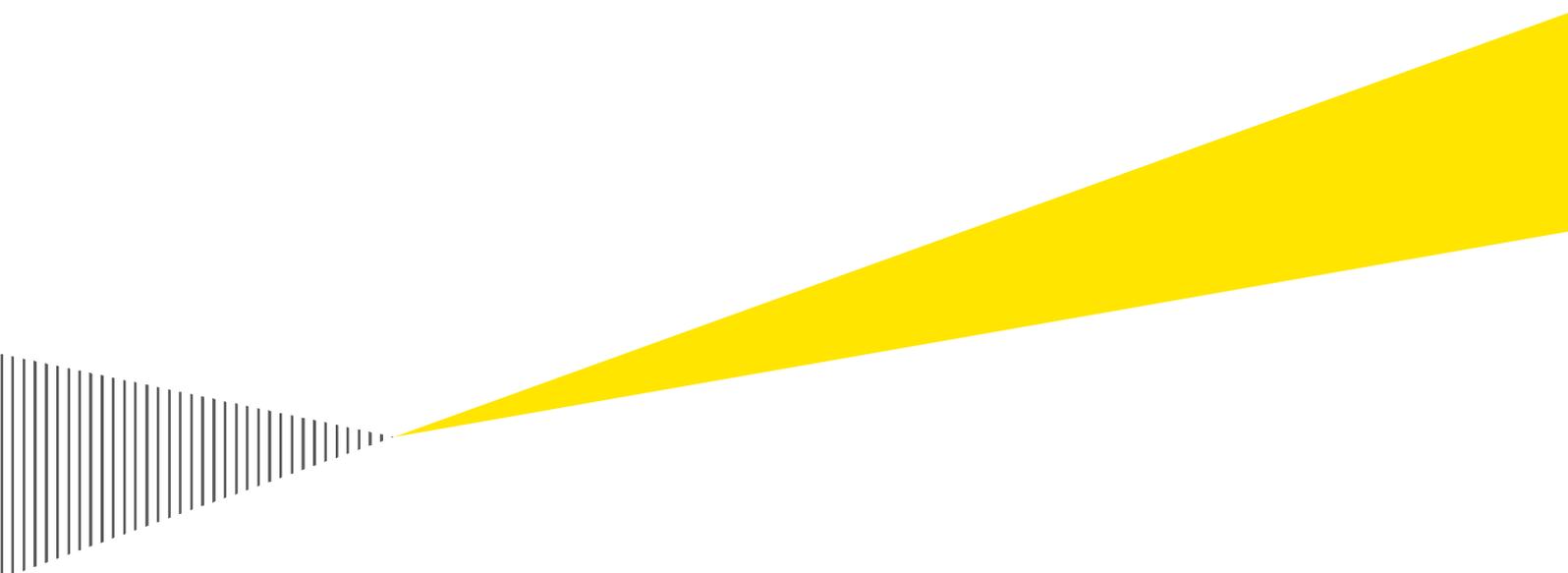


Research into Commonwealth Regulatory and Reporting Burdens on the Charity Sector

A report prepared for the Australian Charities
and Not-for-profits Commission

30 September 2014



Building a better
working world

Ms Susan Pascoe AM
Commissioner
Australian Charities and Not-for-profits Commission
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30 September 2014

Research into Commonwealth Regulatory and Reporting Burdens on the Charity Sector – Final Report

Dear Susan,

It is with pleasure that I submit our final report into the regulatory and reporting burden on the charity sector.

We have produced this document in accordance with our submitted and accepted Conceptual Framework and Measurement Methodology report.

Our research has demonstrated there is significant scope for the Commonwealth to improve the regulatory and reporting environment faced by charities and not-for-profits.

If you have any questions about this document, or our broader research project, please do not hesitate to contact me on 02 6267 3888.

Yours sincerely,



Mark Nixon
Partner

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Glossary

Burden	The incremental or additional costs incurred by charities in complying with Commonwealth Government obligations over and above their business-as-usual costs.
Business Cost Calculator	An online tool developed and administered by the Office of Best Practice Regulation that allows departments and agencies to calculate the compliance costs of regulatory proposals.
Costs	The value of an act or course of action undertaken by an entity to comply with an obligation imposed by government. Types of costs include: <ul style="list-style-type: none"> Administrative costs – costs incurred primarily to demonstrate compliance with a rule, usually record keeping and reporting costs, and the compliance costs associated with financial costs. This includes the costs incurred through complying with government taxes, fees, charges and levies (excluding the actual amount paid). Substantive compliance costs – costs that directly lead to the regulated outcomes being sought, usually purchase and maintenance costs. Delay costs – expenses and loss of income incurred by a regulated entity through an application delay or approvals delay.¹
Charity	According to the <i>Charities Act 2013</i> , a charity is defined as an entity: <ol style="list-style-type: none"> that is a not-for-profit entity, and all of the purposes of which are: <ol style="list-style-type: none"> charitable purposes² that are for the public benefit, or purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i), and none of the purposes of which are disqualifying purposes³, and that is not an individual, a political party or a government entity.⁴
Charity Passport	The ACNC's Charity Passport is the information collected by the ACNC from registered charities packaged in an electronic format for sharing with authorized government agencies. It is designed to reduce the number of times charities have to report the same information to different government agencies, in line with the development of the 'report once, use often' reporting framework. ⁵
Not-for-profit	An entity that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run it or their friends or relatives). ⁶
Obligation	An act or course of action that entities are required to undertake to comply with legally enforceable conditions imposed by government. There are three key types of obligations: <ul style="list-style-type: none"> Information obligations – these are requirements for entities to procure or prepare information and subsequently make it available to a public authority Substantive compliance obligations – these are requirements for entities to undertake an act or course of action to achieve a desired regulatory outcome. Causes of delay – these are requirements that prevent an entity from commencing its intended operations due to delays caused by application or approval processes.⁷
Red tape	Obligations that are excessive, unnecessary or confusing. In this context: <ul style="list-style-type: none"> An excessive obligation is one that imposes a burden disproportionate to the policy goals or benefits of the obligation An unnecessary obligation is one that is redundant, duplicative or does not generate a material benefit A confusing obligation is one that, due to inconsistencies in definitions and requirements, generates confusion and uncertainty.⁸

¹ OBPR (2014), *Interim Regulation Impact Statement Process Guidance Note*, January.

² Part 3 of the *Charities Act 2013* provides greater detail about what constitutes a charitable purpose.

³ Division 3 of the *Charities Act 2013* provides greater detail about what constitutes a disqualifying purpose.

⁴ This definition is derived from Division 1 of the *Charities Act 2013*.

⁵ ACNC (2014), 'Report Once, Use Often: Charity Passport guide for government agencies', Australian Government, Canberra, Australia.

⁶ ACNC (2013), 'Not-for-profit', available at:

https://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_is_NFP/ACNC/Reg/NFP.aspx?hkey=0c89fa5a-38dc-49af-b7aa-e8a6515fe8b1

⁷ This definition of what constitutes an obligation is derived from EY analysis and the Victorian Regulatory Change Measurement Manual.

⁸ EY definition, derived from: Industry Commission (1997), *Reducing the Regulatory Burden: Does firm size matter?*, Staff Research Paper; OBPR (2014), *Interim Regulation Impact Statement Process Guidance Note*, January; SCM Network (2005), *International Standard Cost Model Manual*; Victorian Department of Treasury and Finance (2013), *Victorian Regulatory Change Measurement Manual*, Version 2.0, November.

Regulation	Any rule endorsed by government where there is an expectation of compliance, including legislation, regulations, quasi-regulations, such as standards and codes of practice, and any other aspect of regulator behaviour which can influence or compel specific behaviour by business and the community. Red tape burden imposed by the Commonwealth Government's procurement, grants and cost recovery frameworks is also included. ⁹
Regulatory and Reporting Burden	<p>The burden (see above definition) imposed by the Commonwealth which results from a charity meeting a regulatory obligation (Commonwealth primary, secondary or quasi legislation) or a reporting obligation (including those obligations which relate to the provision of information to the Commonwealth in instances where charities are receiving and acquitting for public money from the Commonwealth).</p> <p>There is some overlap between regulatory burden and reporting burden. For example, a charity may be required to submit a report to the Australian Government to comply with a piece of legislation. This report uses the term 'regulatory and reporting obligation' to avoid ambiguity – particularly given that under previous governments the concept of regulation did not necessarily include grants and other funding reporting.</p>
Regulatory Burden Measurement	A framework, developed by the Office of Best Practice Regulation, which must be used by departments and agencies to quantify the regulatory costs of all regulatory proposals. The framework outlines key costing parameters, including cost types and relevant populations.

⁹ OBPR (2014), *Interim Regulation Impact Statement Process Guidance Note*, January.

Acronyms

ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACNC	Australian Charities and Not-for-Profits Commission
AIS	Annual Information Statement
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BAS	Business Activity Statement
BCC	Business Cost Calculator
Commonwealth	Commonwealth or Federal Government
DGR	Deductible Gift Recipient
FBT	Fringe Benefits Tax
FTE	Full Time Equivalent
GDP	Gross Domestic Product
GST	Goods and Services Tax
IT	Information Technology
NFP	Not-for-profit
OBPR	Office of Best Practice Regulation
PAYG	Pay As You Go
PBI	Public Benevolent Institution
RBM	Regulatory Burden Measurement
RCM	Regulatory Change Measurement
TCC	Tax Concession Charities

Executive summary

In December 2013, the Australian Charities and Not-for-profits Commission (ACNC) engaged Ernst & Young (EY) to research the regulatory and reporting burden on charities. While our research focused primarily on Commonwealth burden, it also considered state and territory burden.

In conducting this research, EY focused primarily on the experiences of 15 case study charities drawn from three charity sub-sectors – social welfare, other education (excluding schools, higher education and research) and health/aged care. We supported the case study research through a review of publicly available data and an online survey of the broader charities sector (which received 378 responses).

Key findings

Quantifying total burden

- Using the Business Cost Calculator (BCC), we estimate that the average Commonwealth burden imposed on the case study charities over the past 12 months of operations is \$108,000. The average Commonwealth burden was smaller for small charities (\$18,000) and larger for large charities (\$235,000).
- Feedback from survey respondents and previous studies suggest that our estimate of average Commonwealth burden derived from the case study charities is higher than the average Commonwealth burden imposed on the entire charity sector.
- Charities that we engaged with generally felt that their regulatory and reporting costs have increased over the past three years, and the Commonwealth burden is impacting on their ability to achieve charitable outcomes.

Quantifying the burden of individual obligations

- We estimate that the average annual burden imposed by the ACNC was \$150 (equal to 0.1 per cent of total annual burden).

Burden and obligation type

- Charities are principally exposed to two different types of regulatory and reporting obligations: obligations that derive from a legislative requirement; and obligations that derive from a funding agreement between the charity and a Commonwealth department or agency.
- Our research suggests that the second type of obligation is the largest source of Commonwealth burden imposed on charities. For example, of the 15 case study charities, 12 received Commonwealth funding over the past year. Using the BCC, we estimate that the average Commonwealth burden imposed on these charities was \$134,000. In comparison, for the three charities that did not receive Commonwealth funding, the average Commonwealth burden was only \$4,200.

Quantifying red tape

- For the purposes of this research project, we have defined 'red tape' as regulatory and reporting obligations that are deemed excessive, unnecessary or confusing.
- Drawing on feedback from the case study charities and survey respondents, we estimate that between 25 per cent and 35 per cent of Commonwealth obligations constitute red tape. Accordingly, we estimate that the Commonwealth imposed, on average, between \$27,000 and \$38,000 worth of red tape on the case study charities over the past 12 months of operations.

Sources of red tape

- As we note above, funding agreement obligations appear to be the largest source of Commonwealth burden imposed on charities. It is thus not surprising that the key sources of red tape identified through our research primarily relate to funding agreement obligations. These key sources are:
 - The level of information required and the frequency of reporting – case study charities and survey respondents indicated that the level of information they are required to provide funding departments, and the frequency of reporting, can be excessive, and is seemingly

driven more by an over-emphasis of the management of risk, rather than an objective consideration of what level of reporting is necessary to ensure funding outcomes are achieved.

- Inconsistencies in reporting requirements and processes – a number of survey respondents highlighted inconsistencies in financial reporting formats as a key source of unnecessary burden. Case study charities, survey respondents and professional advisors also highlighted policy and regulatory instability and the rotation of contract managers as sources of confusion and burden.
- Duplication in reporting requirements – based on our mapping exercise, there appears to be the potential for significant duplication between the financial reporting requirements of different funding programs. Furthermore, there is some duplication in the type of information requested under legislative obligations and funding agreement obligations – particularly in terms of core information and information relating to organisational viability.
- Case study charities and survey respondents indicated that inter-jurisdictional red tape remains a concern – in terms of:
 - Duplication in information requirements across different levels of government
 - Inconsistencies in key regulatory frameworks across the states and territories (particularly in the context of fundraising regulations and the Incorporated Associations regime).

Recommendations

1. Commonwealth departments and agencies that provide funding to charities should ensure their reporting and acquittal requirements align with the Commonwealth Grants Rules and Guidelines and incorporate the charity passport and National Standard Chart of Accounts, where relevant.
2. The charity regulator should work together with funding departments and agencies to encourage the adoption and implementation of available tools (such as the Commonwealth Grants Rules and Guidelines, the charity passport and the National Standard Chart of Accounts) to reduce the reporting burden on charities. The charity regulator could achieve this through a mixture of promoting agencies/programs that represent 'best practice' and reviewing agencies and programs to identify areas for improvement.
3. In three years, the charity regulator could work with the Department of Finance to conduct a review of the Commonwealth Grants Rules and Guidelines, the charity passport and National Standard Chart of Accounts (in terms of their effectiveness in reducing the burden imposed on charities). This review should explicitly consider whether the Commonwealth Grants Rules and Guidelines need to become more prescriptive and/or mandatory to reduce the burden imposed on charities.
4. Future regulatory arrangements for the charity sector should retain existing red tape reduction tools (such as the 'report once, use often' framework, the charity passport and the National Standard Chart of Accounts).
5. The charity regulator should develop additional guidance material to assist departments and agencies in operationalising the Commonwealth Grants Rules and Guidelines from a charity and red tape reduction perspective, particularly in terms of: (a) the management of financial risk (and helping departments and agencies reconceptualise risk management in the context of charities, taking into account the broad risk mitigation role played by the charity regulator and the mission of charities); and (b) best practice reporting requirements.
6. Commonwealth departments and agencies that provide significant funding to the charity sector should continue to explore the potential for program rationalisation.
7. All jurisdictions should seek to harmonise their reporting and regulation with the charity regulator (including through the use of the charity passport) as a means of reducing duplication in information requests across different levels of government.
8. The charity regulator should consider adopting an 'honest-broker' role in driving reform on key inter-jurisdictional sources of regulatory burden on charities, such as fundraising regulation.

1. Introduction

1.1 Background and context

In 2012, the Federal Parliament enacted the *Australian Charities and Not-for-profits Commission Act 2012*. This Act formally establishes the ACNC and states the objects and functions of the ACNC.

Among the ACNC's objects and functions is the requirement to establish and maintain a register for charities as well as introduce and administer a national regulatory framework for charities. Under paragraph 15-5(1)(c), the ACNC is required 'to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector'.¹⁰

According to the ACNC's Annual Report 2012-13, the ACNC is meeting this latter object by 'working with Commonwealth agencies and state and territory governments to reduce unnecessary regulatory obligations, streamline charity reporting requirements and develop a 'report once, use often' reporting framework for charities.'

Consistent with this object, the ACNC in December 2013 held its inaugural red tape forum. This drew a significant audience from the government as well as the NFP and charities sector. The forum discussed contemporary issues faced by the sector regarding regulatory and reporting obligations currently imposed by different levels of government in Australia. Forum participants expressed strong support for a project to measure the red tape imposed on charities.¹¹

Coinciding with this forum, the ACNC engaged EY to research the extent of regulatory and reporting burden imposed on charities by the Commonwealth, and to identify the areas of greatest burden.

1.2 Future of the ACNC

On 19 March 2014, the Government tabled the *Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014* in the House of Representatives. The purpose of this Bill is to repeal the *Australian Charities and Not-for-profits Commission Act 2012*, thereby abolishing the ACNC. The Bill will not take effect, however, until the enactment of a later Bill, which will provide the details of the arrangements replacing the ACNC.

On 4 July 2014, the Department of Social Services released an Options Paper, the purpose of which was to explore, and solicit feedback on, options for the replacement arrangements following the abolition of the ACNC.¹² At this stage, it remains uncertain as to what will, if subsequent legislation is enacted, replace the ACNC, including the register, passport and regulatory functions.

Accordingly, where this report is forward-looking (particularly its recommendations for future burden and red tape reduction efforts), we have avoided referring explicitly to the ACNC; but rather, have referenced a generic 'charity regulator'.

¹⁰ The ACNC's functions include regulating the activities of charities who are established as a company under the *Corporations Act 2001*, whereas the incorporation and winding down of a company remains within the regulatory responsibilities of ASIC.

¹¹ See: ACNC (2014), 'Red tape reduction forum report - Measuring and Reducing Red Tape in the Not-for-profit Sector', available at: <http://www.acnc.gov.au/ACNC/Report/rtrforumreport.aspx>.

¹² See: Department of Social Services (2014), *Options Paper - Australia's Charities and Not-for-profits*, 4 July, available at: http://www.dss.gov.au/sites/default/files/documents/07_2014/options_paper_-_australian_charities_and_not-for-profits.pdf.

1.3 Approach and methodology

To address the Statement of Requirement issued by the ACNC, EY conducted multiple streams of work. These streams are described below.

1.3.1 Conceptual Framework

To conduct the research project, EY developed a conceptual framework (see Appendix B). This draws on the Commonwealth's Regulatory Burden Measurement (RBM) framework, relevant guidance issued by the Office of Best Practice Regulation (OBPR), the BCC, and the Victorian Government's Regulatory Change Measurement (RCM) methodology. This framework was submitted to and accepted by the ACNC on 28 February 2014.

1.3.2 Desktop research

EY conducted a desktop review of relevant documentation regarding the operation of the charity sector in Australia, as well as relevant Australian and international literature regarding regulatory management and measurement issues.

1.3.3 Regulatory mapping

To inform its broader analysis, EY mapped the regulatory and reporting obligations imposed on the case study charities by the Commonwealth. As part of this exercise, EY:

- Identified the Commonwealth obligations likely to be faced by the case study charities
- Categorised the identified obligations, in terms of their:
 - type (i.e. information or substantive compliance)
 - purpose (e.g. taxation, service delivery, human rights, etc.)
 - frequency (i.e. ongoing or one-off)
- Detailed the requirements associated with the obligations (e.g. in terms of what information the case study charities were required to provide).

The mapping process was informed by our pre-existing understanding of the regulatory framework surrounding non-government organisations in Australia, the knowledge of the case study charities we interviewed and publicly available documentation (including relevant legislation, program guidelines and departmental reporting on grant funding). While we strived for data completeness, we were not able to access some data (notably, detail about financial and performance reporting included in the funding agreements between the Commonwealth and the case study charities).

The results of the mapping exercise are summarised in chapter 3. A detailed spreadsheet has also been provided to the ACNC separately to this report.

1.3.4 Selecting and interviewing case study charities

As part of its original Statement of Requirement, the ACNC requested that the research project focus on charities operating in the social welfare, other education (excluding schools, higher education and research) and health/aged-care sub-sectors.¹³¹⁴ These sub-sectors were chosen based on advice from the ACNC's own working groups, anecdotal evidence of significant burden in the sub-sectors, and a general absence of research on burden in these sub-sectors.

¹³ As the research focused on Commonwealth regulatory and reporting burden, the sub-sectors were delineated according to the Australian regulatory context. As such, the sub-sectors do not necessarily correspond to the International Classification of Non-profit Organisations (ICNPO). For example, child care is included in other education, and health care and aged care are combined. Further information is provided at section 5.1.4.

