. (2015b), "A critique of the majority report of the Senate Economics Legislation Committee Review of the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014 (Provisions)", *Third Sector Review*, Vol 20, No. 2, pp. 107 – 136.
- Scott, W. R. (2001), *Institutions and Organizations*. 2nd Edition. Thousand Oaks, CA: Sage Publications.
- Senate Economics Legislation Committee. (2014a), *Australian Charities and Not for Profits Commission (Repeal (No 1 Bill)). Inquiry*, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ACNC.
- Senate Economics Legislation Committee. (2014b), *Australian Charities and Not for Profits Commission (Repeal (No 1 Bill)) Submissions*, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ACNC/Submissions.
- Senate Economics Legislation Committee. (2014c), *Australian Charities and Not for Profits Commission (Repeal (No 1 Bill)) Report*, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ACNC/Report/~media/Committees/Senate/committee/economics_ctte/ACNC_repeal/report/report.pdf.
- Senate Standing Committee on Economics. (2008), *Disclosure Regimes for Charities and Not-for-profit organisations Report*, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2008-10/charities_08/report/~media/wopapub/senate/committee/economics_ctte/completed_inquiries/2008_10/charities_08/report/report_pdf.ashx.
- Shafer, W. E and Gendron, Y. (2005), "Analysis of a failed jurisdictional claim: The rhetoric and politics surrounding the AICPA global credential project", *Accounting Auditing and Accountability Journal*, Vol. 18 No. 4, pp. 453-491.
- Singh, J. V., Tucker, D. J. and House, R. J. (1986), "Organizational legitimacy and the liability of newness", *Administrative Science Quarterly*, Vol. 31 No. 2, pp. 171-193.
- Suchman, M. C. (1995), "Managing legitimacy: Strategic and institutional approaches", *Academy of Management Review*, Vol. 20 No. 3, pp. 571-610.
- Thornburg, S. and Roberts, R. W. (2008), "Money, politics, and the regulation of public accounting services: Evidence from the Sarbanes-Oxley Act of 2002", *Accounting, Organizations and Society*, Vol. 33 Nos 2/3, pp. 229-248.
- Tilling, M. V. and Tilt, C. A. (2010), "The edge of legitimacy: Voluntary social and environmental reporting in Rothmans' 1956-1999 annual reports", *Accounting Auditing and Accountability Journal*, Vol. 23 No. 1, pp. 55-81.
- Tornikoski, E. T. and Newbert, S. L. (2007), "Exploring the determinants of organizational emergence: A legitimacy perspective", *Journal of Business Venturing*, Vol. 22 No. 2, pp. 311-335.
- Young, J. (1994), "Outlining regulatory space: Agenda issues and the FASB", *Accounting, Organizations and Society*, Vol. 19 No. 1, pp. 83-109.
- Young, J. (1995), "Getting the accounting 'right': Accounting and the savings and loan crisis", *Accounting, Organizations and Society*, Vol. 20 No. 1, pp. 55-80.
- Zhu, Y. and McKenna, B. (2012), "Legitimizing a Chinese takeover of an Australian iconic firm: Revisiting models of media discourse of legitimacy", *Discourse & Society*, Vol. 23, No. 5, pp. 525 – 552.
- Zucker, L. G. (1987), "Institutional theory of organizations", *Annual Review of Sociology*, Vol. 13, pp. 443-464.

-
- ¹ Australia is a federation with a central government, six states and two territories.
- ² Existing key regulators include the following. Federally, the Australian Taxation Office controls the granting of NFP tax concessions; the Australian Securities and Investments Commission regulates NFP organisations that are formed under Federal Corporations Law; State and Territory governments regulate fundraising activities and those NFPs formed legally as incorporated associations; and the Australian Accounting Standards Board regulates accounting and reporting.
- ³ For a more detailed chronology of these political events, their underlying ideologies, and their significance for the NFP sector, see Butcher (2015).
