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AUSTRALIA + NEW ZEALAND

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Mr Murray Crowe  
Individuals and Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [ACNCReview@treasury.gov.au](mailto:ACNCReview@treasury.gov.au)

Dear Mr Crowe

**Review of the Australian Charities and Not-for-profits Commission Act 2012 and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (the ACNC Acts)**

Thank you for the opportunity to comment on the suitability and effectiveness of the ACNC Acts.

Chartered Accountants Australia and New Zealand (CA ANZ) is a strong supporter of the not-for-profit (NFP) sector. Many of our members are involved with the sector as advisors, employees or volunteers. We believe that charities regulation should be aimed at providing transparency about the sector to stakeholders and the public while also minimising complexity for the charities themselves.

We are also a long-time supporter of a single national charities regulator and wish to commend the Australian Charities and Not-for-profits Commission (ACNC) for what it has achieved in its first five years of operation. In our view, the ACNC Acts are largely working well and major overhaul is not needed. However, we recognise there are some areas where improvements can be made.

Our comments and recommendations that follow below and in Appendix A focus on the key areas of NFP regulation that are of most importance to our members. Appendix B contains more information about CA ANZ.

Should you have any queries concerning the matters in this submission, or wish to discuss them in further detail, please contact Ceri-Ann Ross (Reporting Leader) via email; [ceri-ann.ross@charteredaccountantsanz.com](mailto:ceri-ann.ross@charteredaccountantsanz.com).

Yours sincerely

**Liz Stamford**  
**Head of Policy, Leadership and Advocacy**  
**Chartered Accountants Australia and New Zealand**

Chartered Accountants Australia and New Zealand

33 Erskine Street, Sydney NSW 2000  
GPO Box 9985, Sydney NSW 2001, Australia  
T +61 2 9290 1344 F +61 2 9262 4841

[charteredaccountantsanz.com](http://charteredaccountantsanz.com)



## Regulation of NFP entities other than charities

We believe that there is potential for extending the ACNC's regulatory requirements to other classes of NFP entities on a voluntary basis, however we believe this should only be addressed after reforms to the current ACNC Acts resulting from this review in relation to registered charities are completed.

The legislative and regulatory frameworks under which NFP entities operate are complex due to the variety of structures which NFP entities use and the nature of the activities they undertake. While some forms of NFP entities receive tax concessions and/or some public funding, others receive minimal or no funding, so the level of public interest in their operations is reduced.

There are a number of issues to be considered in determining how such an extension of the ACNC's responsibilities would operate. Charities have an incentive to register with the ACNC to obtain tax concessions, including Deductible Gift Recipient (DGR) status. The way charities are funded – through a mix of tax concessions, government grants and public donations – means there is an inherent public interest in their operations and therefore a need for regulatory oversight and transparent reporting. The public has a right to know how charities spend their money. It is questionable whether there is the same degree of public interest in other classes of NFP entities.

In the absence of additional tax benefits to incentivise other NFP entities to voluntarily register, there would need to be clear red tape reduction benefits to outweigh what could otherwise be viewed as an additional compliance burden. Other NFP entities are already subject to a large variety of Commonwealth and State/Territory-based regulations in relation to their operating structures and fundraising and other licences. If the ACNC was able to achieve a 'report once, use often' reporting and governance regime, then there would be more appeal to these entities to register.

Extension of the ACNC's operations to encompass all NFP entities would also require an appropriate uplift in the ACNC's funding and resourcing.

## The usefulness of information reported by charities

We have concerns that the information currently reported by charities may not be meeting the needs of stakeholders:

- Currently only charities preparing general purpose financial reports are required to comply with accounting standard AASB 124 *Related Party Disclosures*. Inappropriate transactions with related parties are a key risk in relation to charities misusing funds for private benefit. We believe that it is in the public interest for all charities to disclose related party information, regardless of their size or reporting entity status.
- Interest in non-financial and broader forms of reporting is increasing among users and preparers alike, especially in the NFP sector. Reporting that focuses on what a charity did to meet its aims and objectives during the year is valuable and is a powerful way for charities to tell their story.