¹⁴ It is important to note that the work of charities (including the case study charities) may cover more than one activity/sub-sector.

In selecting the case study charities, EY sought to achieve an even distribution of charities from the three sub-sectors, as well as from small, medium and large charities (in accordance with the ACNC's established definitions of charity size). Appendix B provides more detail about the methodology we used to select the case study charities.

All interviews with case study charities in NSW and the ACT, as well as one in Victoria, were conducted face-to-face. All other interviews were conducted by telephone. The average length of the case study interviews was approximately 1.5 hours.

The purpose of the charity case studies was to understand the nature and extent of charity interaction with the Commonwealth (from a regulatory and reporting perspective), and to identify and measure the administrative and compliance costs experienced by individual charities as a result of their interaction with the Commonwealth.

During interviews, charities were asked to describe the nature of their operations, the nature and level of interaction with the Commonwealth and the administrative, compliance and delay burdens experienced as a result of Commonwealth requirements over the previous 12 months of operations. Charities were also asked to describe any regulatory or reporting problem areas, and to identify areas where the Commonwealth could improve its regulatory and reporting performance which would reduce the burden imposed on the sector.

Where time permitted, EY also explored the regulatory and reporting burden imposed on the case study charities by state and territory governments. While no specific regulatory costing calculations from a state or territory government perspective are presented in this research report, some broad observations on the data received have been made.

A record of conversation was produced for each interview and sent to each charity for review and clarification, particularly around identified Commonwealth regulatory and reporting obligations and associated regulatory costs.

1.3.5 Online Survey

To triangulate the findings from the case study charities, EY developed (in consultation with the ACNC) a short, online survey to collect general information on the regulatory and reporting burden imposed on charities. This survey was developed using Survey Monkey, and comprised 17 questions (see Appendix E for more detail).

This survey was promoted by both EY and the ACNC through multiple platforms and communication channels including social media, e-mail, the Commissioner's column and direct phone calls.

The survey was launched on 17 March 2014 and was concluded on 11 April 2014. It received a total of 378 responses. A profile of the survey respondents is provided in Chapter 4 of this report.

1.3.6 Calculation of regulatory burden

We calculated the regulatory and reporting burden imposed by the Commonwealth on the case study charities by using the BCC and drawing on our conceptual framework (see Appendix B).

We have presented the total calculated burden in Table 15 as well as a breakdown of this burden according to administrative costs and substantive compliance costs. We have also indicated in Table 15 whether the burden is either:

- 'one-off' in nature – i.e. not a typical burden experienced over the previous 12 months and resulted from a unique regulatory or reporting requirement,¹⁵ or

¹⁵ An example, of an 'one-off' burden is a child care centre who was required to alter the physical infrastructure of the centre in response to the introduction of the Commonwealth's National Quality Framework.

- 'on-going' in nature – i.e. a burden that is regularly experienced by the charity given its purpose and operating model.¹⁶

Our calculations of regulatory burden were based on estimates provided by the case study charities in the context of the 12 months prior to the interviews (approximately from the first quarter of 2013 to the first quarter of 2014).

1.3.7 Verification of data and results

In addition to the case study charities, EY interviewed stakeholders from Commonwealth departments and agencies, and professionals to the charity sector (e.g. the legal, accounting and directorship communities).

The methodology in selecting the government officials and professional advisors was based on our broad understanding of the regulatory issues affecting the charity sector, as well as the data obtained via the online survey and the 15 case study charities. A number of public officials were not able to meet with EY due to time and capacity constraints.

EY used these interviews to: outline the background and context of the research project; validate the methodology used to conduct the research; confirm preliminary observations and findings derived from the stakeholder consultations; and gauge responses from officials and professional advisors.

Important observations and findings obtained through the validation interviews are presented in Chapter 6 of this report.

1.4 Research assumptions

A series of assumptions were made during the research project which inform the findings, observations and recommendations made in this report. These assumptions are as follows:

- The research project primarily focused on understanding the burden placed on charities by the Commonwealth. The mapping, costing and exploration were conducted on this basis.
- The regulatory mapping exercise was conducted to record all possible regulatory and reporting obligations which a charity in the target sub-sectors would be likely to experience. EY sought to record items that were of a 'material' nature. EY made such decisions based on professional experience, readings and direct engagement with charities, government officials and professional advisors.
- The case study charities were drawn from three charity sub-sectors – in accordance with the Statement of Requirement issued by the ACNC.
- Six of the 15 charity case studies indicated that they experience delays between applying and receiving Commonwealth funding. Each of these organisations have applied different approaches to manage such delays, including:
 - reallocating staff to alternative work projects
 - reducing the work hours of staff
 - absorbing the financial cost of the employee.
- EY found it difficult to objectively determine (or obtain from the charity case studies) the actual cost of employees which have been absorbed during periods of delay. Hence, delay costs have been noted, but not calculated as part of this research project.
- In conducting the regulatory and reporting burden estimates, it was assumed that meeting Commonwealth obligations was done by manager level staff within each of the charity case studies. This assumption coincided with our findings that the regulatory and reporting burden typically falls on senior members of an organisation. Consistent with the OBPR's interim guidance

¹⁶ An example of an 'on-going' burden could be complying with the GST BAS requirements or reporting requirements associated with regular Commonwealth funding which is closely aligned with the operational activities of the charity.

note, we have assumed a wage rate of \$41.60 per hour (with a 1.16 loading to take into account on-costs).¹⁷

- In determining whether a regulatory or reporting activity was to be included in the costing exercise, EY asked charities whether, in the instance that the Commonwealth did not exist, they would be likely to undertake the activity.
- The figures quoted in this report are expressed in Australian dollars.

1.5 Research limitations

There are several limitations (in addition to EY's general limitations as listed in Appendix A) that impact on our findings and observations. These limitations are as follows:

- The responses provided to EY via the online survey and from the case study charities are inherently drawn from the experiences of each individual charity. Individual responses may have been influenced by subjective perceptions of the individual survey respondents.
- This research project is primarily based on feedback provided by 15 case study charities and 379 survey respondents. Due to the relatively small size of the samples involved, our results should not necessarily be interpreted as representative of the charity sector.
- EY was limited by time available in being able to interview each charity. On average, EY was able to spend approximately 1.5 hours with each organisation. EY was also limited by which members of the charities were available to participate in the interviews.
- EY's mapping and costing of regulatory and reporting obligations by the specific charities interviewed can only be based on the data and documentary evidence provided to EY.
- This research project was solely focused on obtaining data from charities which were currently operating and were well established. This research project does not measure the burden imposed by the Commonwealth government during the establishment phase.
 - This limitation is quite significant given that professional advisors and government officials indicated that there is significant burden which is currently being experienced by organisations who are seeking either Deductible Gift Recipient (DGR) or Public Benevolent Institution (PBI) status.
- EY's findings and conclusions can only be based on the documentation reviewed and the data obtained.
- In conducting the mapping of the grant management processes which exist with the Commonwealth, EY approached several departments for interviews to develop an understanding of the grant management process across the Commonwealth. Only a select number of organisations were available to meet.
- The BCC methodology only focuses on burdens or costs imposed by Commonwealth law, policies and programs and does not consider or measure any benefits that the Commonwealth may generate through its regulatory and policy/program activities. This should be taken into consideration when considering the estimates of regulatory burden.

¹⁷ Office of Best Practice Regulation (2014), *Interim Regulation Impact Statement Process Guidance Note*, January.

2. Background and context

As at 30 June 2014, there were 60,736 charities registered with the ACNC.¹⁸ Over half of these registered charities are located in either New South Wales (34 per cent) or Victoria (24 per cent).¹⁹

Charities within the NFP sector are divided into broad areas of activities and service delivery, such as the advancement of health, education, social or public welfare, religion and culture.

The NFP sector has enjoyed significant growth in recent years. According to the Australian Bureau of Statistics (ABS):

- The gross value added (GVA) of Non-Profit Institutions (NPI) grew from \$38.3 billion in 2006/07 to \$54.8 billion in 2012/13 (all figures in 2013 dollars) – an annual average increase of 6.1 per cent in real terms
- The NPI share of total industry GVA was 3.9 per cent in 2012/13, up from 3.2 per cent in 2006/07.²⁰

2.1 The impact of regulatory burden on the charities

Over the past decade, there have been several attempts to understand the regulatory and reporting burden on the NFP sector. NFPs have raised concerns that the level of regulatory and reporting obligations imposed on them is hindering sector productivity. For instance, after conducting an extensive inquiry into the NFP sector in 2010, the Productivity Commission concluded that:

- 'Current information requirements imposed on NFPs for funding and evaluation purposes are poorly designed and unduly burdensome.'
- 'The current regulatory framework for the sector is complex, lacks coherence, sufficient transparency, and is costly to NFPs.'²¹

Studies have found that regulatory frameworks impose a considerable burden on charities and the broader NFP sector. According to these studies, the burden is largely driven by inconsistencies in regulatory requirements across jurisdictions, and perceptions of some obligations being excessive and duplicative in nature.²² A summary of the publicly available studies is provided in Table 1.

¹⁸ Data supplied by the ACNC.

¹⁹ ACNC (2014), 'Background to the not-for-profit sector', available at: www.acnc.gov.au/ACNC/About_ACNC/NFP_reforms/Background_NFP/ACNC/Edu/NFP_background.aspx?hkey=e88db8f0-3e48-4408-ab99-c2acb6ef8a1d.

²⁰ ABS (2014), 'Australian National Accounts: Non-Profit Institutions Satellite Account, 2012-13', cat. no. 5256.0.

²¹ Productivity Commission (2010), *Contribution of the Not-for-profit Sector*, Research Report, January.

²² Australian Institute of Health and Welfare (2006), *Cutting the Red Tape: Preliminary paper detailing the problem of multiple entry and reporting by service providers*; Christine Ryan, Cameron Newton and Myles McGregor-Lowndes (2008), *How Long is a Piece of Red Tape? The paperwork reporting cost of government grants*.

Table 1: Measuring regulatory and reporting burden – specific to the context of charities and NFPs

<p>Morgan Disney and Associates (for the Office of Indigenous Policy Coordination), <i>A Red Tape Evaluation in Selected Indigenous Communities</i>, 2006</p> <p>This evaluation set out to establish the extent and nature of the administrative burden of governed funding programs on Indigenous organisations. Undertaken between mid-2005 and January 2006, the evaluation involved a sample of half of the Indigenous Coordination Centres (ICCs), and 22 Indigenous organisations in receipt of government funding and nominated by the 14 ICCs in the sample. The evaluation is primarily qualitative in nature, though some quantitative estimates of the time taken to prepare applications and meeting reporting requirements are provided. Key findings include:</p> <ul style="list-style-type: none"> • The accountability framework for grants, by itself, does not create red tape or unreasonable burden on funded organisations • Rather, red tape or unreasonable burden is created primarily at the operational level in how the accountability framework is translated into departmental and local practices • Administrative burden is greater where applications for grants are required every year, reporting is more frequent, and organisations receive many sources of funds from two levels of government.
<p>Australian Institute of Health and Welfare, <i>Cutting the Red Tape: Preliminary paper detailing the problem of multiple entry and reporting by service providers</i>, 2006</p> <p>The purpose of this study was to describe and validate the program of multiple entry and reporting by community service providers required to provide data against more than one national data collection. Data was collected through site visits to four community service providers.</p> <p>The study found that community service providers are experiencing a considerable data collection and reporting impost because of:</p> <ul style="list-style-type: none"> • The requirement of program-centred reporting for service providers to use separate, program provided data collection forms and/or software resulting in the client providing, and the service provider, recording and reporting on the same client on multiple occasions • The lack of electronic data capture, storage and reporting systems in the community services sector which would give providers the capacity to record data once, from which multiple reporting could occur.
<p>Allen Consulting Group (for the Victorian State Services Authority), <i>Review of NFP Regulation: Estimate of potential administrative cost savings</i>, 2007</p> <p>This study sought to quantify the potential administrative and compliance savings of proposed reforms to Victorian Government regulation and reporting requirements on the NFP sector. Potential savings were estimated in terms of administrative savings (measuring using the SCM), substantive compliance costs savings and direct financial cost savings. Data was collected through consultations with NFPs and peak bodies.</p> <p>The study found that, if the proposed reforms were implemented, the Victorian Government could expect total savings to be at least \$24.2 million per annum.</p>
<p>Hudson Institute Centre for Global Prosperity, <i>Philanthropic Freedom: A Pilot study</i>, 2013</p> <p>This is a comparative, cross-national study on philanthropic freedom. It examines the barriers and incentives for individuals and organisations to donate money and time to social organisations by measuring seven indicators (grouped in terms of civil society regulation, domestic tax regulation and cross border-flows regulation) across 13 countries (including Australia).</p> <p>Australia received an overall score of 4.3 out of 5.0 and was ranked equal third (with Sweden and Japan) behind the Netherlands and the United States.</p>
<p>Christine Ryan, Cameron Newton and Myles McGregor-Lowndes, <i>How Long is a Piece of Red Tape? The paperwork reporting cost of government grants</i>, 2008</p> <p>This study quantified the time and cost of government generated paperwork (such as applying for grants or grant acquittals) for Queensland non-profit organisations. The study utilised a case study approach, involving 14 organisations that kept logs to record government generated paperwork as they completed forms over a 12 month period in 2005. Key findings of the study included:</p> <ul style="list-style-type: none"> • Over the 12 months, the 14 organisations together reported taking an average of 143.57 hours (median of 95 hours) to complete government generated paperwork • 60 per cent of compliance forms were submitted to state government, and 34 per cent to the Commonwealth <p>The cost of government generated paperwork was an average of 1.74 per cent of an organisation's total revenue.</p>

Public Interest Advocacy Centre, The Whitlam Institute within the University of Western Sydney, and Social Justice and Social Change Research Centre, University of Western Sydney, *A Question of Balance: Principles, contracts and the government-not-for-profit relationship*, 2009

This study analysed the nature of contracts in human services (between government and NFP organisations), the principles upon which they are built and the implications of their actual terms. The study was primarily qualitative in nature, drawing on interviews with senior staff from 24 NFP organisations, and legal analysis of existing contracts between NFPs and Commonwealth Government departments. Key findings of the research include:

- There is widespread concern among NFPs about government micro-management under the contractual umbrella, and the cost associated with contractual compliance (interviewees estimated that meeting contractual requirements accounted for between 40 and 60 per cent of their administrative load)
- Some contractual obligations are unduly burdensome – particularly those that aim to eliminate risk, rather than manage it.

Various government reviews

There have been numerous Commonwealth Government reviews of the NFP regulatory framework over the past 15 years. These include:

- 2001 Report of the inquiry into the Definition of Charities and Related Organisations
- 2008 Senate Economics Committee inquiry into Disclosure Regimes for Charities and NFP Organisations
- 2009 Australia's Future Tax System report (AFTS report)
- 2010 Productivity Commission report on Contribution of the Not-for-Profit sector
- 2010 Senate Economic Legislation Committee inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010
- 2011 Commonwealth Treasury Scoping Study for a National Not-For-Profit Regulator²³
- 2011 Establishment of the Australian Charities and Not-for-profits Commission Regulation Impact Statement.

The overarching findings from these reviews are:

- The NFP regulatory framework is fragmented, inconsistent and based on entity type rather than activities or outcomes
- At the Commonwealth level regulatory oversight is spread across multiple Government agencies which increases compliance costs and complexity
- Reporting arrangements for NFP entities are uncoordinated and complex, and do not take into account the differing size, risks and access to public monies of NFP entities
- Existing reporting arrangements imposes significant administrative burden on NFP entities.

²³ Commonwealth Treasury (2011), *Final Report: Scoping Study for a National Not-for-Profit Regulator*, Commonwealth Government Canberra.

In January 2013, COAG released a consultation regulatory impact assessment (RIA) that sought to identify and quantify the extent of duplication between existing and proposed governance standards and reporting requirements on charities, with a view to assisting a final report to COAG to determine whether it is a problem that would warrant government action.

The Consultation RIA estimated that the compliance burden arising from the duplication between existing regulatory requirements of states and territories and the proposed ACNC governance and reporting requirements is equal to \$1.6 million in one-off costs and \$13.4 million in ongoing annual costs across Australia. The Consultation RIS proposed five options to reduce duplication, and prompted feedback on these options from stakeholders.

It is important to note that:

- The RIA made clear that the 'impacts of duplication will not occur until transitional arrangements expire'
- The estimated duplication was if harmonization did not occur as recommended in the RIA and only after the transitional arrangements expire
- South Australia and the Australian Capital Territory have since committed to harmonize should the ACNC continue (eliminating the duplication), and other jurisdictions have shown interest
- Transitional arrangements remain in place
- The RIA did not cost simple duplication, but also costs from increased transparency.

2.2 Current Commonwealth policy

Reducing the regulatory and reporting burden on charities and the broader NFP sector continues to be a bipartisan objective of both the previous and the current Commonwealth Government.

The current Commonwealth Government has set itself the objective of reducing the cost of red tape for businesses, community organisations and individuals by at least \$1 billion per year.²⁴ This objective applies to:

*'any mandatory obligations imposed by legislation, regulations, quasi regulations such as statutory instruments, standards, codes of practice, or any other aspect of regulator behaviour that has a measurable cost burden on business or individuals. Red tape burden imposed by the Commonwealth's procurement, grants and cost recovery rules are also included.'*²⁵

The implementation of this deregulation agenda involves several work streams, including:

- The establishment of portfolio deregulation units
- The establishment of ministerial advisory councils
- The launch of 'repeal day'
- The conduct of regulatory audits across portfolios and the quantification of the regulatory burden.

Across a number of areas, the Commonwealth has announced reviews or initiatives that may impact the regulatory and reporting outcomes of the NFPs and charities sector, including:

- The announced deregulation changes to the university sector
- Current reforms to the processes relating to Commonwealth grants
- The Productivity Commission inquiry into the child care sector
- The Productivity Commission inquiry of the Fair Work Act 2009
- The upcoming White Paper on taxation reform
- The upcoming White Paper on Federalism
- Reconfiguration of the Job Services Agreement in 2015 between the Commonwealth and Job Services providers.

Additional Commonwealth deregulatory reform announcements are expected in the coming 12 months once the current deregulation audits and costing exercises are complete. These additional announcements have the capacity to impact on the NFP and charity sector.

²⁴ Department of the Prime Minister and Cabinet (2013), 'Office of Deregulation', available at: <http://www.dpmc.gov.au/deregulation/index.cfm>.

²⁵ Ibid.

3. Mapping regulatory and reporting obligations

A key research task of this project was to undertake a regulatory and reporting obligation mapping exercise (in accordance with the Conceptual Framework and Methodology, developed in agreement with the ACNC). The purpose of this exercise was to identify and classify the Commonwealth obligations imposed on the 15 case study charities – the results of which would inform our analysis of the burden and red tape imposed on the case study charities.

To map the obligations imposed on the case study charities, we relied on information supplied by the case study charities and drew on:

- Our own knowledge of the regulatory frameworks surrounding charities in Australia
- Relevant publicly available information – such as guidance issued by departments and agencies (e.g. grant program guidelines and manuals) and grant reporting information published by departments or agencies.

While we have strived for data completeness, in some cases (particularly in the context of grant program reporting) detailed information about obligations is not publicly available; but rather, is included in funding agreements and thus considered commercial-in-confidence.

3.1 Classifying obligations

Generally speaking, the case study charities are required to comply with two broad types of regulatory and reporting obligations:

- Legislative obligations - those that are mandatory because of a legal (either primary or secondary legislation) requirement
- Funding agreement obligations - those that are imposed on a charity as a result of the charity entering into a funding agreement with the Commonwealth.

3.2 Legislative obligations

We have identified 15 broad legislative obligations that apply to the group of case study charities. These are listed in Table 2.