- ⁴ Referring to Latour's notion of social legitimacy, Gendron et al (2001) highlighted the need for regulatory recommendations or changes to be mobilised convincingly, illustrating this in the case of a state auditor, who could bring about change, either directly or through influencing the legislature.
- ⁵ There were 116 responses, but two were designated private and therefore not available for analysis.
- ⁶ Categorisation of respondents by stakeholder group was as follows: NFP services deliverers – 46.5%; Peak bodies and member associations – 27.2%; Professional firms and consultants – 8.8%; Individuals/academics institutions/granting foundations – 7.9%; Churches and independent schools – 6.1% and Regulators/government departments – 3.5%.
- ⁷ Of the 155 submissions, one was double-counted, and one was from the ACNC itself, which we analysed separately, alongside the Senate Legislation Committee's findings. Hence, we analysed 153 submissions (Senate Economics Legislation Committee, 2014b). Thirty-five (23%) of the respondents to the Inquiry also made a submission to the 2011 ACNC Discussion Paper. Categorisation of respondents by stakeholder group was as follows: Individuals/academics institutions/granting foundations – 28.1%; Peak bodies and member associations – 24.2%; NFP services deliverers – 23.5%; Professional firms and consultants – 13.7%; Churches and independent schools – 8.5% and Regulators/government departments – 2%.
- ⁸ The Committee relied on submissions, a public hearing in which 17 witnesses offered evidence, and additional information in making its report (Senate Economics Legislation Committee, 2014c, p. 1). Of the 17 witnesses, 15 were associated with organisations that had made submissions to the Inquiry, with 7 recommending the Repeal Act not be passed, 6 recommending it be passed, and 2 providing no definite opinion. Of the two witnesses not associated with a submission, one of these was clearly against the repeal legislation, and the opinion of the other was unknown.
- ⁹ Significantly, while the establishment of a Centre of Excellence was proposed, there was no detail about how this might be implemented.
- ¹⁰ At the time, the Labor government which had supported the ACNC's establishment was facing electoral defeat by a Liberal/National Coalition antagonistic to the ACNC's continuation.
- ¹¹ These included Treasury, the Australian Taxation Office, Government departments, State and Territory governments and peak and professional bodies
- ¹² See, for example, Submission 28.
- ¹³ See, for example, Submissions 11, 28, 32, 39, 44, 50, 51, 57, 67, 68, 70, 71, 86.
- ¹⁴ Submission 70.
- ¹⁵ Submission 44.
- ¹⁶ See, for example, Submissions 31, 34, 45, 47, 52, 55, 57, 61, 113, 129, 131, 134, 135, 137, 140, 145, 151.
- ¹⁷ See, for example, Submissions 37 and 133.
- ¹⁸ Submission 65
- ¹⁹ See, for example, Submissions 32, 43, 44, 61, 65, 67, 75.
- ²⁰ See, for example, Submissions 2, 10, 11, 14, 19, 27, 39, 66, 122, 135, 147, 149.
- ²¹ Submissions 52 and 25.
- ²² See, for example, Submissions 3, 10, 12, 16, 22, 23, 25, 26, 28, 29, 33, 36, 38, 39, 49, 51, 52, 61, 66, 67, 68, 69, 71, 108, 117, 125, 126, 141, 147, 149, 155.
- ²³ See, for example, Submissions 13, 14, 18, 42, 47, 50, 53, 56, 57, 60, 65, 70, 72, 77, 115, 121, 123, 124, 126, 128, 138, 141, 142, 143, 144, 149.
- ²⁴ See, for example, Submissions 42, 135, 153.
- ²⁵ See, for example, Submissions 45, 47, 51, 63, 64, 65, 70, 151.
- ²⁶ Submission 135.
- ²⁷ Submission 95.
- ²⁸ Submission 95, p. 38.
- ²⁹ This opinion relied heavily on evidence from two members of the Financial Services Council and from Mr Peter Hersh, of Logicca, a firm of chartered accountants (Senate Economics Legislation Committee, 2014c). The submissions of these two groups (Nos. 102 and 22), urged repeal of the ACNC legislation and offered no opinion respectively.