

8 October 2021

Ms. Jacky Rowbotham  
Assistant Secretary  
Not-for-profits and Tax Administration Branch  
The Treasury

*via email: [charitiesconsultation@treasury.gov.au](mailto:charitiesconsultation@treasury.gov.au)*

Dear Ms Rowbotham

### **Australian Charities and Not-for-profits Commission Draft Regulations**

Thank you for the opportunity to provide comments on the exposure draft legislation **Australian Charities and Not-for-profits Commission Amendment (ACNC) (2021 Measures No. 3) Regulations 2021** (the **Exposure Draft**).

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 47,000 reflects the diversity of Australia's director community, comprised of directors and leaders of not-for-profits (**NFPs**), large and small businesses and the government sector.

The NFP sector is a major focus of the AICD's work with a significant majority of our members involved in the governance or work of NFPs, many of them making contributions as directors on a voluntary basis. The AICD is committed to advocating for a fit for-purpose regulatory regime for the NFP sector that supports and promotes good governance, is streamlined, and is national.

### **Executive Summary**

The AICD is broadly supportive of the proposed measures in the Exposure Draft that would give effect to three recommendations of the Australian Charities and Not-for-profits Commission Legislation Review 2018 (the **ACNC Review**). However, our view is that more needs to be done to move forward harmonisation of Federal, State and Territory regulations as they apply to NFPs, including reporting thresholds. As found by the ACNC Review, a comprehensive approach to harmonisation has the potential to realise significant benefits for all NFPs and the vulnerable Australians that many NFPs serve.<sup>1</sup>

We make the following observations about each of the proposals:

- The AICD strongly encourages the Government to adopt the reporting thresholds recommended under the ACNC Review. While the proposed thresholds under the Exposure Draft are an improvement on the existing settings, they do not go far enough. Adopting the thresholds from the ACNC Review will ensure they remain fit-for-purpose for a longer period and will result in a greater proportion of registered charities benefiting from reduced compliance costs. The reduction in

---

<sup>1</sup> Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, May 2018, p 114.

compliance costs will ultimately result in charities having more resources to pursue their charitable purposes.

- The AICD supports disclosure of material related party transactions by registered charities proportionate to the size of the charity. The AICD encourages the ACNC to work with the sector to develop practical guidance that assists in efficiently implementing the new requirements.
- The AICD supports the disclosure of remuneration of responsible persons and senior executives by large charities at an aggregated level.
- The AICD considers that the commencement date for both disclosure of related party transactions and remuneration should be aligned to be from the 2022/23 reporting period to provide sufficient time for charities to prepare and the ACNC to issue guidance.

## Reporting thresholds

This section responds to the proposed reporting thresholds contained in the Exposure Draft.

The AICD supports increasing reporting thresholds as a mechanism to lower the regulatory burden on registered charities with limited resources, particularly smaller and medium sized charities. While the proposed reporting thresholds represent an improvement on the status quo, the AICD strongly recommends the Government follow the ACNC Review recommendation 12 on this issue.

Increasing the thresholds consistent with the ACNC Review (less than \$1 million for small charities; greater than \$1 million and less than \$5 million for medium charities; greater than \$5 million for large charities) has the potential to realise greater benefits with no material loss of transparency or accountability across the sector. The Treasury consultation paper from February 2021 estimates that approximately 10% of charities would benefit from the thresholds in the Exposure Draft.<sup>2</sup> In contrast, based on figures from the ACNC Review, we estimate that approximately 23% of registered charities would benefit if the higher thresholds were adopted.<sup>3</sup> This is a significant difference when, as noted by the Treasury consultation paper, the saving in professional fees from moving to medium to small is estimated at \$2,4000 and from large to medium \$3,000.<sup>4</sup> These are savings that a registered charity could then deploy in pursuit of its purpose.

Following the recommendation of the ACNC Review would also be consistent with the increased disclosure obligations proposed under the Exposure Draft. Medium and large sized charities will be subject to greater obligations in respect of disclosure of remuneration and related party transactions. In the context of these enhanced obligations, we consider the reporting thresholds should only capture charities where increased transparency is warranted. For example, under the proposals, a charity with \$550,000 annual revenue would be classified as medium and have to provide detailed information on related party transactions in its Annual Information Statement. This outcome would risk maintaining the burdensome nature of ACNC financial reporting as identified by the ACNC Review:

*The burden imposed on some registered entities is unnecessary and onerous, particularly where a registered entity is heavily reliant on volunteers.<sup>5</sup>*

Finally, we note that as there is no periodic review mechanism of reporting thresholds under the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*, registered charities experience a form

---

<sup>2</sup> Treasury consultation paper, Increasing financial reporting thresholds for ACNC registered charities, February 2021, page 5.

<sup>3</sup> Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, May 2018, p 62.