Table 2: Legislative obligations that apply to the case study charities

Broad obligation	Portfolio	Regulatory purpose
ABS reporting	Treasury	Data collection
ACNC registration and compliance	Treasury	Charity regulation
Age Discrimination Act 2004	Attorney-General's	Human rights
ASIC registration	Treasury	Corporate regulator
Criminal Code Act 1995	Attorney-General's	Criminal law
Disability Discrimination Act 1992	Attorney-General's	Human rights
Disability services requirements	Social Services	Service delivery
Employment conditions and remuneration	Employment	Workplace
FBT requirements	Treasury	Taxation
GST requirements	Treasury	Taxation
PAYG requirements	Treasury	Taxation
Privacy requirements	Attorney-General's	Human rights
Racial Discrimination Act 1975	Attorney-General's	Human rights
Sex Discrimination Act 1984	Attorney-General's	Human rights
Workplace gender equality	Employment	Workplace

Table 3 summarises our mapping of the legislative obligations imposed on the individual case studies. It is important to note that:

- Not all the obligations listed in Table 3 represent individual obligations. In some cases, we have rolled a number of similar obligations into a single obligation.
- Not all obligations are equal in terms of the requirements and burden they impose on the case study charities. Some obligations, such as those relating to the various discrimination acts and the Criminal Code Act 1995, generally only require the case study charities to avoid certain actions. Other obligations, such as those relating to the various taxation measures, require the case study charities to undertake certain actions (e.g. in terms of collecting and paying tax), report information to the ATO, and to keep records for a mandated period.

Key findings from our mapping of legislative obligations include:

- There are a number of legislative obligations that apply to all the charity case studies. These include the obligations associated with ABS reporting, ACNC registration, the various human rights Acts (e.g. the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992 and the Aged Discrimination Act 2004), and the GST.
- Other legislative obligations (such as those associated with employment conditions and remuneration and PAYG) apply to nearly all the charity case studies – the exception being one case study that uses only volunteers, and thus does not believe they had any PAYG or workplace requirements.
- Large case study charities face, on average, more legislative obligations than small and medium case study charities – primarily because certain obligations (such as those relating to privacy and workplace gender equality) only apply to organisations over a certain size.
- Case study charities in the social welfare sub-sector face, on average, more legislative obligations than case study charities in the health and the other education sub-sectors.
- Generally speaking, the legislative obligations imposed on case study charities appear more or less split between information and substantive compliance obligations.

Table 3: Mapping of legislative obligations against the case study charities

Obligation	Type	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
<i>Charity size (small, medium, large)</i>		<i>Sml</i>	<i>Sml</i>	<i>Lge</i>	<i>Lge</i>	<i>Lge</i>	<i>Lge</i>	<i>Med</i>	<i>Med</i>	<i>Lge</i>	<i>Sml</i>	<i>Med</i>	<i>Med</i>	<i>Sml</i>	<i>Sml</i>	<i>Med</i>
<i>Sub-sector (health, other education, social)</i>		<i>Hth</i>	<i>Hth</i>	<i>Hth</i>	<i>Soc</i>	<i>Ed</i>	<i>Hth</i>	<i>Soc</i>	<i>Ed</i>	<i>Soc</i>	<i>Ed</i>	<i>Soc</i>	<i>Ed</i>	<i>Ed</i>	<i>Hth</i>	<i>Soc</i>
ABS reporting																
Participate in surveys	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ACNC registration																
Annual information statement	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Comply with governance standards	Sub. Comp.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Notify of changes	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Keep records	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Age Discrimination Act 2004																
General compliance	Sub. Comp.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ASIC registration																
Notify certain information	Information			✓		✓	✓			✓					✓	
Criminal Code Act 1995																
General compliance	Sub. Comp.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Disability Discrimination Act 1992																
General compliance	Sub. Comp.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Disability services requirements																
Certified against the National Standards	Sub. Comp.				✓					✓		✓				
Employment conditions and remuneration																
Fair Work Act 2009 compliance	Sub. Comp.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Fair Work Act 2009 record keeping	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
FBT requirements																
Compliance	Sub. Comp.			✓	✓	✓	✓			✓				✓		✓
Reporting	Information			✓	✓	✓	✓			✓				✓		✓
Record keeping	Information			✓	✓	✓	✓			✓				✓		✓

GST requirements																
Compliance	Sub. Comp	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Reporting	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Record keeping	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PAYG requirements																
Compliance	Sub. Comp	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Reporting	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Record keeping	Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Privacy requirements																
General compliance	Sub. Comp					✓	✓			✓						
Racial Discrimination Act 1975																
General compliance	Sub. Comp	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sex Discrimination Act 1984																
General compliance	Sub. Comp	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Workplace gender equality																
Reporting	Information					✓	✓			✓						

3.3 Funding agreement obligations

We identified 16 sources of Commonwealth funding for which the case study charities had funding agreements over the previous 12 months. These sources of funding, and their associated obligations, are outlined in Table 4. Key findings include:

- Three of the case study charities did not receive funding from the Commonwealth over the previous 12 months. Of the remaining 12 case study charities, eight received funding from one source of Commonwealth funding, three received funding from two sources and one received funding from nine sources.
- Approximately four-fifths of the obligations associated with the sources of funding are information obligations, and all sources of funding have at least one information obligation. The information obligations associated with the sources of funding generally fall into one of three categories: performance reporting (typically relating to outcomes of the funding), activity reporting (e.g. details on the clients that received services from the funding) and financial reporting (proving and/or detailing how the funding was spent).
- The substantive compliance obligations associated with the sources of funding generally relate to maintaining appropriate client feedback/complaints processes, subjecting staff and volunteers to regular police checks, and maintaining appropriate data security arrangements.

It is important to note that many of the information obligations listed in Table 4 involve frequent reporting (i.e. more than once a year) to the relevant Commonwealth department or agency.

Table 4: Mapping of funding agreement obligations against the case study charities

Obligation	Type	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
<i>Charity size (small, medium, large)</i>		<i>Sml</i>	<i>Sml</i>	<i>Lge</i>	<i>Lge</i>	<i>Lge</i>	<i>Lge</i>	<i>Med</i>	<i>Med</i>	<i>Lge</i>	<i>Sml</i>	<i>Med</i>	<i>Med</i>	<i>Sml</i>	<i>Sml</i>	<i>Med</i>
<i>Sub-sector (health, other education, social)</i>		<i>Hth</i>	<i>Hth</i>	<i>Hth</i>	<i>Soc</i>	<i>Ed</i>	<i>Hth</i>	<i>Soc</i>	<i>Ed</i>	<i>Soc</i>	<i>Ed</i>	<i>Soc</i>	<i>Ed</i>	<i>Ed</i>	<i>Hth</i>	<i>Soc</i>
HACC program																
Minimum Data Set quarterly reports	Information	✓	✓	✓												
Financial accountability Report	Information	✓	✓	✓												
Output variation reports	Information	✓	✓	✓												
Ad hoc reporting	Information	✓	✓	✓												
Police checks for staff and volunteers	Sub. Comp.	✓	✓	✓												
Staffing and training	Sub. Comp.	✓	✓	✓												
Service delivery requirements (various)	Sub. Comp.	✓	✓	✓												
Complains handling	Sub. Comp.	✓	✓	✓												
Incident reporting	Information	✓	✓	✓												
Record keeping	Information	✓	✓	✓												
Acknowledging funding requirements	Information	✓	✓	✓												
Quality review and reporting (if requested)	Information	✓	✓	✓												
Child care requirements																
Family Assistance Law - notification requirements (various)	Information												✓			
Family Assistance Law - electronic reporting requirements (various)	Information, Sub. Comp												✓			
Family Assistance - record keeping (various)	Information												✓			
Family Assistance Law - fee requirements (various)	Sub. Comp.												✓			
Family Assistance Law - service requirements (various)	Sub. Comp												✓			

Family Assistance Law - maintain suitability (various)	Sub. Comp											✓				
Disability Employment Assistance funding																
Performance reporting	Information								✓			✓				
Financial acquittals	Information								✓			✓				
Maintain records	Information								✓			✓				
Acknowledge Commonwealth support	Information								✓			✓				
Maintain complaints handling process	Sub. Comp								✓			✓				
Diversity and Social Cohesion program funding																
Performance reporting	Information												✓			
Financial reporting	Information												✓			
Employment Services Deed																
Service reports	Information															✓
Financial reports	Information															✓
Service requirements	Sub. Comp															✓
Comply with, provide and explain the Employment Services Code of Practice	Sub. Comp															✓
Maintain and publicise Customer Feedback process	Sub. Comp															✓
Keep customer feedback register	Sub. Comp															✓
Evaluation and performance review	Information															✓
Family Support Program funding																
Performance reporting	Information						✓				✓					
Financial reporting	Information						✓				✓					
FSP data system reporting	Information						✓				✓					
Record keeping	Information						✓				✓					
Keeping data collection records private and secure	Sub. Comp						✓				✓					

Maintain complaints handling procedure	Sub. Comp					✓				✓						
Financial Management Program funding																
Maintain complaints handling mechanism	Sub. Comp									✓						
Incident reporting	Information									✓						
Performance reporting	Information									✓						
Financial acquittals	Information									✓						
Risk management strategy	Sub. Comp									✓						
Discretionary project funding (Health)																
Financial acquittals	Information						✓									
Home Care Package programme funding																
Notification of start of home care services	Information				✓											
Financial reporting	Information				✓											
Service requirements	Sub. Comp.				✓											
Participation in aged care workforce census	Information				✓											
Report allegation or suspicion of reportable assault	Information				✓											
Police check for new and existing staff/volunteers	Sub. Comp				✓											
Quality reporting and review	Information				✓											
Indigenous Education Targeted Assistance funding																
Progress reports	Information					✓				✓						
Performance reports	Information					✓				✓						
Financial acquittal	Information					✓				✓						
Indigenous Sport and Active Recreation Program funding																
Activity progress report	Information									✓						
Budget progress report	Information									✓						

Financial acquittal	Information									✓						
Record-keeping	Information									✓						
Mental Health Respite: Carer Support funding																
Incident reporting	Information									✓						
Engage at least one peer support worker with lived experience of caring for a person with mental illness.	Sub. Comp									✓						
Include appropriate carer representation in decision-making and governance	Sub. Comp									✓						
Have operational policies and procedures in place for volunteer involvement	Sub. Comp									✓						
Biannual progress reports	Information									✓						
Financial report	Information									✓						
Ad hoc reports	Information									✓						
Partners in Recovery funding																
Progress reporting	Information									✓						
Financial acquittals	Information									✓						
Broader monitoring and evaluation requirements	Information									✓						
Settlement Grants Programme funding																
Performance reports	Information				✓					✓				✓		
Second quarter report	Information				✓					✓				✓		
Fourth quarter/End of financial year report	Information				✓					✓				✓		
Online settlement client activity reports	Information				✓					✓				✓		
Targeted Community Care funding																
Performance reporting	Information									✓						
Financial acquittals	Information									✓						
Complaints handling	Sub. Comp.									✓						

Risk assessment	Sub. Comp.										✓					
Volunteer Grants funding																
Record keeping	Information															✓

3.4 Mapping and red tape

As part of our mapping exercise, we captured (where data availability allowed) the requirements associated with the obligations outlined in Table 3 and Table 4, and then examined the captured requirements to identify potential duplication and sources of red tape. Key findings that emerged from our analysis include:

- There does not appear to be substantial duplication between the legislative obligations and funding agreement obligations imposed on the case study charities.
 - Some sources of Commonwealth funding include statements that recipients of funding are required to comply with relevant Commonwealth laws (e.g. the various discrimination Acts, the Privacy Act 1988, etc.). While these statements seem unnecessary, they are unlikely to be burdensome (as the charities in question should already be complying with relevant Commonwealth laws).
 - The above notwithstanding, there is some duplication in the type of information requested under legislative obligations and funding agreement obligations – primarily in terms of core information (e.g. legal name, Australian Business Number [ABN], contact details, etc.) and information relating to organisational viability (e.g. governance documents, annual financial reports, etc.).
- There does not appear to be substantive duplication between the different legislative obligations imposed on the case study charities.
 - The various discrimination Acts impose similar requirements on the case study charities (e.g. in terms of what they must not do in terms of employment, association, etc.), but for different purposes and involving different offences.
 - While the broad taxation obligations have similar reporting requirements, the Australian Taxation Office (ATO) allows consolidated reporting for those organisations that collect PAYG, GST and/or FBT.
 - There appears to be a clear demarcation between the obligations imposed on the case study charities by the ACNC and the Australian Securities and Investments Commission (ASIC).²⁶
 - The remaining obligations (e.g. those associated with the Privacy Act 1988, the Criminal Code Act 1995, and employment conditions and remuneration) are either sector or policy specific.
- In terms of the funding agreement obligations imposed on the case study charities:
 - There does not appear to be substantive duplication between the relevant activity and performance reporting requirements – primarily because these requirements tend to relate to the specific services and projects funded under the various funding agreements.
 - There is the potential for overlap between the quality review requirements of the HACC program and the Home Care Package programme, as both sets of requirements are based on the same underlying standards (the Community Care Common Standards Guide). This notwithstanding, none of the case study charities received funding from both programs.
 - There is also potential for overlap between the performance reporting of the Mental Health Respite: Carer Support Funding program, the Partners in Recovery program, and the Targeted Community Care program, given the focus of all these programs on mental health support. However, there is not sufficient publicly available information on the performance reporting requirements of the three programs that would allow us to make a reasonable comparison.
 - There appears to be the potential for significant duplication between the financial reporting requirements of the various funding sources listed in Table 4. However, the extent of actual duplication is difficult to ascertain, as the details of the financial reporting requirements for many of the programs are included in the relevant funding agreements and are thus not publicly available.
 - A number of the programs require the case study charities to maintain complaints handling procedures. However, these requirements do not appear to be overly prescriptive – meaning

²⁶ ACNC (2014), 'Factsheet: Companies limited by guarantee and the ACNC', available at: http://www.acnc.gov.au/ACNC/FTS/FS_ASIC_reg.aspx

that a charity would likely be able to satisfy the multiple requirements by having one complaints handling procedure in place.

- A number of the programs (such as the HACC program and the Home Care Package programme) require the case study charities to obtain police checks for all staff and volunteers. However, it appears that the case study charities could satisfy the multiple police check requirements by having one police check process in place. Furthermore, none of the case study charities received funding from both programs.
- Many of the information obligations outlined in Table 4 require the case study charities to lodge frequent reports. For instance, under the HACC program, providers are required to submit activity reports on a quarterly basis, and detailed financial reports and variation reports on a biannual basis. Likewise, under the Family Support Programs, providers are required to submit activity data monthly, and performance reports biannually. It is not clear whether the benefits of such frequent reporting (in terms of risk management, accountability and informed program management) offset the costs incurred by providers in developing and submitting the reports.
- In addition to the above point, a number of the information obligations outlined in Table 4 (particularly the performance reports and activity reports) require the case study charities to report on outputs (e.g. the number of clients serviced). There would appear to be scope to review these output reporting requirements to ensure they are aligned with best practice – i.e. that output reporting should be limited, with greater emphasis on outcome reporting.²⁷

3.5 Commonwealth grants management reform

The Commonwealth has recently undertaken important initiatives to reduce the burden imposed through Commonwealth grants. These initiatives are outlined below.

3.5.1 Grants.gov.au

The Department of Finance is currently undertaking a scoping study to inform the development of the Australian Government Grants System which was announced in the 2013-14 Commonwealth budget. The intention behind this initiative is to establish a whole-of-government grants advertisement, lodgment and reporting system, which would become a single point of reference for government entities and grant applicants (similar to Austender).²⁸

The scoping study is nearing completion. The Department of Finance intends to undertake system design (based on the Austender platform) and user-testing over 2014-16, and for implementation to be completed by mid-2017.²⁹

3.5.2 Revision of the Commonwealth Grants Guidelines

The Department of Finance issued revised Commonwealth Grant Guidelines (now referred to as the Commonwealth Grants Rules and Guidelines) on 1 July 2014.³⁰ We have considered the future implications of the Commonwealth Grants Rules and Guidelines in conducting this research. However, due to project timeframes, we did not take into account the revised Commonwealth Grant Guidelines during our mapping or costing of regulatory and reporting obligations on the case study charities.

²⁷ Standing Council of Federal Financial Relations (2011), 'Conceptual framework for performance reporting', available at: http://www.federalfinancialrelations.gov.au/content/performance_reporting/conceptual_framework_performance_reportin_g_feb_11.pdf.

²⁸ Department of Finance (2014), 'Commonwealth Grants Rules and Guidelines', available at: <http://www.finance.gov.au/resource-management/grants/>.

²⁹ Department of Finance (2014), 'Australian Government grants news – August 2014', available at: <http://www.finance.gov.au/sites/default/files/grants-news-august-2014.pdf>.

³⁰ Department of Finance (2014), *Commonwealth Grants Rules and Guidelines*, available at: <http://www.finance.gov.au/publications/fmg-series/3-commonwealth-grant-guidelines.html>.

3.5.3 Low-risk grant agreement template

As part of the Government's repeal day on 26 March 2014, the Department of Finance launched a whole-of-government grant agreement template which is available for Commonwealth departments and agencies when entering into low risk grants. The template includes 20 standard terms and conditions with the option of additional terms and conditions being added.

The Department of Finance has also released an associated risk tool which can be used by departments and agencies to determine the level of risk specifically associated with the granting activity.

Officials indicated during the research project that Commonwealth agencies have started adopting the template in operations but it is too early to assess whether regulatory and reporting burden has been saved both within the government as well as with grant recipients.

3.5.4 'Report Once, Use Often' framework and the charity passport

A core component of the ACNC's reporting framework and efforts around reducing red tape is the 'report once, use often' principle.³¹ This principle is consistent with recommendations issued by the Productivity Commission, the National Commission of Audit, the Australian National Audit Office, the Treasury and the Department of Finance. The principle of 'report once, use often' is incorporated through Section 8.4 of the Commonwealth Grants Rules and Guidelines (and the associated Resource Management Guide No. 412: Australian Government Grants – Briefing and Reporting).³²

The ACNC has sought to operationalise this principle through the development and implementation of the charity passport, which was launched in June 2014.

3.5.5 Other reform initiatives

A number of Commonwealth departments and agencies have undertaken, are currently undertaking or are planning to undertake reform initiatives that have the potential to alleviate the regulatory and reporting burden imposed on charities. These initiatives include:

- New grant arrangements (Department of Social Services) – the Department of Social Services recently streamlined its grants arrangements. As part of this, the department:
 - consolidated 18 programs into seven, with the intention of better reflecting the way community services are delivered
 - is moving towards a single grant agreement for each provider
 - is moving towards a new and streamlined approach to program performance reporting – this will involve the progressive introduction of standardised, prioritised, and collaborative reporting processes across many of the department's grant programs from July 2014 to July 2015
 - has adopted simplified financial acquittal reporting.³³

³¹ ACNC (2014), *Report Once, Use Often: Charity passport guide for government agencies*, available at: [file:///C:/Users/croucca/Downloads/Report%20Once,%20Use%20Often%20-%20Guide%20for%20government%20agencies%20on%20using%20the%20Charity%20Passport%20\[PDF%201.44MB\].pdf](file:///C:/Users/croucca/Downloads/Report%20Once,%20Use%20Often%20-%20Guide%20for%20government%20agencies%20on%20using%20the%20Charity%20Passport%20[PDF%201.44MB].pdf).

³² See: Department of Finance (2014), *Commonwealth Grants Rules and Guidelines*, available at: <http://www.finance.gov.au/publications/fmg-series/3-commonwealth-grant-guidelines.html>; Department of Finance (2014), *Australian Government Grants – Briefing and reporting*, Resource Management Guide No. 412., available at: <http://www.finance.gov.au/sites/default/files/resource-management-guide-no-412.pdf>.

³³ Department of Social Services (2014), 'A new way of working: grant programmes in DSS', available at: http://www.dss.gov.au/sites/default/files/documents/05_2014/reducing_red_tape_in_grant_programmes_fact_sheet_v2_0.pdf.