In order to determine what financial and non-financial information should be published on the register, it is important to identify who are the users of charity reports and what information they actually need in order to make their decisions. This may vary considerably between a small charity, where users may primarily be interested in how the charity spent their money and if they are well governed, versus a larger charity where users may want more detailed financial information as well as information about how the charity carried out its activities.

We recommend that more detailed research and consultation with stakeholders takes place to determine who uses charity reports, what information would be useful to them in making

decisions about charities of various sizes and how these needs can be addressed through the reporting framework.

## The reporting and assurance framework

### Reporting framework

We believe that the reporting framework is overly complex and needs to be simplified to better match user needs and preparer costs.

According to the ACNC's *Australian Charities Report 2016*, 67% of charities have annual revenue of less than \$250,000 and nearly 83% have annual revenue of less than \$1 million. This is a significant population of smaller entities who may be operating largely with volunteer staff. While the needs of the users of the information produced by small entities and the public interest in their operations must be addressed, the reporting framework for such entities must also give consideration to the balance between the costs of compliance and the benefits of transparency in determining the appropriate reporting framework.

In anticipation of this review, the Australian Accounting Standards Board (AASB) issued a research report AASB Research Report No 5 *Financial Reporting Requirements Applicable to Charities* in October 2017 and a discussion paper, AASB Discussion Paper *Improving Financial Reporting for Australian Charities* in November 2017. These two papers make it clear that some degree of reform is needed to refine the financial reporting framework for charities and we are supportive of reform to achieve a reporting framework that is simplified and better meets the needs of users.

While the AASB Discussion Paper offered some examples of what the potential revised framework could be, we believe that due to the complexity of this issue, decisions on amendments to the reporting framework should be made following further consultation with all stakeholders as part of the AASB's Financial Reporting Framework Project.

### Assurance

In addition to changes in the reporting thresholds and/or requirements, consideration needs to be given to the appropriate levels of assurance to be required on the information provided by charities to the ACNC. We have several recommendations in relation to the assurance requirements of the ACNC Acts. These are summarised below and more detail on the rationale for these recommendations is provided in Appendix A. We recommend that:

- The requirement for audits of registered charities to be performed by a Registered Company Auditor (RCA) be removed and replaced by a requirement for the auditor to be 'a member of Chartered Accountants Australia and New Zealand, CPA Australia or the Institute of Public Accountants with a current certificate of public practice and who has appropriate professional competence as required by APES 110 *Code of Ethics for Professional Accountants* issued by the Accountants Professional and Ethical Standards Board' and that consequential amendments be made to the Corporations Act 2001 (the Corporations Act) in relation to the appointment of an RCA by large and medium companies limited by guarantee.
- If the reporting framework is amended, the assurance requirements also be reconsidered and that any assurance requirements comply with the Australian Auditing and Assurance Standards Board's standards.
- That a requirement equivalent to s311 of the Corporations Act be included in the ACNC Acts to clarify auditors and reviewers obligations in relation to reporting significant contraventions they may come to suspect during the course of their engagement.
- That the requirement for the auditor or reviewer to provide a separate independence declaration be removed.

## **Other opportunities to reduce the regulatory burden**

The ACNC has made significant progress in streamlining regulatory requirements for charities, particularly for companies limited by guarantee and some incorporated associations, but there is still more to be done in order to reduce the regulatory burden.

In addition to the duplicative requirements that still exist between Commonwealth and State/Territory laws and regulations, for large and medium charities there is also concern that the financial information in the AIS is duplicating what can be found in the financial report and therefore time spent extracting it to populate the AIS is an unnecessary compliance cost.

We encourage the ACNC to continue its red tape reduction agenda and keep working with state and other federal regulators to achieve a report once, use often regime where charities lodge the appropriate information with the ACNC and the other regulators who require that information obtain it from the ACNC.