<sup>4</sup> Treasury consultation paper, Increasing financial reporting thresholds for ACNC registered charities, February 2021, page 5.

<sup>5</sup> Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, May 2018, p 58.

of bracket creep as revenue increases. Already the recommendations from the ACNC Review are based on data from the 2016 reporting period. Increasing the thresholds in line with the ACNC Review will ensure they remain fit-for-purpose for a longer period and do not inappropriately capture smaller charities as their revenue increases.

The AICD supports the reporting thresholds commencing from the 2021/22 reporting period, however, urges the Government to reconsider the proposed thresholds consistent with the ACNC Review.

### Disclosure of related party transactions

This section responds to the proposed disclosure of related party transactions under the Exposure Draft and the application of Accounting Standard AASB 124: Related Party Disclosures (**AASB 124**).

The AICD is supportive of the disclosure of material related party transactions by registered charities proportionate to the size of the charity. As detailed above, we are concerned the proposed reporting thresholds are too low and will burden many small charities with unnecessary disclosure requirements. However, the AICD considers that disclosure, particularly by large charities, will assist with public trust and confidence in the sector. Disclosure may also incentivise improvements in the governance of related party transactions by the boards of registered charities.

Comprehensive practical guidance from the ACNC will be key to ensuring registered charities are able to efficiently implement the requirements. The guidance should be drafted in a manner that will assist registered charities meet the expectations, without an increase in compliance costs. We would expect guidance would encompass:

- summarising and contextualising AASB 124 with a focus on common charity related party arrangements to assist in determining whether another party is 'related';
- detailed information on what will constitute a 'material' related party transaction. This would include discussion of whether common charity practices, such as the provision of goods and services by an entity associated with a board member at a below market cost, are material;
- expectations for what information will be included in the Annual Information Statement, particularly what will constitute a 'brief description' for small charities; and
- examples or case studies that highlight the ACNC's expectations.

The AICD would be pleased to contribute to the ACNC's development of guidance, including through consultation with directors on our NFP Chairs' Forum and separately the Reporting Committee.

The AICD supports the disclosure of related party transactions commencing from the 2022/23 reporting period to allow a reasonable adjustment period.

### Disclosure of remuneration

This section responds to the proposed disclosure of remuneration under the Exposure Draft.

The AICD is supportive of the disclosure of remuneration of responsible persons and senior executives by large charities at an aggregated level. Consistent with previous AICD submissions, mostly recently on the

*Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021*, disclosure of remuneration at an aggregated level appropriately balances the benefits of transparency and individual privacy.<sup>6</sup>

However, we are concerned that commencement of this requirement from the 2021/22 reporting period does not provide sufficient time for large charities to prepare, including interpreting any new ACNC guidance. Our view is that commencement date for both disclosure of related party transactions and remuneration should be aligned to be from the 2022/23 reporting period.

As with the disclosure of related party transactions, we consider that enhanced ACNC guidance is important to assist large charities in meeting the new requirements, including:

- clarity on how a charity is expected to map 'key management personnel' under AASB 124 to capture responsible persons and senior executives; and
- expectations for the presentation of remuneration information in the Annual Information Statement.

### Harmonisation of state and territory fundraising laws

The AICD applauds progress on implementing the ACNC Review recommendations. However, this progress represents only one component of broader reform that is necessary to ease unnecessary and duplicative regulation of NFPs across federal, state and territory jurisdictions.

The AICD has worked with the #FixFundraising coalition, comprised of Justice Connect, Governance Institute of Australia, CPA Australia, Chartered Accountants Australia and New Zealand, Philanthropy Australia, Community Council for Australia and Australian Council of Social Services, on reform to fundraising laws for several years. We support a model that provides for the ACNC as the national point of registration, notification, regulation, audit and reporting for charitable fundraisers. Such a model would result in a significant reduction in compliance costs with the savings able to be deployed by NFPs to further their purposes to the benefit of society.

As reflected in our recent submission to the Department of the Prime Minister and Cabinet's Deregulation Taskforce, reform should be regarded as an urgent economic priority by Australian Governments working together to support the sector's sustainability and growth.<sup>7</sup> Charities and NFP organisations perform a vital role in society and will be critical as Australia emerges from the COVID-19 pandemic and temporary government support is reduced or ceases.

### Next steps

We hope our response will be of assistance. If you would like to discuss any aspects further, please contact Simon Mitchell at [smitchell@aicd.com.au](mailto:smitchell@aicd.com.au).

Yours sincerely,



**Louise Petschler GAICD**

General Manager, Advocacy

---

<sup>6</sup> AICD submission, CATSI Act Amendment Bill 2021, 17 September 2021

<sup>7</sup> AICD submission, Harmonisation of state and territory fundraising laws – streamlining overlapping regulations, 3 August 2021