- Grants reform (Department of Health) – the Department of Health has a relatively long-standing grants reform agenda, the objectives of which are to reduce the workload for staff and service providers, to reduce red tape, and to reduce risk. A key initiative under the grants reform agenda has been the establishment of a Standard Funding Agreement. This reduced a large proportion of individual funding agreements being offered to service providers, through the consistent application of a single set of Terms and Conditions across the department.³⁴

In addition to the above, under the Government's deregulation agenda, departments are required to conduct regulatory audits across their portfolios and quantify regulatory burden. These audits have the potential to lead to deregulatory initiatives that could reduce the regulatory and reporting burden on charities.

³⁴ Department of Health (2014), 'Grant reform homepage', available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/gps-grants-reform-homepage>.

4. Online survey results

4.1 Response rate to the survey

A total of 379 charities responded to the survey. Only one of the survey questions (Question 1 – ‘Please enter your charity’s [ABN] in the comment box below’) was compulsory. Table 5 details the response rate for each of the survey questions.³⁵

Table 5: Survey question response rates

Question Number	Response Rate	
	Answered	Skipped
1	379	0
2	354	25
3	204	175
4	347	32
5	292	87
6	291	88
7	291	88
8	257	122
9	263	116
10	257	122
11	201	178
12	256	123
13	254	125
14	198	181
15	254	125
16	157	222
17	151	228

4.2 Respondent characteristics

Using the ABNs provided by respondents, as well as the ACNC Register and Australian Business Register, we were able to collect information on the key organisational characteristics of our survey sample. The key limitation of this approach is that only 335 respondents (or 88 per cent of the total) provided a usable ABN.

Location

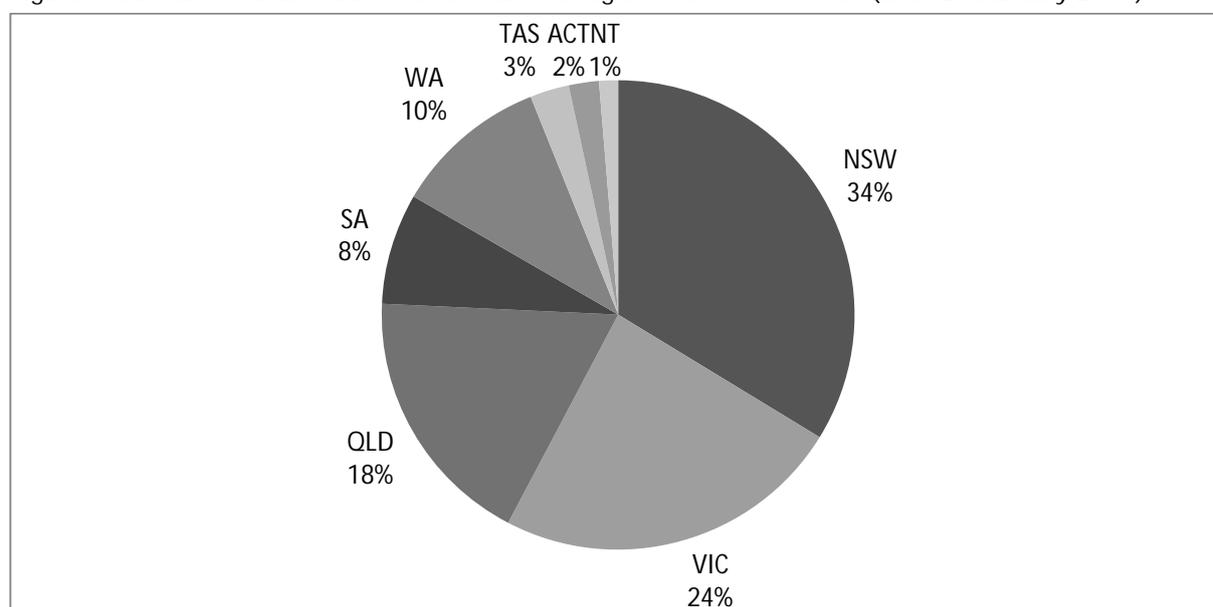
As Table 6 indicates, location information was available for 335 respondents. Of these, the largest share is based in Victoria (33 per cent), followed by New South Wales (30 per cent), Queensland (13 per cent) and Western Australia (9 per cent). Compared to all charities registered with the ACNC (see Figure 1), our survey sample is over-represented by charities based in Victoria and the Australian Capital Territory, and under-represented by charities based in New South Wales and Queensland.

³⁵ Note that survey participants who ‘skipped’ providing a specific response to an individual question did not influence the survey responses as they were not included.

Table 6: Survey respondents, by location

State or Territory	Number of survey respondents	Proportion of sub-total
New South Wales	99	30%
Victoria	110	33%
Queensland	44	13%
South Australia	20	6%
Western Australia	29	9%
Tasmania	9	3%
Australian Capital Territory	22	7%
Northern Territory	2	1%
Sub-total	335	100%
Respondent information not available	44	
Total	379	

Figure 1: Jurisdictional distribution of all charities registered with the ACNC (as at 29 January 2014)



Charity size

As Table 7 outlines, charity size information was available for 314 respondents. Of these, just under three-fifths are large charities, approximately one-fifth are small charities, and one fifth medium charities. Compared to charities registered with the ACNC (Table 8), our survey sample is considerably over-represented by large charities and considerably under-represented by small charities.

Table 7: Survey respondents, by charity size

Organisation Size	Number of survey respondents	Proportion of sub-total
Small	68	22%
Medium	63	20%
Large	183	58%
Sub-total	314	100%
Respondent information not available	65	
Total	379	

Note: Small charity (less than \$250,000), medium charity (medium (\$250,000 or greater, but less than \$1 million) and large charity (\$1million or greater).

Table 8: Size of charities registered with the ACNC (as at 29 January 2014)

	Small	Medium	Large
Share of registered charities for which size information is available	68%	16%	16%

Note: The data in this table is not based on all registered charities, but those charities that had lodged an AIS with the ACNC by 29 January 2014.

Entity structure

As shown in Table 9, entity type information was available for 335 respondents. Of these, the largest share was accounted for by 'other incorporated entities' (39 per cent), followed by 'other unincorporated entities' (28 per cent) and 'Australian public companies' (25 per cent). Compared to charities registered with the ACNC (Table 10), our survey sample is overrepresented by 'Australian public companies', and under-represented by 'other unincorporated entities'.

Table 9: Survey respondents, by entity structure

Entity Structure	Number of survey respondents	Proportion of sub-total
Australian Private Company	6	2%
Australian Public Company	85	25%
Co-operative	3	1%
Discretionary Investment Trust	9	3%
Fixed Trust	4	1%
Other Incorporated Entity	130	39%
Other trust	3	1%
Other Unincorporated Entity	94	28%
State Government Entity	1	0%
Sub-total	335	100%
Respondent information not available	44	
Total	379	

Table 10: Entity type of charities registered with the ACNC (as at 29 January 2014)

	Other incorporated entity	Other unincorporated entity	Australian public company
Share of registered charities for which entity type information is available	41%	36%	10%

Taxation status

The vast majority of survey respondents are registered for the GST, while approximately half are registered for FBT or have obtained DGR status (Table 11).

Table 11: Survey respondents, by taxation status around whether an entity is registered for the GST, FBT and whether the organization has obtained the DGR status

	GST	FBT	DGR Status
Registered	308	162	183
Not-registered	23	169	148
Respondent information not available	48	48	48
Total	379	379	379

Main organisational activity

As Table 12 indicatives, information about main organisational activity was available for 210 respondents. Of these, the largest share nominated 'social services' (10 per cent), followed by 'primary secondary education' (9 per cent), 'aged care' (8 per cent), 'economic social community' (8 per cent) and 'religious' (8 per cent).

Table 12: Survey respondents, by main organisational activity

Main Activity	Number	Percentages
Aged Care	17	8%
Animal Protection	1	0%
Civic Advocacy	4	2%
Culture Arts	5	2%
Economic Social Community	17	8%
Emergency Relief	3	1%
Employment Training	5	2%
Environmental	8	4%
Grant Making	4	2%
Higher Education	2	1%
Hospital Services Rehabilitation	3	1%
Housing	8	4%
International	3	1%
Law and Legal Services	3	1%
Mental Health Crisis Intervention	7	3%
Other Education	13	6%
Other Health Service Delivery	13	6%
Other Recreation Social Club	1	0%
Primary Secondary Education	18	9%
Religious	17	8%
Research	4	2%
Social Services	21	10%
Other	33	16%
Sub-total	210	100%
Respondent information not available	169	
Total	379	

4.3 Survey results

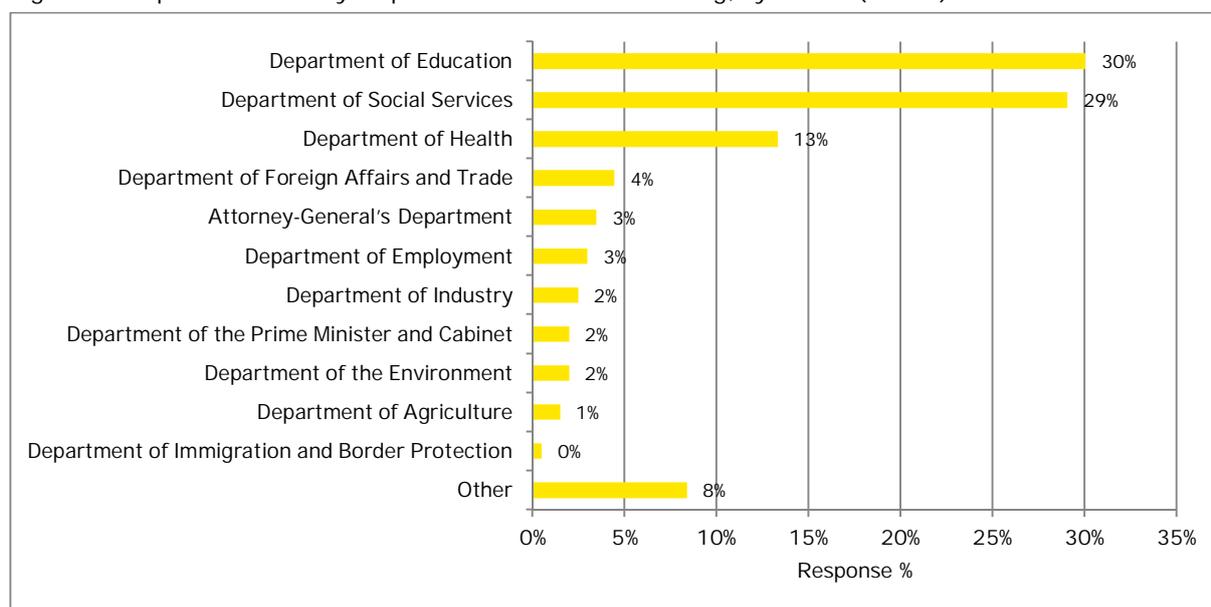
4.3.1 Commonwealth funding

Almost three-fifths of survey respondents indicated they receive funding from the Commonwealth (Table 13). As Figure 2 illustrates, the top sources of Commonwealth funding nominated by survey respondents were the Department of Education, the Department of Social Services and the Department of Health.

Table 13: Proportion of survey respondents that receive Commonwealth funding

Answer	Response %	Response Count
Yes	59%	208
No	41%	146

Figure 2: Proportion of survey respondents that receive funding, by source (n=204)

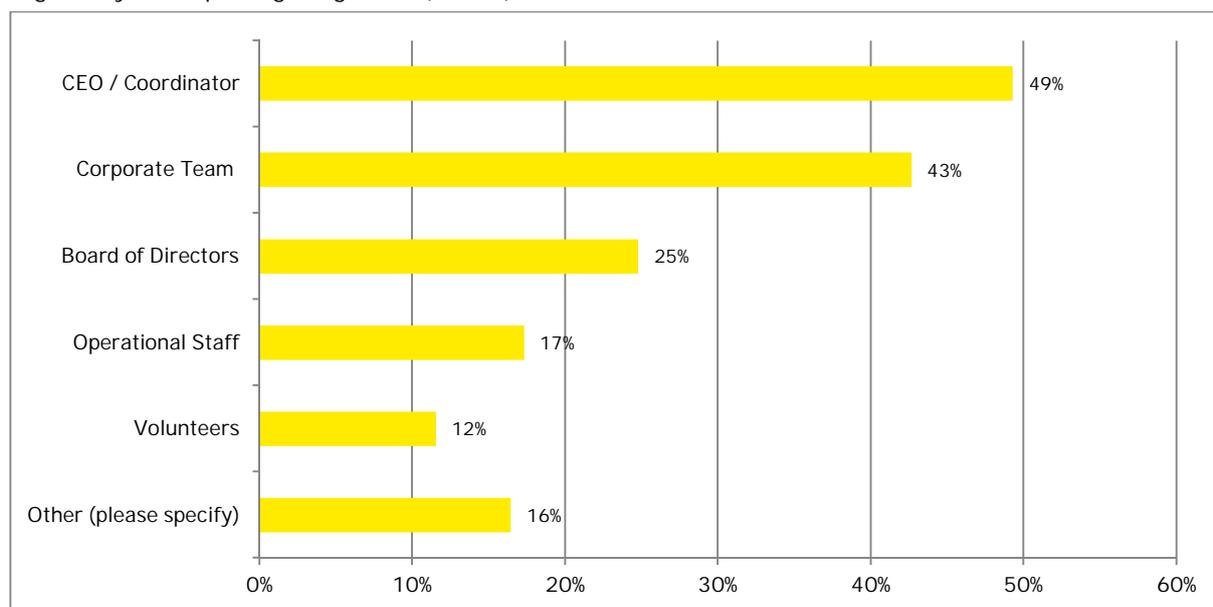


4.3.2 Responsible for meeting regulatory and reporting obligations

Respondents to the survey were asked to indicate who was primarily responsible for activities that support their organisation in meeting its regulatory and reporting obligations. As Figure 3 shows, a majority of survey respondents nominated their CEO or Corporate Team. 'Other' persons nominated by survey respondents included:

- Company secretary
- Chief Financial Officer
- Catholic Education Office
- Legal Team
- Prior of religious order
- Parish priest
- Bishop
- Delegate of congregation for Australia
- School principal
- Bookkeeper
- Business Manager
- Contractors.

Figure 3: Persons who are primarily responsible for activities that support their organisations in meeting its regulatory and reporting obligations (n=347)



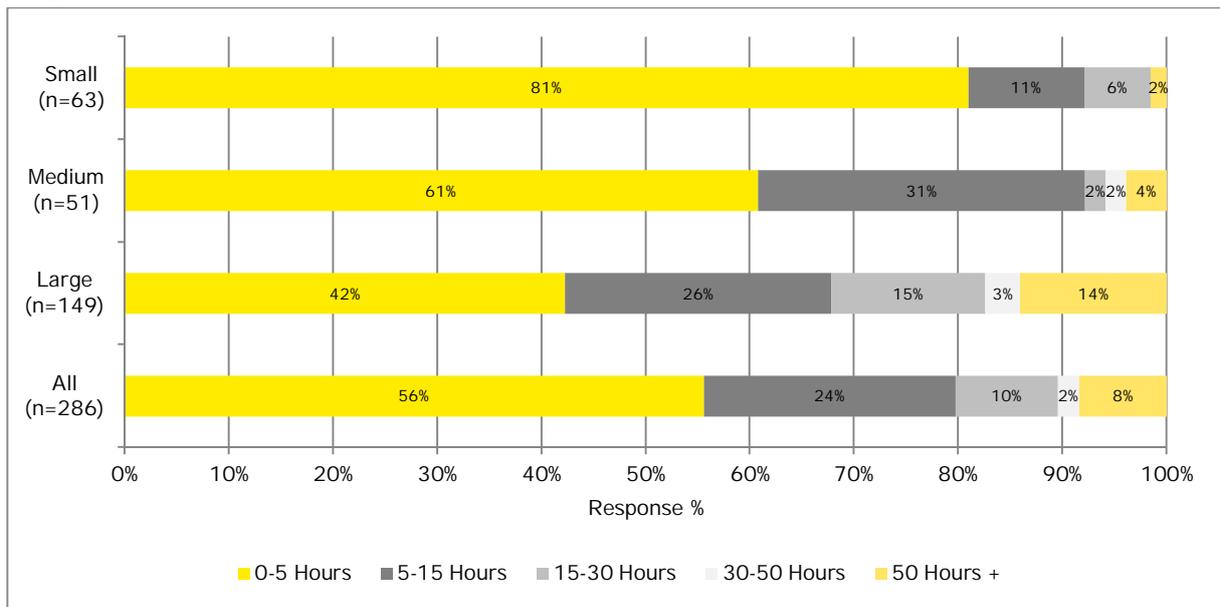
4.3.3 Regulatory and reporting burden experienced

Time spent meeting obligations

Respondents to the online survey were asked to indicate how much time in an average week their charity spends on activities required to meet regulatory and reporting obligations (counting both staff and volunteer hours).

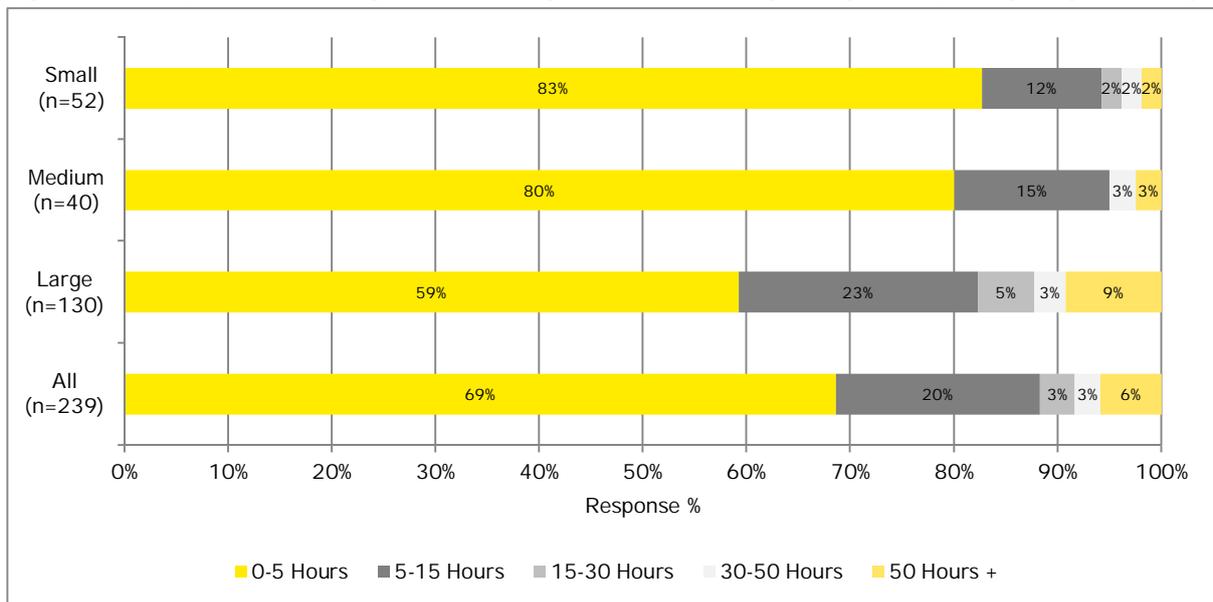
Fifty-six percent of respondents indicated that they spend less than five hours in an average week meeting all their regulatory and reporting obligations (i.e. those imposed by the Commonwealth and state governments), while 34 per cent stated that they spend between five and 30 hours, and 10 per cent stated that they spend 30 hours or more. As Figure 4 illustrates, small charities reported spending less time meeting all their obligations than large charities. Analysis of the survey data suggests that entity type and taxation status have little impact on the amount of time spent by respondents on meeting their regulatory and reporting obligations.