The fundraising regime in Australia is also very complex and fragmented. Simplification in this area as could be achieved by minor amendments to the Australian Consumer Law which would significantly benefit this sector.

## **The regulatory approach taken by the ACNC**

We believe that the ACNC's approach to date—focusing on education, outreach and assisting charities to meet their obligations—has been effective and beneficial to the sector. We believe that the ACNC should continue to support charities in this way and that its educational activities should continue to be properly resourced and funded. However, we also believe that now that the ACNC has been in place for five years, it is appropriate for some tightening of the enforcement approach.

We are supportive of the ACNC's recommendations in its submission to the review in relation to it being allowed to disclose the grounds for revocation, when compliance agreements have been undertaken and making public comments on compliance activities or investigations in relation to individual charities where it is in the public interest for such information to be made known. We note that ASIC, as the equivalent regulator in the corporate private sector, has the power to name entities and individuals in relation to compliance issues and outcomes.

## **Expansion of the objects of the ACNC Act**

We note that in the ACNC's submission to the review was a recommendation that two additional objects be added to the legislation. The additional objects are:

- To promote the effective use of the resources of not-for-profit entities and
- To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public.

The ACNC has stated that it believes these powers to be appropriate to enable it to:

- address the need for transparency and accountability in the not-for-profit sector, by ensuring the public has access to information about NFP entities, and
- address the need for the maintenance and promotion of the effectiveness and sustainability of the not-for-profit sector.

We believe alternative solutions to enable the ACNC to address these issues should be explored before any additional objects to the ACNC Acts are contemplated.

We do not support, any move by the regulator to determine what is considered to be an effective or efficient use of resources by charities. We believe that if the reporting framework reflects user needs, the compliance framework is appropriate and the Commissioner has appropriate powers to disclose information about compliance and enforcement matters, then stakeholders and the public will have the information they require to make decisions about donations, funding and a charity's operations.

### **Exemption for Basic Religious Charities**

According to the ACNC's dataset from the 2016 Annual Information Statements (AIS), approximately 18% of charities registered with the ACNC were registered as Basic Religious Charities (BRC). BRCs, as defined in Division 60-60 of the ACNC Act, are exempt from having to answer financial questions in the AIS, submitting financial reports and having to comply with governance standards.

The purpose of regulation of charities is to maintain, protect and enhance public trust and confidence in the sector through measures that promote transparency, accountability and good governance. It is questionable if this can be achieved when a significant portion of the population are exempt from providing financial information (a key tool for transparency) or complying with governance standards.

We recommend that as part of this review, the Panel considers whether the existence of exemptions from regulatory requirements is warranted and to what degree.

### **Information in relation to responsible persons**

As we stated in our September 2017 submission on the discussion paper issued by Treasury in relation to modernising business registers operated by ASIC and the ATO, we are aware of a current problem with ASIC's registers being out of date for entities subject to the Corporations Act 2001 who are also registered charities with the ACNC.

This issue has arisen because those entities are not required to update their information with ASIC but there is no mechanism by which ASIC updates the register with information from the ACNC register. It is understood there is a flag on the ASIC register for each company limited by guarantee that is a charity indicating the information displayed may not be current and they should refer to the ACNC website. However, this flag would not appear if someone was searching the directors' register for example (i.e. the user would not get a complete summary of all directorships, including those for Not-For-Profit and charities).

We believe there should be linking with respect to company and director information (i.e. the ASIC register should be updated with information from the ACNC register, rather than individuals having to maintain information on two registers), or details of directors of these entities removed entirely from the ASIC register (other than in the case where the individuals hold directorships of other ASIC regulated entities) so that anyone seeking this information has to go to the ACNC website to obtain it.

The current information mismatch causes issues for registered charities when banks and other third parties search ASIC's registers and find outdated information which may result in the refusal of funding. This causes additional time and cost to be incurred by the charities and is also a risk to the public interest if people make business decisions based on outdated information on the ASIC register.