Figure 4: Time spent in an average week meeting all (state and Commonwealth) regulatory and reporting obligations



As Figure 5 illustrates, 69 per cent of respondents indicated that they spend less than five hours in an average week on meeting Commonwealth regulatory and reporting obligations only, while 23 per cent stated that they spend between five and 30 hours, and 9 per cent stated that they spend 30 hours or more.

Figure 5: Time spent in an average week meeting Commonwealth regulatory and reporting obligations only

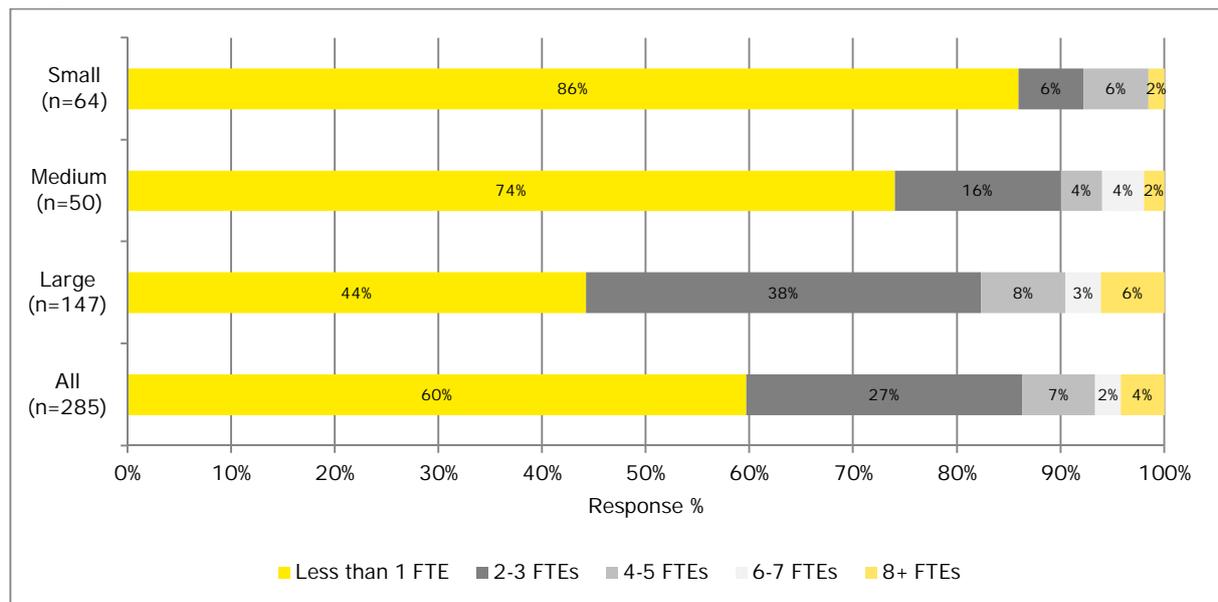


Staff dedicated to meeting obligations

Respondents to the online survey were asked to nominate how many full-time equivalents (FTEs) their charity has allocated to meeting its regulatory and reporting obligations.

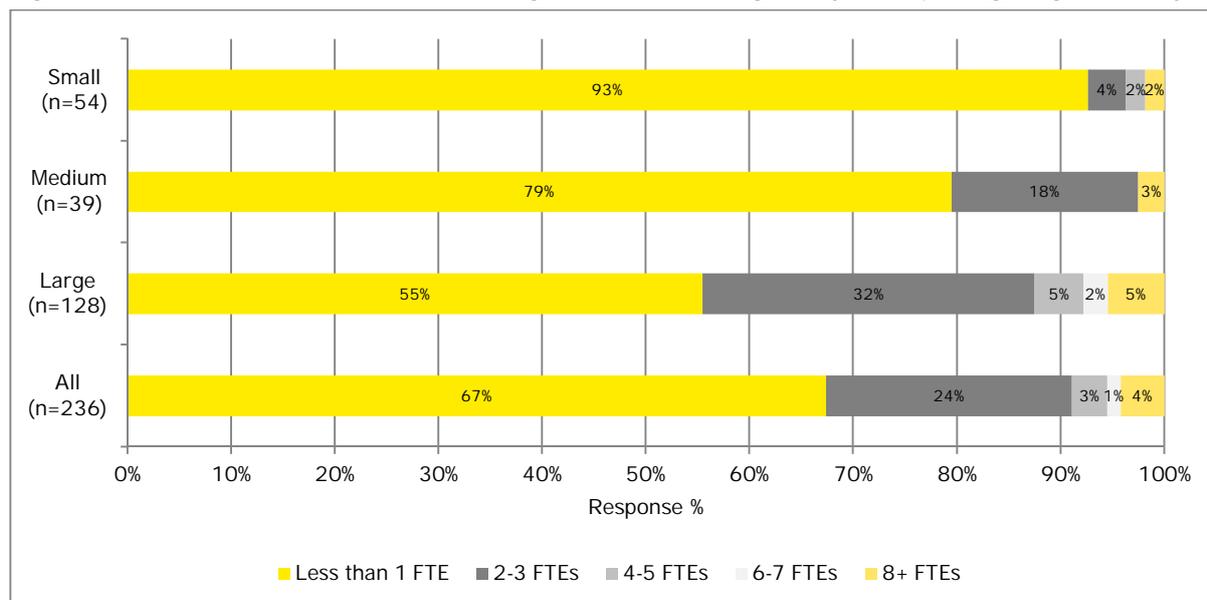
Sixty per cent of respondents reported they dedicate less than 1 FTE to meeting all their regulatory and reporting obligations, while 34 per cent dedicate between 2 and 5 FTEs, and 6 per cent dedicate 6 or more FTEs (Figure 6). Small charities reported dedicating less staff to meeting all their obligations than large charities. Analysis of the survey data suggests that entity type and taxation status have little impact on the amount of staff dedicated by respondents to meeting their regulatory and reporting obligations.

Figure 6: Number of FTEs dedicated to meeting all (state and Commonwealth) regulatory and reporting obligations



As Figure 7 illustrates, two-thirds of respondents reported they dedicate less than 1 FTE to meeting Commonwealth regulatory and reporting obligations only, while 27 per cent dedicate between 2 and 5 FTEs, and 5 per cent dedicate 6 or more FTEs. The amount of staff dedicated to meeting Commonwealth obligations is generally less than the staff they dedicate to meeting all obligations.

Figure 7: Number of FTEs dedicated to meeting Commonwealth regulatory and reporting obligations only



Costs incurred in meeting obligations

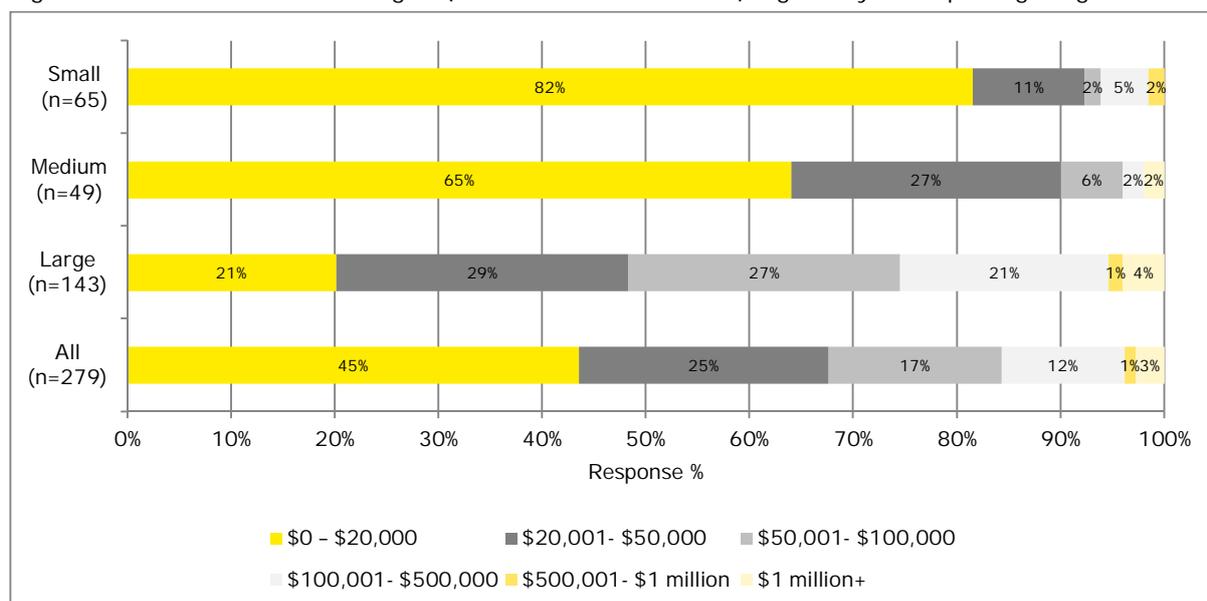
Respondents to the online survey were asked to estimate how much their charity spent in the last financial year on activities associated with meeting its regulatory and reporting obligations.

Forty-five per cent of respondents indicated that they incurred costs of less than \$20,000 in meeting all regulatory and reporting obligations, while:

- 42 per cent stated that they incurred between \$20,000 and \$100,000 in costs
- 13 per cent stated that they incurred between \$100,000 and \$1 million in costs
- 3 per cent stated that they incurred \$1 million or more in costs (Figure 8).

Small charities reported incurring significantly less costs in meeting all their obligations than large charities. Analysis of the survey data suggests that entity type and taxation status have little impact on the amount of costs incurred by respondents in meeting their regulatory and reporting obligations.

Figure 8: Costs incurred in meeting all (state and Commonwealth) regulatory and reporting obligations

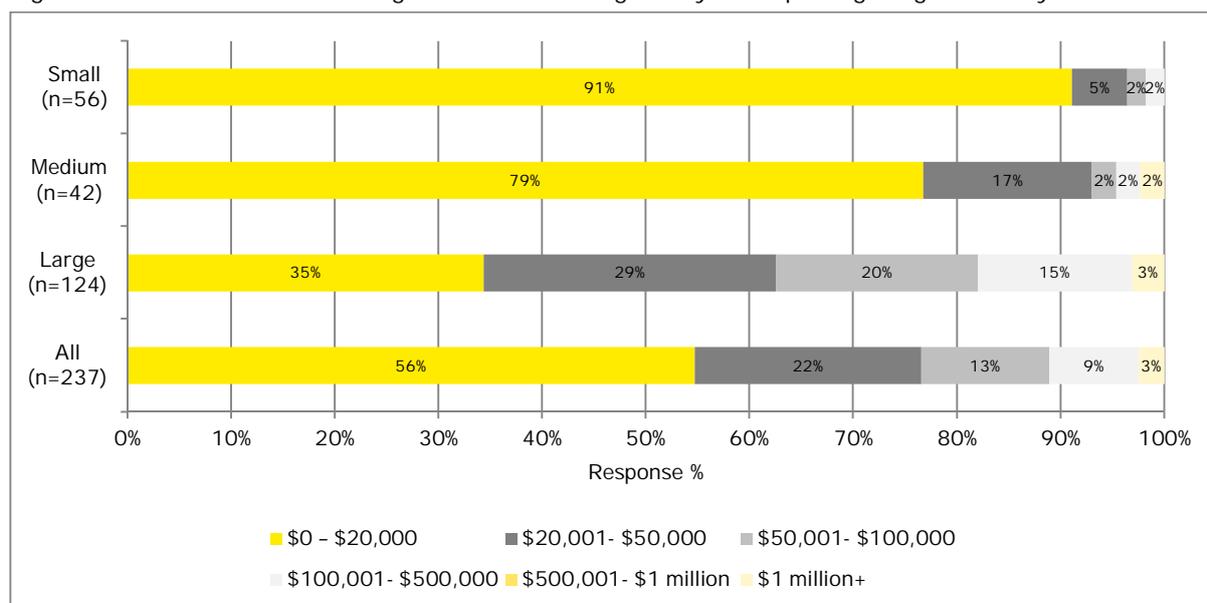


As Figure 9 illustrates, 56 per cent of respondents reported that they incurred costs of less than \$20,000 in meeting Commonwealth regulatory and reporting obligations only, while:

- 35 per cent stated that they incurred between \$20,000 and \$100,000 in costs
- 9 per cent stated that they incurred between \$100,000 and \$1 million in costs
- 3 per cent stated that they incurred \$1 million or more in costs.

The value of costs incurred in meeting Commonwealth obligations is generally less than the costs incurred in meeting all obligations.

Figure 9: Costs incurred in meeting Commonwealth regulatory and reporting obligations only



Summary

Key findings that emerge from the sections above are:

- The burden imposed by Commonwealth obligations is generally low – a clear majority of respondents indicated that the time, staff and costs associated with meeting Commonwealth regulatory and reporting obligations lie at the lower end of the spectrum
- The above notwithstanding, a sizeable minority of respondents indicated that the burden imposed by Commonwealth obligations is significant (i.e. they indicated that the time, staff and costs associated with meeting regulatory and reporting obligations lie at the upper end of the spectrum)
- The factors that are likely to explain the difference between the above results include:
 - Charity size – larger charities tended to report a greater level of Commonwealth burden than smaller charities
 - Funding received – our general research indicates that the more sources of Commonwealth funding a charity receives, the greater the Commonwealth burden it experiences.

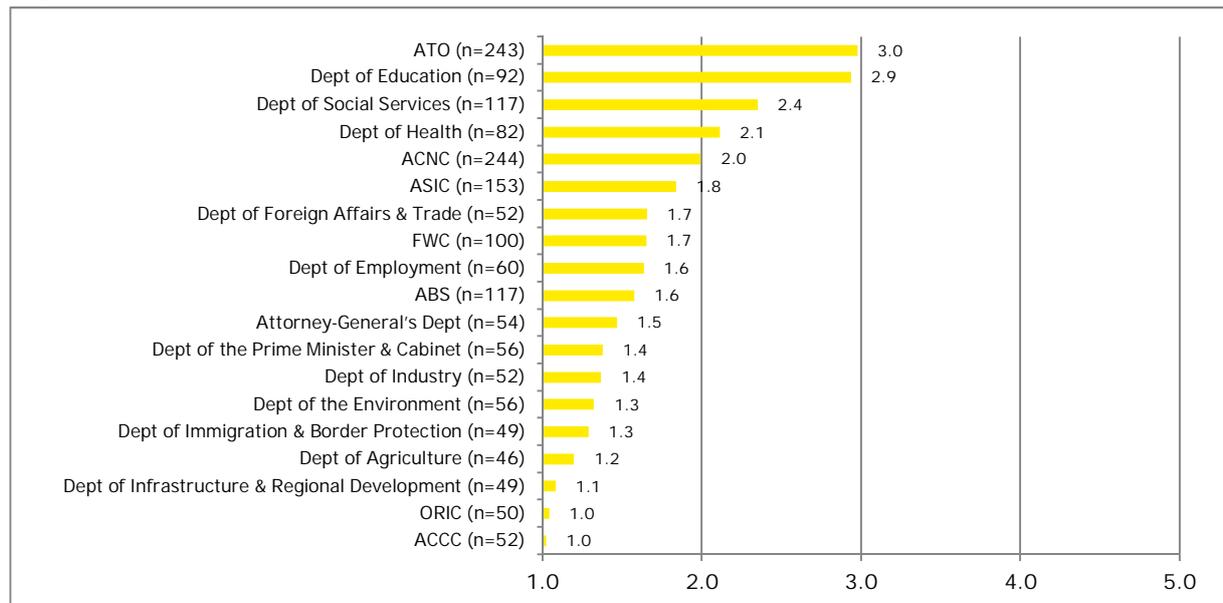
4.3.4 Sources of Commonwealth regulatory and reporting burden

Respondents to the online survey were asked to rate a selection of Commonwealth departments and agencies in terms of the costs associated with meeting their regulatory and reporting obligations (using a five point scale, with 1 equaling minimal cost and 5 equaling greatest cost). As Figure 10 illustrates, the ATO received the highest average score (3.0), followed by the Department of Education (2.9), the Department of Social Services (2.4), the Department of Health (2.1) and the ACNC (2.0).

At a more granular level:

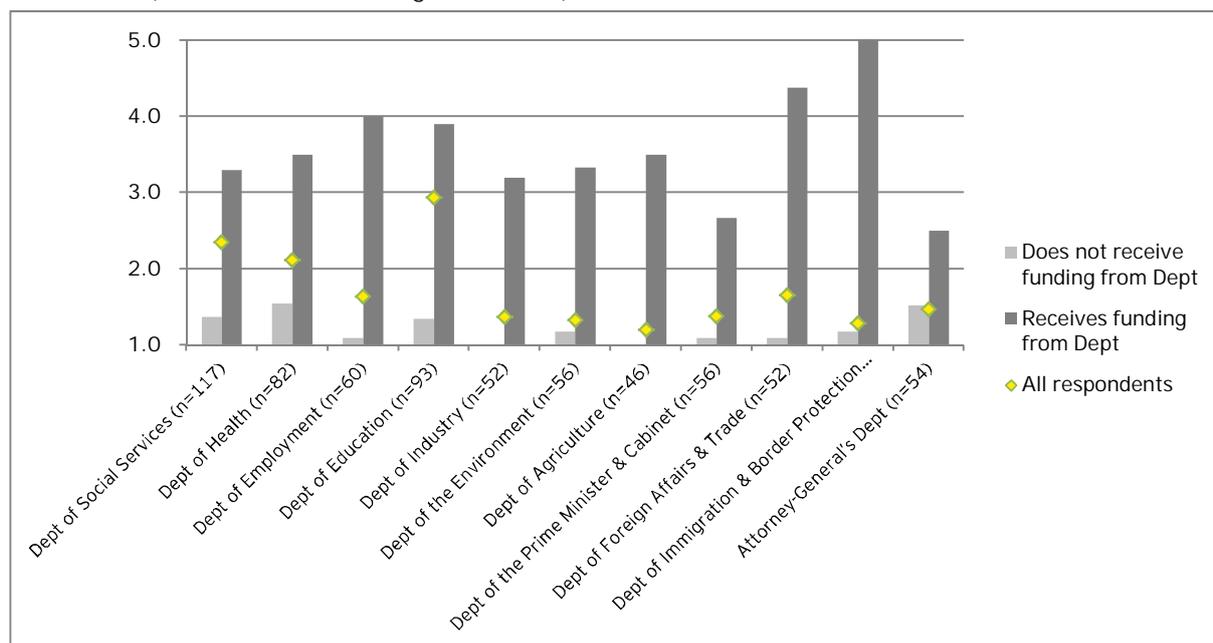
- Large charities tended to give Commonwealth departments a higher rating (by an average of 0.4) than small charities
- Small charities tended to give the ATO, ACNC and ASIC a higher rating (by an average of 0.3) than large charities
- There was no significant variation in the ratings given to the ABS, ACCC, FWC and ORIC across charity sizes.

Figure 10: Average rating given by survey respondents to Commonwealth departments and agencies in terms of the costs associated with meeting their regulatory and reporting obligations (1=minimal cost and 5=greatest cost)



As Figure 11 illustrates, respondents that receive funding from a department were more likely to give the department a higher rating (by an average of 2.4) than respondents that do not receive funding from the department. Furthermore, the ratings given by respondents to departments from which they receive funding tend to be higher (by an average of 1.8) than the ratings given by respondents to Commonwealth agencies that primarily have a regulatory function (such as the ATO, the ACNC, ASIC, FWC, ABS, ORIC and ACCC). These findings suggest that funding agreement obligations are generally seen by charities as being more burdensome than legislative obligations.

Figure 11: Ratings given by survey respondents to Commonwealth departments in terms of the costs associated with meeting their obligations, by those that receive funding from the department and those that do not (1=minimal cost and 5=greatest cost)



4.3.5 Estimation of red tape

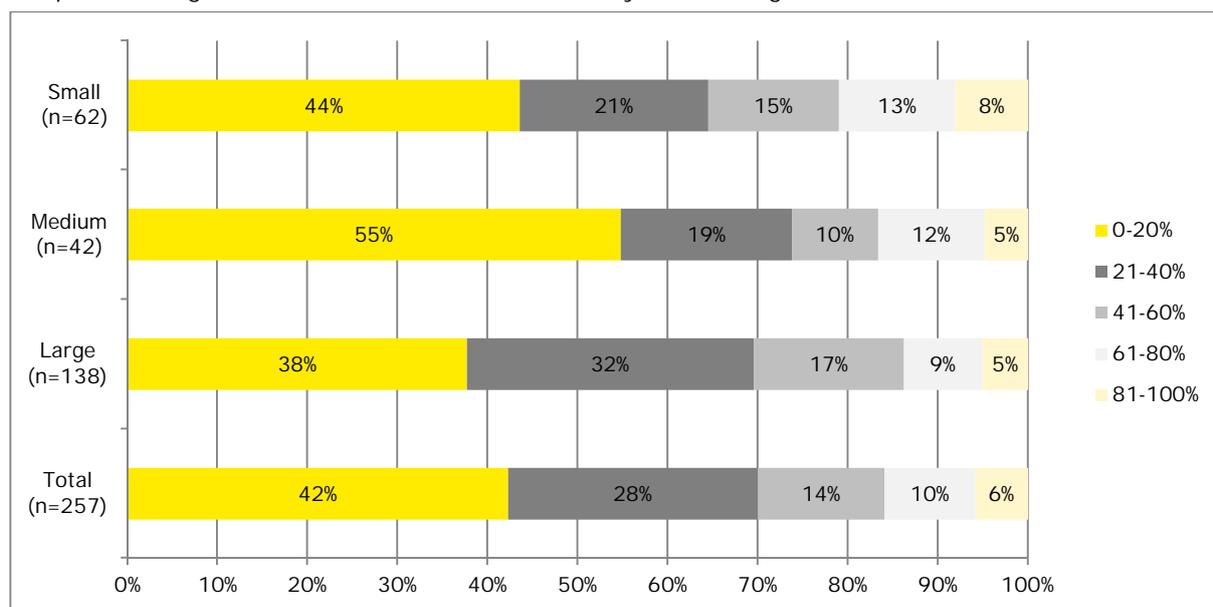
Respondents to the online survey were asked to indicate, of the time their charity spends on meeting its regulatory and reporting obligations, what proportion is spent on obligations they consider to be excessive, unnecessary or confusing.

As Figure 12 illustrates, 42 per cent of respondents indicated between 0 and 20 per cent of the time spent on meeting obligations is spent on obligations that are excessive, unnecessary or confusing, while:

- 28 per cent indicated between 21 and 40 per cent
- 14 per cent indicated between 41 and 60 per cent
- 11 per cent indicated between 61 and 80 per cent
- 6 per cent indicated between 81 and 100 per cent.

There are no clear trends associated with charity size and respondent views on the extent of their obligations they consider to be excessive, unnecessary or confusing.

Figure 12: Proportion of total time spent on meeting regulatory and reporting obligations that is believed to be spent on obligations that are excessive, unnecessary or confusing



As a further layer of analysis, we converted the proportion ranges that underpin Figure 12 into point estimates – one representing the lower bound (e.g. 0-10 per cent becomes 0 per cent, 11-20 per cent becomes 11 per cent, 21-30 per cent becomes 21 per cent, and so on) and one representing the upper bound (e.g. 0-10 per cent becomes 10 per cent, 11-20 per cent becomes 20 per cent, 21-30 per cent becomes 30 per cent, and so on). Using these point estimates, we then calculated that, on average, respondents view between 27 per cent and 36 per cent of the obligations they face as being excessive, unnecessary or confusing.

4.3.6 Method of information submission

Respondents to the online survey were asked whether they submit regulatory and reporting information to government primarily through paper-based forms or online tools. Two-thirds of survey respondents indicated they mostly use electronic forms to submit relevant information, compared to one-third that mostly use paper-based forms (Table 14).

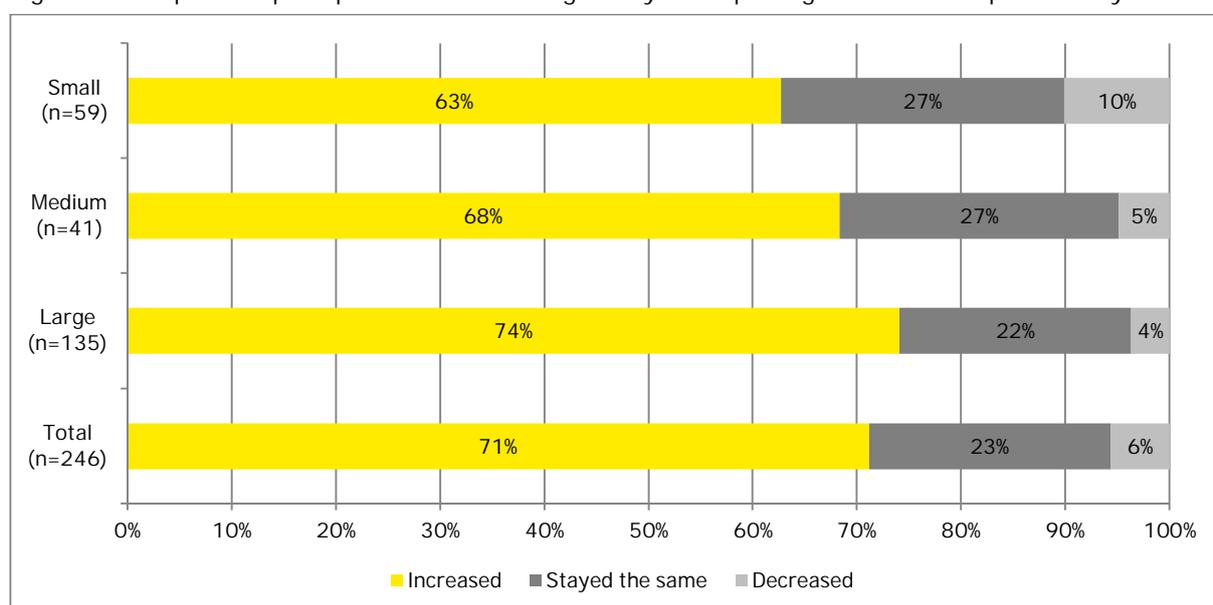
Table 14: Method of information submission

Answer	Response %	Response Count
Mostly paper based	33.6%	86
Mostly electronic forms submitted through an online tool	66.4%	170

4.3.7 Trend in regulatory and reporting burden

Respondents to the online survey were asked whether the costs associated with meeting their organisation's regulatory and reporting obligations increased or decreased over the past three years. As Figure 13 illustrates, 71 per cent of respondents indicated their regulatory and reporting costs have increased over the past three years, whilst 29 per cent of respondents suggested their regulatory and reporting costs have stayed the same or decreased. Large charities were more likely than small charities to state that their regulatory and reporting costs have increased.

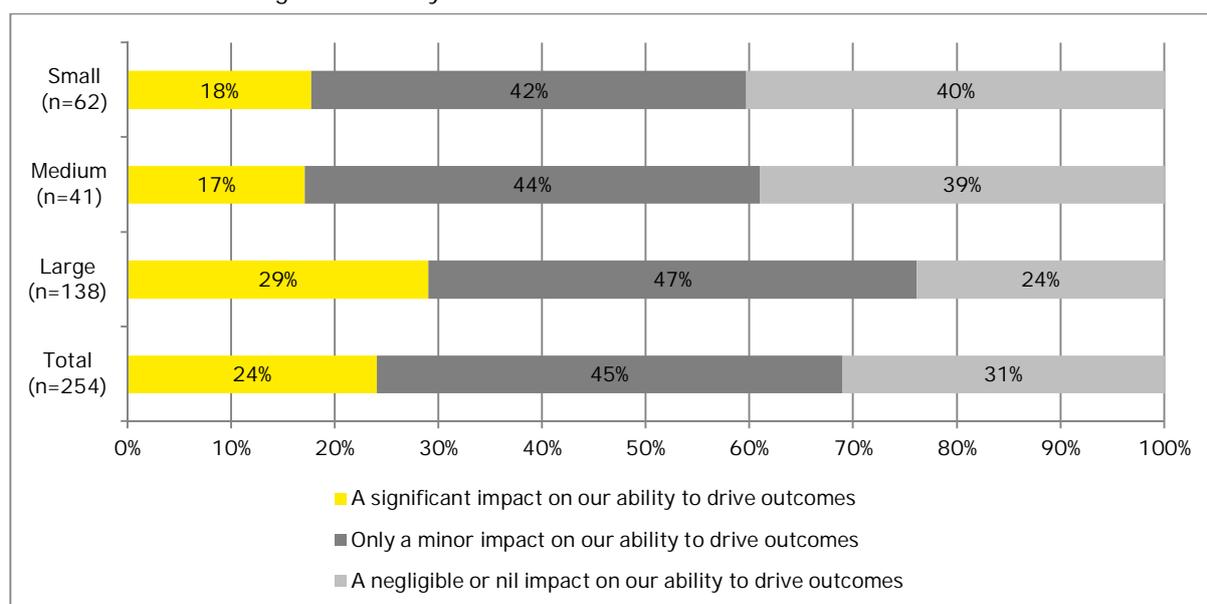
Figure 13: Respondent perceptions on trend in regulatory and reporting costs over the past three years



4.3.8 Impact of Commonwealth regulatory and reporting burden

Respondents to the online survey were asked whether the current regulatory and reporting burden imposed by the Commonwealth impacts their charity's ability to achieve its charitable outcomes. A plurality of the respondents (45 per cent) indicated that Commonwealth burden is having only a minor impact on their ability to drive outcomes, compared to 31 per cent that felt Commonwealth burden is having essentially no impact, and 24 per cent of respondents that felt Commonwealth burden is having a significant impact (Figure 14). Large charities were more likely than medium and small charities to view Commonwealth burden as having a significant or minor impact on their ability to achieve charitable outcomes.

Figure 14: Respondent perceptions on the impact that regulatory and reporting burden imposed by the Commonwealth is having on the ability of charities to achieve their charitable outcomes



4.3.9 Examples of Red Tape

Respondents to the online survey were asked to highlight instances of ‘red tape’ (i.e. regulatory and reporting obligations that are perceived as excessive, unnecessary or confusing). Survey respondents provided a wide variety of responses to this question. Nonetheless, a number of key themes emerged, which are outlined below.

Inter-jurisdictional burden

A number of respondents indicated that there is still significant duplication in information requirements across different levels of government in Australia. Some respondents noted that they provide the same information to the ACNC, ATO, ASIC, other Commonwealth funding departments and state and territory governments. Some respondents also highlighted how different fundraising requirements imposed by each state and territory government are burdensome for those charities operating across multiple jurisdictions.

The regulatory burden associated with inter-jurisdictional differences, particularly in the context of fundraising requirements, was a key finding of the Productivity Commission’s 2010 research report on the NFP sector.³⁶

Policy and regulatory instability

Constant change in regulatory and reporting arrangements has proved to be confusing and disruptive for charities. For example, one respondent highlighted how the tendency of one Commonwealth department to frequently change its requirements has led to reporting inconsistencies across the department. Another respondent indicated that keeping abreast of all changes that relate to employment, OH&S, privacy and accounting is onerous.

³⁶ For instance, the Productivity Commission noted that: ‘Differences across jurisdictions in regulatory requirements, including incorporation and fundraising legislation, raise compliance costs. The current arrangements are not coherent, are complex to navigate, do not allow for easy migration of legal form, and do not provide sufficient transparency to the public. There are multiple reporting requirements and few are proportionate to the size and scope of the NFPs.’ See: Productivity Commission (2010), *Contribution of the Not-for-Profit Sector*, Research Report, Canberra.

Extent of information

A number of respondents highlighted issues relating to the extent of information they are required to provide government as part of their reporting obligations. At a general level, respondents indicated that some of the data requested by Commonwealth departments and agencies (including the ATO, ACNC, ASIC, ABS, Workplace Gender Equity Agency and Commonwealth funding departments) can be unnecessary, and available guidance on providing the information is often confusing.

At a more specific level, a number of respondents suggested that some departments have an excessive focus on financial risk. As a consequence, charities that receive funding from these departments can be required to provide disproportionate amounts of information (particularly in the context of financial acquittals), even when the value of the funding is relatively small.

Standardisation

Some respondents raised issues in relation to the consistency of reporting requirements and processes. For instance, respondents noted that:

- There is inconsistency in financial reporting formats across departments, and some departments require financial information to be presented in ways 'other than through the expected fiscal reporting and auditing requirements'³⁷
- Frequent personnel changes within departments (particularly at the contract manager level) can generate additional burden for charities as they may be required to re-send information or provide additional information
- In some cases, the reporting parameters included in funding agreements can shift over the life of the contract.

Reporting frequency

A large number of respondents raised concerns with the frequency of reporting requirements. These concerns were raised in the context of:

- Taxation reporting (notably GST and FBT reporting)
- Performance reporting (particularly those performance reports that require significant amounts of operational data)
- Financial acquittals – some state health departments require financial acquittals every month. One survey respondent indicated that their organisation had to complete 67 financial acquittals, with 50 of these acquittals being submitted to the same government department.

The above feedback from respondents corresponds with the finding from our mapping exercise that the information obligations included in some funding agreements appear to be excessive – in terms of the frequency of the reporting requirements and the emphasis on output reporting.

4.3.10 Regulatory and reporting reform opportunities

Survey respondents were offered an opportunity to suggest reform ideas which would reduce the overall regulatory and reporting burden on the sector. Survey respondents provided a wide variety of responses. Suggested reform opportunities are outlined below:

- Uniform fundraising regulation across Australia – the Commonwealth should develop and assume responsibility for one nationally consistent fundraising licence regulatory regime.
- Simplify legal requirements – some survey respondents indicated that in their view, there is an opportunity to simplify Commonwealth, state and territory legal requirements such as the DGR endorsements regime or exempting smaller charities from complying with the GST.³⁸³⁹

³⁷ Survey respondent feedback.

³⁸ The responsibilities for decisions relating to DGR endorsements and exemptions from the GST fall with the ATO.

- National Central Repository of Data - the Commonwealth should seek agreement with state and territory governments that makes the charities register and the charities passport the central repository of organisational data in Australia. This could then allow for the ACNC to rollout a universal data collection tool with a common reporting model.
- Reform the Incorporated Associations regime - the Commonwealth via the ACNC should seek to nationalise the Incorporated Associations regime with nationally appropriate accountability and transparency measures.
- Create policy stability - governments at all levels should create policy and program stability that gives the charities sector sufficient certainty and confidence to plan and operate into the future.
- Reform or abolish the ACNC - a minority of respondents (11 per cent of the 198 respondents that provided a reform suggestion) indicated that reducing the regulatory and reporting burden imposed by the ACNC would be a welcome development by the sector. Some survey respondents suggested that this could be achieved either through the abolition of the ACNC or that the ACNC's scope could be narrowed to focus on medium to large sized charities.
- Reform the Grants Management Process - several survey respondents indicated various options on how to reduce the burden associated with the Commonwealth and State/Territory government grants management system. These options include:
 - increasing the use of electronic reporting methods and tools - for example the Commonwealth could adopt an all-encompassing electronic system that allows multiple report and payments of all Commonwealth government requirements
 - each jurisdiction could adopt a single service agreement with each charity
 - producing a single survey for all reporting requirements from which generic information is provided and the various departments can take what is required
 - simplifying performance acquittals and removing inconsistency between reporting requirements at the federal and state levels
 - government departments/agencies adopting longer term contracts as well as adopting one contract manager per department/agency
 - reducing the frequency of financial and operational reporting - e.g. from quarterly to annual (including reducing the frequency of quality audits to every three years)
 - a move to quality assurance performance audits rather than implementing a compliance regime. Government funds payments by outcomes, not outputs
 - greater consistency between the lodgment of fundraising licences to State Governments and the information provided to the ACNC
 - risk based approach - Government departments/agencies should adopt greater use of risk based approaches to reduce reporting burdens for low risk organisations
 - standard accounting standards - grants should be reported in a standard manner for accounting purposes.

³⁹ Note that charities are currently exempted from having to meet the obligations of the GST if their turnover is under \$150,000 per annum.

5. Case study charities

As part of its broader analysis, EY explored the regulatory costs imposed by the Commonwealth on 15 case study charities. This chapter outlines the findings from this exploration, including our estimated regulatory costs.

5.1 Summary of the background of the charity case studies

The case study charities we interviewed as part of this research project have diverse objectives, work in different industries and have varying levels of operational sophistication. Below is a brief description of various elements of the case study charities.

5.1.1 Turnover and sources of funding

The difference in turnover of the case study charities is significant. The smallest case study charity has an annual turnover of \$75,000 per annum. Conversely, the two largest case study charities have annual turnovers of \$70 million and \$20 million, respectively.

Twelve of the case study charities indicated that they have received revenue from the Commonwealth in the past 12 months of operations, whereas only 3 charities indicated that they hadn't. Of the 12 charities which receive Commonwealth funding, the scale of funding received ranged from \$5,000 to several millions of dollars.

5.1.2 Geographical footprint

Eleven of the case study charities interviewed only operate in the state or territory in which they are based. One case study charity based in regional Australia indicated that they operate in two jurisdictions. Three other case study charities stated that, while they have specific headquarters in one location, they operate on a national basis (either through the funds they raise or the services they offer).⁴⁰

5.1.3 Corporate Structure

Five case study charities operate as companies limited by guarantee. The other 10 charities operate as incorporated associations.

5.1.4 Nature of Charities

While the case study charities were selected from the other education, health/aged care and social welfare sub-sectors, there is significant diversity in the operations of the case study charities. The range of services provided by the case study charities include:

- Other education – the provision of child care services, adult education, and the provision of books to remote indigenous charities.
- Health/aged Care – activities which seek to prevent child drowning, the provision of food and nutrition for the elderly, the provision of nursing services in a remote community, the provision of cancer support, advocacy and research and day support for elderly people.
- Social welfare – the provision of job placement services, employment opportunities for disabled workers, settlement services, support and advocacy for foster parents and family support services.

⁴⁰ This geographical footprint may not be representative of how the charity sector is currently configured. This should be factored in when considering the analysis and findings of this report.

5.2 Regulatory cost estimations

Charities were asked to describe the regulatory and reporting obligations imposed on them by the Commonwealth and how they met these obligations. Data collected during the interviews was used to calculate the associated regulatory and reporting burdens using the BCC methodology (outlined by the OBPR).⁴¹

Table 15 outlines the regulatory costs estimates.⁴² Key findings include:

- The annual burden incurred by the case study charities varies considerably - from \$1,000 (case study charity 10) to \$430,000 (case study 5).
- The average annual regulatory and reporting burden imposed on the case study charities by the Commonwealth is \$108,000.

From the analysis, the greatest determinant as to whether a case study charity experiences significant Commonwealth regulatory and reporting burden is whether they receive Commonwealth funding to deliver a program consistent with the policy objectives of the Government.

Of the 15 case study charities interviewed, 12 accepted Commonwealth government funding in the past 12 months. The average regulatory and reporting burden imposed on these organisations was \$134,000. Alternatively, three case study charities indicated that they did not receive any Commonwealth funding. The average Commonwealth burden associated with these entities was only \$4,200.

⁴¹ In presenting these results, we have endeavored to protect the confidentiality of the charities who have been interviewed by not revealing the regulatory cost estimations against individual charities.

⁴² Table 19 doesn't include delay costs. See research assumptions for explanation.