## Appendix A: Detailed information about recommendations in relation to assurance

### ***Qualification of appointed auditors***

Currently audits of registered charities must be performed by a Registered Company Auditor. We recommend this requirement be removed as the RCA designation is largely a recognition of skills and experience in relation to audits of Corporations Act 2001 (the Corporations Act) entities. It is important that the people who carry out audits and reviews have appropriate professional skills and experience but Corporations Act experience is not necessarily essential to the audit of NFPs.

We recommend that the qualification requirement be revised to be ‘a member of Chartered Accountants ANZ, CPA Australia or the IPA with a current certificate of public practice and who has appropriate professional competence as required by APES 110 *Code of Ethics for Professional Accountants* 110 issued by the Accountants Professional and Ethical Standards Board’.

Due to the professional and ethical obligations of members of the accounting bodies, the above wording of the requirement would still mean that only members with appropriate audit or review skills could accept an appointment as an auditor or reviewer of a registered charity.

Amending this requirement would require changes to the Corporations Act to remove the requirement for medium or large companies limited by guarantee to appoint an RCA. Consideration may need to be given to providing governance guidance on appropriate procedures for approving the appointment of auditors by the board or governing body of the charity.

If the Corporations Act is to be amended to address issues in relation to the ACNC, then we also recommend that s324BB(5) also be amended to add New Zealand to the residency requirements. The current clause states that an audit firm is unable to consent to act as auditor for a Corporations Act entity unless it has at least one member who is an RCA ordinarily resident in Australia. This residency requirement is an inadvertent consequence of drafting which we have previously discussed with ASIC and Treasury. It effectively prevents NZ firms with Australian registered RCAs from accepting appointments for Australian entities. This negates the intent of allowing them to register as RCAs and runs counter to the Trans-Tasman harmonisation approach that has been taken in relation to audit and accounting.

### ***Nature of assurance provided***

As stated above, if changes are made to the reporting framework, the assurance framework also needs to be reconsidered. There are other forms of assurance and agreed upon procedures engagements that may, dependent on the type of information being provided, meet the needs of users better. We are aware that some countries such as the UK have introduced the concept of an ‘independent examination’ for charities. We believe that the framework provided by the Australian Auditing and Assurance Standards Board (AUASB) offers sufficient flexibility to cover the needs of users for various kinds of assurance and related services and therefore we recommend that any revised assurance requirements established by the ACNC Acts should be compliant with the requirements of the AUASB’s standards.

***Notification of breaches***

Under s311 of the Corporations Act, auditors of Corporations Act entities must notify ASIC if they become aware of circumstances that give them reasonable grounds to suspect a contravention of the Act, amount to an attempt by a person to unduly influence or mislead a person involved in the conduct of the audit or otherwise interfere with the proper conduct of the audit.

The requirement applies to significant contraventions or non-significant contraventions that the auditor believes will not be adequately dealt with by commenting on it in their report or bringing it to the attention of those charged with governance. We recommend that a similar requirement be included in the ACNC Acts to provide clarity for auditors and reviewers in relation to their obligations. As with the Corporations Act, any such requirement should only be in relation to significant matters.

***Independence declaration***

Currently auditors and reviewers of registered charities are required to provide a statement of their compliance with any applicable code of professional conduct in respect of the audit or review to the directors/governing body, however this is not required to be included in the financial report. This causes confusion for auditors and divergence in practice as we understand that some charities include the statement in the financial report.

Auditors of Corporations Act entities are required to provide an independence declaration to the directors and this is included in the financial report. This is necessary because the Corporations Act has additional independence requirements to those set out in APES 110. The ACNC Acts do not impose additional independence requirements over and above those contained in APES 110 and the auditor or reviewer of a registered charity is required by the AUASB's standards to make an explicit statement about their compliance with independence requirements of the professional and ethical requirements in their review or audit report. We recommend that the requirement for a separate independence declaration be removed as it is unnecessary.

## Appendix B: About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 117,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations. We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation accounting professionals across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.