Table 15: Breakdown of regulatory and reporting compliance costs by case study charity

No.	Case Study Background		Relevant Qualitative Comments	Commonwealth Regulatory and Reporting Burden		
	Size	Sub-sector		Total Calculated Burden	Administrative Costs	Substantive Compliance Costs
1	Small	Health/Aged Care		\$8,300	Ongoing: \$7,700	Ongoing: \$600
2	Small	Health/Aged Care		\$29,000	Ongoing: \$12,000	Ongoing : \$17,000
3	Large	Health/Aged Care		\$99,000	Ongoing: \$98,000	Ongoing: \$700
4	Large	Social Welfare	Occasionally experiences delay costs around applying for Commonwealth funding and receiving funds	\$106,000	Ongoing: \$62,000	Ongoing: \$25,000 One Off: \$20,000
5	Large	Other education	Occasionally experiences delay costs around applying for Commonwealth funding and receiving funds	\$430,000	Ongoing: \$422,000	Ongoing: \$8,000
6	Large	Health/Aged Care	Occasionally experiences delay costs around applying for Commonwealth funding and receiving funds	\$272,000	Ongoing: \$272,000	n/a
7	Medium	Social Welfare		\$1,500	Ongoing: \$1,500	n/a
8	Medium	Other education		\$10,000	Ongoing: \$4,000	Ongoing: \$6,000
9	Large	Social Welfare	Occasionally experiences delay costs around applying for Commonwealth funding and receiving funds	\$268,000	Ongoing: \$203,000	Ongoing: \$65,000
10	Small	Other education		\$1,000	Ongoing: \$600	One off: \$300
11	Medium	Social Welfare		\$22,000	Ongoing: \$21,000	One off: \$600 Ongoing: \$200
12	Medium	Other education	Occasionally experiences delay costs around applying for Commonwealth funding and receiving funds	\$201,000	Ongoing: \$121,000 One Off: \$20,000	Ongoing: \$34,000 One Off: \$26,000
13	Small	Other education	Occasionally experiences delay costs around applying for Commonwealth funding and receiving funds	\$39,000	Ongoing: \$39,000	Ongoing: \$200
14	Small	Health/Aged Care		\$11,000	Ongoing: \$7,000	Ongoing: \$4,500
15	Medium	Social Welfare		\$122,000	Ongoing: \$101,000	One off: \$5,000 Ongoing: \$17,000

Note: The sum of 'administrative costs' and 'substantive compliance costs' may not equal 'total calculated burden' due to rounding.

5.2.1 Calculating average regulatory and reporting burden according to size and sector

Drawing on the data included in Table 15, we have estimated:

- The average regulatory and reporting burden imposed by the Commonwealth on the case study charities, by entity size (Table 16). Not surprisingly, a medium case study charity is more likely to have a greater burden than a small case study charity, and a large case study charity is more likely to have a greater burden than both a small or medium case study charity.
- The average regulatory and reporting burden imposed by the Commonwealth on the case study charities, by charity sub-sector (Table 17). Case study charities in the other education sub-sector have a greater average burden (\$136,000) than case study charities in the social welfare sub-sector (\$104,000) and the health/aged care sub-sector (\$84,000).⁴³

Table 16: Average regulatory and reporting burden imposed by the Commonwealth on the case study charities, by entity size

	Average one-off costs	Ongoing burden	Average Regulatory and Reporting Burden
Small	\$70	\$18,000	\$18,000
Medium	\$10,000	\$61,000	\$71,000
Large	\$3,900	\$231,000	\$235,000
ALL	\$4,800	\$103,000	\$108,000

Note: The sum of 'average one-off costs' and 'ongoing burden' may not equal 'average regulatory and reporting burden' due to rounding.

Table 17: Average regulatory and reporting burden imposed by the Commonwealth on the case study charities, by sub-sector

	Average one-off cost	Ongoing burden	Average Regulatory and Reporting Burden
Social welfare	\$5,000	\$99,000	\$104,000
Other education	\$9,300	\$127,000	\$136,000
Health/aged care	\$0	\$84,000	\$84,000
ALL	\$4,800	\$103,000	\$108,000

Note: The sum of 'average one-off costs' and 'ongoing burden' may not equal 'average regulatory and reporting burden' due to rounding.

5.2.2 Calculating the burden of individual obligations

While our estimates of Commonwealth burden were generally calculated at the aggregate level, we were able to estimate the burden associated with some specific obligations. Namely, we were able to estimate the burden associated with obligations imposed by the ACNC.

⁴³ Due to the small sample size, these burden estimates may not be representative of the entire social welfare, other education and health/aged care sub-sectors.

The main obligation that relates to the ACNC is the completion of the Annual Information Statement. All 15 charity case studies indicated during their interviews that they have completed an Annual Information Statement (AIS).⁴⁴

As Table 18 outlines, the average annual burden imposed by the ACNC is \$150 (equal to 0.1 per cent of total annual burden). The burden imposed by the ACNC accounts for a greater share of total burden for small charities than large charities.

Table 18: Average annual burden imposed by the ACNC on the case study charities

Organisational size	ACNC obligations	
	Avg burden per charity	% of total burden
Small (n=5)	\$160	0.9%
Medium (n=3)	\$160	0.2%
Large (n=3)	\$100	<0.1%
All	\$150	0.1%

Note: Only 11 of the 15 case study charities were able to differentiate their ACNC burden from their general burden. The estimates in this table are derived from these 11 case study charities.

5.3 Estimating red tape

The case study charities provided a wide range of estimates of what proportion of their regulatory and reporting obligations could be defined as red tape with some indicating that 50 per cent of the burden they experienced constitutes red tape.

5.4 Key themes and observations obtained through the interviews

In addition to obtaining specific data regarding the Commonwealth's regulatory and reporting obligations, several key observations and themes emerged from the interviews about dealing with the regulatory and reporting obligations imposed by the Commonwealth. These themes and observations include:

- The majority of the regulatory and reporting burden imposed by the Commonwealth comes from the regulatory and reporting requirements associated with Commonwealth funding.
- A significant proportion of the burden associated with Commonwealth funding is associated with the financial and performance reporting acquittal process.
 - Much of this burden is associated with a specific program, such as the provision of child care services, job seeker services or services associated with the HACC program. Under these programs, the Commonwealth seeks individualised client data and records, which imposes a considerable burden on the relevant providers.
- The Commonwealth, in the view of some charities, over-emphasises the management of financial risk, rather than focusing on achieving policy and program outcomes. Compared to the state and territory governments, some charities indicated that the Commonwealth has a tendency to micro-manage the charities they fund.
- The constant rotation and change of Commonwealth contract managers is source of frustration and burden for charities. Charities indicated they invest significant amounts of time with contract managers only to have to repeat the process when a new contract manager assumes the role.
- There continues to be significant duplication of information requests across Commonwealth departments and agencies, as well as duplication between:
 - the Commonwealth and the states and territories
 - state and territory governments and local governments.

⁴⁴ Noting that, as the research was based on the previous 12 month period, this estimate of burden is based on the 2013 AIS.

- Additional burdens have been, and continue to be, experienced by significant changes to Commonwealth policy and programs under both the previous and current governments. Burdens that are associated with amendments to existing Commonwealth policy and program could be considered to be 'transitional or one-off' burdens rather than ongoing burdens given that charities are required to amend their operational and reporting practices in response to enacted changes.
- The significant sources of burden imposed by the Commonwealth are typically due to the administration and enforcement of primary and secondary legislation and government program, rather than from the primary and secondary legislation itself.
- The peak periods of regulatory and reporting burden being experienced is directly associated with the end of the financial year or at the beginning of the calendar year when calendar based programs are rolled out.
- The sophistication of a charity's IT and operational system (including policies and procedures) has a direct bearing on a charity's ability to handle the regulatory and reporting requirements imposed by all levels of government.
- The creation and the ongoing operation of the ACNC is beneficial to the sector. This view, however, was not universally shared.
- The regulatory and reporting burden is particularly acute for organisations operating across state or territory lines. The main sources of burden in this regard are associated with receiving government funding from different governments as well as complying with multiple regulatory schemes associated with fundraising.
- The Commonwealth uses IT systems as part of its service delivery and other program which involves disparate systems that require in many instances manual and repetitive data entry.
- According to one case study charity, the regulatory and reporting burden it faces is so acute that it is spending more time meeting its obligations than working with its clients.
- Estimations of how much Commonwealth regulatory and reporting burden constitutes red tape varied across the case studies from less than 10 per cent up to 50 per cent.
- The overall (Commonwealth and state and territory) regulatory and reporting burden has increased over recent years according to several charities.
- The burden currently being experienced by several charities is having a significant impact on their ability to meet their charitable outcomes.

6. Calculating and determining the level of Commonwealth red tape

This research paper provides an estimate of red tape being imposed on the case study charities.

As noted in the glossary, we have defined red tape as regulatory and reporting obligations that are excessive, unnecessary or confusing. Given this definition, determining what constitutes red tape is open to being highly subjective to an individual or organisation and is highly dependent on the unique circumstances of the charity involved.

To estimate the level of red tape, we drew on three data sources: the obligation mapping exercise (Chapter 3), the online survey (Chapter 4) and our interviews with the case study charities (Chapter 5). Our findings are outlined below.

6.1 Difficulties in determining and quantifying red tape

From the research undertaken to date, we note that many charities find it difficult to accurately identify what is red tape.

Given that much of the regulatory and reporting burden is experienced in relation to the grants process, charities lack a sufficient understanding of the accountability requirements that Commonwealth departments and agencies have to Parliament and under Commonwealth law. The burden imposed on charities may reflect broader policy and program considerations that the Commonwealth is seeking to achieve or perceived risks that the Commonwealth is trying to mitigate.

Given the asymmetric information that exists between Commonwealth departments and agencies and the charities sector, we found that charities are often in a very difficult situation to determine what obligations are necessary from a public policy perspective and what could be construed as red tape.

When asked during our case study interviews, charities struggled to objectively indicate what proportion of the Annual Information Statement or the BAS could be determined to be red tape (i.e. unnecessary in this context) given that the design and content requirements of the AIS and BAS forms are based on broader Commonwealth legislative and policy considerations (including interdependencies with other legislative and policy requirements), of which charities are not fully appreciative.

If reductions in the burden imposed by the Annual Information Statement and BAS are possible, deeper policy and legislative analysis and consideration is required beyond reviewing the specific elements of the Annual Information Statement and BAS forms in order to ensure that the Commonwealth's policy and legislative intent is still achieved.

We have therefore avoided estimating the red tape burdens associated with specific obligations such as the Annual Information Statement and BAS, given that such estimations are not able to be conducted on an objective basis as a specific investigation of each obligation against policy and legislative requirements is required.

6.2 Estimating Commonwealth red tape

As noted in the previous chapters:

- Estimations of how much Commonwealth regulatory and reporting burden constitutes red tape varied across the case studies from less than 10 per cent up to 50 per cent
- Respondents to the online survey view, on average, between 27 per cent and 36 per cent of the obligations they face as being excessive, unnecessary or confusing.

For the purposes of this research project, we estimate that between 25 per cent and 35 per cent of Commonwealth obligations constitute red tape. This estimate is primarily derived from the feedback provided by survey respondents. We have preferenced the views of the survey respondents over the case study charities given the larger sample size of the former, and noting that the estimated range of red tape provided by the survey respondents lies at the midpoint of that provided by the case study charities.

Based on our estimated range of between 25 per cent and 35 per cent, and the burden calculations outlined in Table 15, we estimate that the Commonwealth imposed, on average, between \$27,000 and \$38,000 worth of red tape on the case study charities over the past 12 months.

6.3 Interpreting estimates of Commonwealth red tape

Given that these estimates are based on calculations determined by the revised BCC which has only been recently introduced by the OBPR, opportunities to compare these figures against other estimates are limited. Differences in methodological and data collection approaches need to be taken into account when comparing the estimates outlined above to other estimates.

6.4 Validation Interviews

Upon the completion of the interviews with the case study charities and calculation and extrapolation, a series of meetings were held with both professional advisors and government officials to validate the assumptions made, and to obtain additional data and insights where information gaps existed.

The approach taken towards these interviews is outlined in section 1.3.7 of this report.

A number of important observations and findings were obtained via these interviews which provided additional insights to the analysis conducted to date. These observations and findings are listed below.

- Several government officials indicated that the ACNC's register and charity passport under the 'report once, use often' framework is likely to realise some benefits in reducing the duplication of data requests experienced by charities; but that such benefits will be limited in the context of reducing the overall quantum of regulatory and reporting burden experienced by charities.⁴⁵ Reasons for this view include:
 - the limited information/data fields which are currently held within the charity passport^{46,47}

⁴⁵ The charity passport was brought into operation in June 2014 by the ACNC and its full impact has yet to be determined given the time required for Commonwealth departments and agencies to adjust operational practices that takes advantage of the information held within the charity passport.

⁴⁶ As noted by one government official, the information requested by Commonwealth departments and agencies relating to financial acquittals and performance reporting is unique to the program or funding source and such information, particularly as it relates to Commonwealth service delivery (e.g. childcare or job services) will not be held in the current configuration of the charity passport. Though, it is important to note that, under the Commonwealth Grants Rules and Guidelines, no financial acquittal should be required for registered charities unless higher risk.

⁴⁷ Over time this limitation could potentially be overcome if the charity passport were to become more sophisticated, particularly around holding larger volumes and different forms of data.

- the lack of acceptance of the charity passport by certain state and territory governments⁴⁸
- the limited longitudinal data held by the ACNC⁴⁹
- the appropriateness and relevance of financial data held by the ACNC given that Commonwealth departments and agencies must be confident of the financial viability of the receiving organisation at the point in which a contract or agreement is entered into
- not all Commonwealth grant programs use unique identifiers (such as an ABN),⁵⁰ which limits the ability of departments and agencies to obtain data from the ACNC – though noting that data-matching according to name is also possible through the charity passport.
- Charities have experienced increased levels of Commonwealth regulatory and reporting burden given the significant level of policy and regulatory change over the past 2-3 years. According to one professional advisor, this burden could be classified as ‘transitional’ given that this burden is one-off in nature associated with recent changes as opposed to being classified as ‘ongoing’ burden.
- The recent machinery of government changes that were implemented after the 2013 election has resulted in some Commonwealth departments adopting grant and other funding programs with vastly different operational approaches. These departments are working to find a common approach to grants management. Charities whose funding source is a government program that has been impacted by the machinery of government changes are likely to experience changes in the nature of their interaction with the Commonwealth and, in turn, the associated burden.
- Consistent with the Government’s deregulation agenda, government departments are currently undertaking a deregulation audit of their regulatory and reporting stock to determine the burden they impose on individuals, business and the community.
 - The audit provides departments with an opportunity to identify legislative, policy and program reform opportunities including considering the use of new technology platforms such as the charity passport.
- Obtaining a DGR status from the ATO is a source of regulatory burden for some charities.
- While the distinction of responsibility between the ACNC and ASIC is clear,⁵¹ there still remains confusion among some charities as to their mandatory regulatory and reporting requirements (irrespective of the guidance that has been provided to the NFPs and charities on their responsibilities).
- Government officials indicated that there is a lack of a standardised approach to determine the risk profile of a grant or service delivery program or of the recipient of the funds.
 - one official indicated that the nature of the different services delivered by the Commonwealth incurs different risks
 - another official indicated that not all NFPs and charities are equal meaning that these organisations fall into different risk profiles
 - another official admitted that the risk profile which is selected for a program or an individual organisation could be determined by the professional judgement of an individual public servant.
- Government officials indicated that the regulatory and reporting burden associated with incorporated associations is, in their view, significantly lower than the burden associated with operating as a company limited by guarantee, given that state and territory governments have very limited resources policing incorporated associations and enforcing the regulatory framework for associated incorporations. According to these officials, fewer resources and less oversight

⁴⁸ Currently, there is a commitment from the Governments of South Australia and the Australian Capital Territory to ‘carve out’ their reporting requirements – i.e. make charities reporting to the ACNC exempt from state/territory reporting – if the Commonwealth commits to keeping the ACNC. It is expected that the full implementation of these commitments will have an impact.

⁴⁹ The passport in its current form will overcome this limitation over time as more data is collected.

⁵⁰ It should be noted that most grants programs do use ABNs as unique identifiers and it is considered best practice to do so.

⁵¹ ASIC has oversight responsibility for the incorporation and winding down of all companies (including charities) whereas the ACNC is responsible for regulating the operations of the companies who are deemed to be charities.

ultimately results in fewer investigations for alleged breaches as well as fewer requirements to provide information to relevant officials.⁵²

- For charities that provide job placement services,⁵³ the burden via requiring large volumes of data per client is significant given the Commonwealth uses an outcomes-based case management model to deliver the services.
- Under this model, clients who experience greater disadvantage receive greater levels of Commonwealth assistance. Also, clients are required to complete certain activities in order to receive welfare payments. It is for these reasons that organisations need to be able to detail the history of each job seeker in order to determine the level of assistance appropriate to the job seeker and to ensure that they have met the conditionality of their welfare payment.

⁵² This observation is solely reflective of the state of play between the Commonwealth versus the state and territory governments. Currently, there are legislative arrangements in place which eliminates the duplication of notification and reporting burden for companies limited by guarantee.

⁵³ Approximately two-thirds of all job services providers are either charities or NFPs.

7. Conclusion

7.1 Key findings

This section synthesises the findings that emerged from our mapping exercise, the online survey and the case study charities.

7.1.1 Regulatory and reporting burden

Quantifying total burden

Using the BCC, we estimate that the average Commonwealth burden imposed on the 15 case study charities over the past 12 months was \$108,000. As Table 19 indicates:

- There is a correlation between organisational size and the level of Commonwealth burden imposed on the case study charities
- Case study charities in the other education sub-sector had a higher level of Commonwealth burden, followed by those in the social welfare sub-sector and the aged-care/health sub-sector.

Table 19: Estimated Commonwealth burden imposed on the case study charities over the past 12 months, by organisational size and sub-sector

Organisational size	Avg Cwltb burden	Sub-sector	Avg Cwltb burden
Small	\$18,000	Other education	\$136,000
Medium	\$71,000	Health/aged care	\$84,000
Large	\$235,000	Social welfare	\$104,000
Total	\$108,000	Total	\$108,000

Respondents to the online survey were asked to indicate how much time and staff they dedicate to, and costs they incur in, meeting Commonwealth regulatory and reporting obligations. As Figure 15 illustrates:

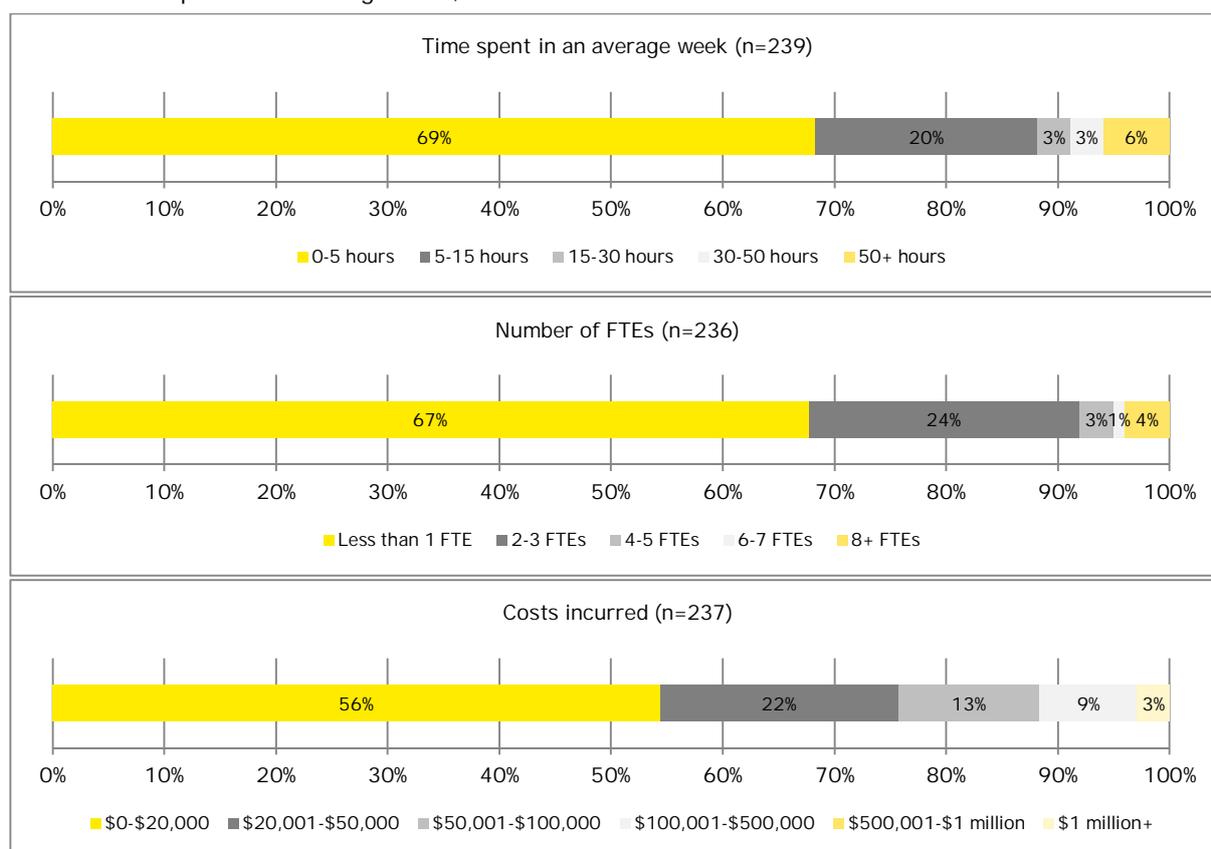
- Just under 70 per cent of respondents reported they spend less than five hours in an average week meeting their Commonwealth obligations, while 9 per cent spend 30 hours or more
- Approximately two-thirds of respondents indicated they dedicate less than 1 FTE to meeting their Commonwealth obligations, while 5 per cent dedicate 6 FTEs or more
- Over half of the respondents stated they incurred annual costs of \$20,000 or less in meeting their Commonwealth obligations, while 3 per cent incurred costs of \$1 million or more.

It is difficult to compare the findings outlined in Table 19 with those in Figure 15, given the different underlying approaches to burden measurement between the case study charities and online survey. Nonetheless, given that over half of the case study charities had a total burden of \$50,000 or less (Table 15), compared to 78 per cent of survey respondents (Figure 15), it is likely that our estimate of average Commonwealth burden derived from the case study charities is higher than the average Commonwealth burden imposed on the entire charity sector.

The results of the online survey suggest that Commonwealth burden tends to be lower for small charities and higher for large charities. This corresponds with our findings from the case study charities.

Approximately 70 per cent of survey respondents stated that their regulatory and reporting costs have increased over the past three years, and that Commonwealth burden is impacting on their ability to achieve charitable outcomes. Similar feedback was provided by the case study charities.

Figure 15: Burden imposed on survey respondents as a result of meeting Commonwealth obligations, in terms of time spent in an average week, number of dedicated staff and costs incurred



There are few other studies that have quantified the regulatory and reporting burden imposed on charities. One that has was conducted in 2008 by Ryan et al.⁵⁴ They found that:

- 14 Queensland-based NFPs reported taking an average of 143.6 hours in the past 12 months to complete government generated paperwork (primarily around grant applications and acquittals)
- 34 per cent of this paperwork was submitted to the Commonwealth.

Applying the same hourly wage rate that underpins our burden estimates for the case study charities (i.e. \$41.60 per hour, with a loading of 1.16 to account for on-costs), the above findings indicate that the burden associated with Commonwealth government paperwork is equal to \$2,400 per year. While it is difficult to compare this estimate with the estimates outlined in Table 19 (given the different underlying timeframes, areas of focus and measurement approaches), the findings from Ryan et al do suggest that our estimate of average Commonwealth burden is higher than the average Commonwealth burden imposed on the entire charity sector.

Quantifying the burden of individual obligations

While our estimates of Commonwealth burden for the case study charities were generally calculated at the aggregate level, we were able to estimate the burden associated with some specific obligations. As Table 20 outlines, the average annual burden imposed by the ACNC is \$150 (equal to 0.1 per cent of total annual burden). The burden imposed by the ACNC accounts for a greater share of total burden for small charities than large charities.

⁵⁴ Christine Ryan, Cameron Newton and Myles McGregor-Lowndes (2008), *How long is a Piece of Red Tape? The paperwork reporting cost of government grants*, March.

Table 20: Average annual burden imposed by the ACNC on the case study charities

Organisational size	ACNC obligations	
	Avg burden per charity	% of total burden
Small (n=5)	\$160	0.9%
Medium (n=3)	\$160	0.2%
Large (n=3)	\$100	<0.1%
All	\$150	0.1%

Note: Only 11 of the 15 case study charities were able to differentiate their ACNC burden from their general burden. The estimates in this table are derived from these 11 case study charities.

Some survey respondents and case study charities identified the ACNC and its obligations as a key source of burden. This perspective, however, is not supported by the cost information outlined in Table 20.

Burden and obligation type

In interacting with the Commonwealth, charities are exposed to two different types of regulatory and reporting obligations:

- Legislative obligations - those that are mandatory because of a legal (either primary or secondary legislation) requirement
- Funding agreement obligations - those that are imposed on a charity because the charity entered into a funding agreement with the Commonwealth.

Our research suggests that the second type of obligation is the largest source of Commonwealth burden imposed on charities. For instance:

- Of the 15 case study charities we interviewed, 12 received Commonwealth funding over the past year. Using the BCC, we estimate that the average regulatory and reporting burden imposed by the Commonwealth on these charities was \$134,000. In comparison, for the three charities that did not receive Commonwealth funding over the past 12 months, the average regulatory and reporting burden imposed by the Commonwealth was only \$4,200.
- Respondents to the online survey were asked to rate departments and agencies in terms of the costs associated with meeting their regulatory and reporting obligations (using a five point scale, with 1 equaling minimal cost and 5 equaling greatest cost). Respondents that receive funding from a department were more likely to give the department a higher rating than respondents that do not receive funding from the department. Furthermore, the ratings given by respondents to departments from which they receive funding tended to be higher than the ratings they gave agencies with primarily a regulatory function (such as the ATO, ACNC and ASIC).

7.1.2 Red tape

Quantifying red tape

For the purposes of this research project, we have defined 'red tape' as regulatory and reporting obligations that are excessive, unnecessary or confusing.

Our engagement with stakeholders (charity, government and professional advisors) revealed that there is a lack of shared understanding between the Commonwealth and charities as to what constitutes red tape, and what level of regulatory and reporting obligations are necessary to ensure proper accountability of departments and agencies to Ministers, the Parliament and the broader community.

While the case study charities generally believe that red tape exists, not all were able to identify specific obligations as examples of red tape. Nonetheless, most of the case study charities were able to provide estimates of the proportion of Commonwealth burden they face that they believe constitutes red tape. These estimates ranged from 10 per cent to 50 per cent.

Respondents to the online survey were asked to indicate what proportion of the time they spend meeting their regulatory and reporting obligations they consider to be excessive, unnecessary or confusing. The average response was between 27 per cent and 36 per cent.

For the purposes of this research project, we estimate that between 25 per cent and 35 per cent of Commonwealth obligations constitute red tape. This estimate is primarily derived from the feedback provided by survey respondents. We have preferenced the views of the survey respondents over the case study charities given the larger sample size of the former, and noting that the estimated range of red tape provided by the survey respondents lies at the midpoint of that provided by the case study charities.

Based on the above, and the burden calculations outlined in Table 15, we estimate that the Commonwealth imposed, on average, between \$27,000 and \$38,000 worth of red tape on the case study charities over the past 12 months.

Sources of red tape

As we note above, funding agreement obligations appear to be the largest source of Commonwealth burden imposed on charities. It is thus not surprising that the key sources of red tape identified through our research primarily relate to funding agreement obligations. These key sources are:

- The level of information required – case study charities and survey respondents indicated that the level of information they are required to provide funding departments (in the context of both financial acquittals and performance reporting) can be excessive, and is seemingly driven more by an over-emphasis of the management of financial and political risks, rather than an objective consideration of what level of reporting is necessary to ensure funding outcomes are achieved.
 - This finding aligns with the 2009 research conducted by the Public Interest Advocacy Centre et al – they found widespread concern among NFPs about government micro-management under the contractual umbrella, and noted that the government desire to eliminate risk (rather than manage it) is a factor in why certain contractual obligations are unduly burdensome.⁵⁵
 - Our mapping exercise found that a number of the information obligations included in funding agreements involve the collection of output data. There would appear to be scope to review these output reporting requirements to ensure they are aligned with best practice – i.e. that output reporting should be limited, with greater emphasis on outcome reporting.⁵⁶
- The frequency of reporting – case study charities and survey respondents indicated that the frequency of which they are required to submit reports can be excessive, and (as above) is seemingly driven more by an over-emphasis of the management of financial and political risks, rather than an objective consideration of what level of reporting is necessary to ensure funding outcomes are achieved. This feedback is supported by our mapping exercise, which found that many of the information obligations included in funding agreements require charities to lodge frequent reports (in some cases, quarterly or even monthly)

⁵⁵ Public Interest Advocacy Centre, The Whitlam Institute within the University of Western Sydney, and Social Justice and Social Change Research Centre, University of Western Sydney (2009), *A Question of Balance: Principles, contracts and the government-not-for-profit relationship*.

⁵⁶ Standing Council of Federal Financial Relations (2011), 'Conceptual framework for performance reporting', available at: http://www.federalfinancialrelations.gov.au/content/performance_reporting/conceptual_framework_performance_reporting_feb_11.pdf.

- This finding aligns with the 2006 research report conducted by Morgan Disney and Associates – they found that frequent reporting was a driver of administrative burden for 22 indigenous organisations that received government funding.⁵⁷
- Inconsistencies in reporting requirements and processes – a number of survey respondents highlighted inconsistencies in financial reporting formats as a key source of unnecessary burden. Case study charities, survey respondents and professional advisors also highlighted policy and regulatory instability (which can lead to changes in program design and reporting requirements) and the rotation of Commonwealth contract managers as sources of confusion and burden.
- Duplication in reporting requirements – based on our mapping exercise, there appears to be the potential for significant duplication between the financial reporting requirements of different funding programs. Furthermore, there is some duplication in the type of information requested under legislative obligations and funding agreement obligations – primarily in terms of core information (e.g. legal name, ABN) and information relating to organizational viability (e.g. governance documents, annual financial reports).

Case study charities and respondents to the online survey both indicated that inter-jurisdictional red tape remains a concern – in terms of:

- Duplication in information requirements across different levels of government
- Inconsistencies in key regulatory frameworks across the states and territories – particularly in the context of fundraising requirements and the Incorporated Associations regime.

7.2 Recommendations

A clear finding from this project is that funding agreement obligations are the primary source of Commonwealth burden imposed on charities. Furthermore, there are particular aspects of funding agreement obligations that can make them constitute ‘red tape’ (i.e. obligations which are excessive, unnecessary or confusing). These aspects are: the level of information required; the frequency of reporting; inconsistencies in reporting requirements; and duplication in reporting requirements.

There are a number of tools already in place that the Commonwealth could use to address the red tape aspects of funding agreement obligations. These tools include:

- Commonwealth Grants Rules and Guidelines⁵⁸ - these outline a range of guidance and requirements to reduce the reporting burden imposed on grant recipients, particularly in relation to the ‘volume, detail and frequency of reporting requirements’, the avoidance of duplication and the reduction of inconsistencies in reporting requirements (e.g. through the encouragement of best practice tools, such as the National Standard Chart of Accounts).
- Charity passport – as noted in section 3.5.4, the charity passport is intended to reduce duplication in information requirements, particularly in relation to core information and information relating to organizational viability.
- National Standard Chart of Accounts – was designed as a nationally consistent approach for government agencies to request financial information from NFPs, with the intention of reducing the regulatory burden imposed on the NFP sector.

We have not analysed the effectiveness of these tools as part of this research project. Nonetheless, given that the tools were designed (at least in part) to reduce the burden on NFPs, and uptake of, and alignment with, the tools are far from universal, it would seem reasonable for the Commonwealth to make better use of the existing tools, rather than creating new tools to reduce the regulatory and reporting burden on charities.

⁵⁷ Morgan Disney and Associates (2006), *A Red Tape Evaluation in Selected Indigenous Communities*, for the Office of Indigenous Policy Coordination.

⁵⁸ Department of Finance and Deregulation (2014), *Commonwealth Grants Rules and Guidelines*, July.

1. Commonwealth departments and agencies that provide funding to charities should ensure their reporting and acquittal requirements align with the Commonwealth Grants Rules and Guidelines and incorporate the charity passport and National Standard Chart of Accounts, where relevant.
2. The charity regulator should work together with funding departments and agencies to encourage the adoption and implementation of available tools (such as the Commonwealth Grants Rules and Guidelines, the charity passport and the National Standard Chart of Accounts) to reduce the reporting burden on charities. The charity regulator could achieve this through a mixture of promoting agencies/programs that represent 'best practice' and reviewing agencies/programs to identify areas for improvement.
3. In three years, the charity regulator could work with the Department of Finance to conduct a review of the Commonwealth Grants Rules and Guidelines, the charity passport and National Standard Chart of Accounts (in terms of their effectiveness in reducing the burden imposed on charities). This review should explicitly consider whether the Commonwealth Grants Rules and Guidelines need to become more prescriptive and mandatory to reduce the burden imposed on charities.
4. Future regulatory arrangements for the charity sector should retain existing red tape reduction tools (such as the 'report once, use often' framework, the charity passport and the National Standard Chart of Accounts).

Notwithstanding their validity, there are aspects of the Commonwealth Grants Rules and Guidelines that could be improved. For instance, the charity regulator could assist departments and agencies to operationalise the Commonwealth Grants Rules and Guidelines from a charity and red tape reduction perspective. This could involve the charity regulator developing guidance material on:

- Charities and the management of risk – our research found that burdensome reporting requirements are generally linked to an over-emphasis of the management of financial and political risk. The charity regulator could play a role in helping departments and agencies reconceptualise risk management in the context of charities - taking into account the broad risk mitigation role of the charity regulator (which reduces, in turn, the risk posed to individual departments and agencies) and the mission of charities (which may justify departments and agencies developing a higher tolerance for risk).
- Best practice reporting requirements – with the intention of providing departments and agencies with practical examples of what best practice looks like in terms of the volume, detail and frequency of reporting requirements for charity grant recipients.

5. The charity regulator should develop additional guidance material to assist departments and agencies in operationalising the Commonwealth Grants Rules and Guidelines from a charity and red tape reduction perspective, particularly in terms of: (a) the management of financial risk (and helping departments and agencies reconceptualise risk management in the context of charities, taking into account the broad risk mitigation role played by the charity regulator and the mission of charities); and (b) best practice reporting requirements.

There are a number of other initiatives that Australian governments could pursue to reduce the regulatory and reporting burden imposed on charities. These include:

- The greater the number of funding programs, the greater the opportunity for inconsistencies and duplication in reporting requirements. Consequently, departments and agencies that provide significant funding to the charity sector (such as the Department of Social Services, the Department of Education and the Department of Health) should explore the potential for program rationalisation.
- Our research revealed that: (1) duplication in information requests between different levels of government continues to be a concern of charities; and (2) only two jurisdictions (South Australia and the Australian Capital Territory) have expressed their intention to harmonise reporting and regulation with the charity regulator (including giving consideration to use of the charity passport, which was designed to reduce duplication in information requests for charities). There would thus appear scope for all jurisdictions to harmonise reporting and regulation with

the charity regulator (particularly through use of the charity passport) to reduce the reporting burden on charities.

- Our research revealed that a number of key inter-jurisdictional regulatory issues (such as fundraising regulation) remain a concern for charities. Progress on resolving these issues, however, appears stalled. There would thus appear scope for the charity regulator to adopt an 'honest-broker' role, and revive and drive reform on such issues as fundraising regulation. This could be achieved by commissioning research on the costs of the current fundraising regulatory framework, and/or holding national workshops with charities to build the case and options for reform.

6. Commonwealth departments and agencies that provide significant funding to the charity sector should continue to explore the potential for program rationalisation.
7. All jurisdictions should seek to harmonise their reporting and regulation with the charity regulator (including through the use of the charity passport) as a means of reducing duplication in information requests across different levels of government.
8. The charity regulator should consider adopting an 'honest-broker' role in driving reform on key inter-jurisdictional sources of regulatory burden on charities, such as fundraising regulation.

Appendix A Limitations

- This report was prepared at the request of the ACNC.
- This report is provided to the ACNC for the purposes of public release. However, the ACNC and any other party other than the ACNC who access this report shall only do so for their general information only and this report should not be taken as providing specific advice to those parties on any issue, nor may this report be relied upon in any way by any party other than the ACNC. A party other than the ACNC accessing this report should exercise its own skill and care with respect to use of this report, and obtain independent advice on any specific issues concerning it.
- In carrying out the research project and preparing this report, EY has worked solely on the instructions of the ACNC, and has not taken into account the interests of any party other than the ACNC.
- This report has been constructed based on information current as of 30 June 2014. Material events or information that have occurred/arisen since this date have not been considered in our analysis. Most notably, this means that the report does not account for the new Commonwealth Grant Guidelines (referred to as the Commonwealth Grants Rules and Guidelines) that were issued by the Department of Finance on 1 July 2014. It is anticipated that the new guidelines, if implemented by relevant Commonwealth agencies, may reduce the burden imposed on charities associated with funding agreements.
- Neither EY, nor the parties which have endorsed or been involved in the development of the report, accept any responsibility for use of the information contained in the report and make no guarantee nor accept any legal liability whatsoever arising from or connected to the accuracy, reliability, currency or completeness of any material contained in this report. EY and any other parties involved in the preparation and publication of this report expressly disclaim all liability for any costs, loss, damage, injury or other consequence which may arise directly or indirectly from use of, or reliance on, the report.
- Liability limited under a scheme approved under Professional Standards Legislation.

Appendix B Conceptual framework

Framework purpose

The purpose of this framework is twofold. First, it provides the basis for how we will analyse the regulatory and reporting burden on NFP entities and charities (in terms of defining key concepts and directing, in turn, what data will need to be collected and how). Second, it defines the boundaries of the research project that will be undertaken by EY, determining what will (and what will not) be measured.

We devised the conceptual framework (and associated measurement methodology) to:

- Meet the research requirements and stipulated timing and scope constraints of the ACNC (as set out in the Statement of Requirement released by the ATO on 8 November 2013)
- Align with the *Interim Regulation Impact Statement Process Guidance Note* (issued by the OBPR on 24 January 2014) and the Victorian Regulatory Change Measurement Manual (November 2013).

Framework structure

The conceptual framework is structured as follows:

- The section on 'Research focus' defines the unit of analysis that will underpin the research project
- The section on 'Regulatory burden' defines regulatory burden
- The section on 'Red tape' defines red tape.

Research focus

We have defined the unit of analysis for the research project as follows:

Obligations imposed by government Ministers, departments and regulatory agencies on Australian not-for-profit entities (including charities).

The subsections below expand on key elements of this definition.

What is an obligation?

By and large, an obligation is a concept that is widely used, but rarely defined. Recent publications that provide an implicit definition of what constitutes an obligation include:

- The *Victorian Regulatory Change Measurement Manual* – which suggests that obligations are legally enforceable statements 'that bind a party to perform a certain action'⁵⁹
- The Queensland Government's framework for measuring and reducing the burden of regulation – which suggests that obligations are government requirements that compel individuals or organisations to undertake an activity.⁶⁰

Drawing on these reports, we define an *obligation* as an act or course of action that entities are required to undertake to comply with legally enforceable conditions imposed by government. Such conditions can be imposed through legislation, legislative instruments, mandatory codes and guidelines, and contractual agreements.

⁵⁹ Victorian Department of Treasury and Finance (2013), *Victorian Regulatory Change Measurement Manual*, Version 2.0, November.

⁶⁰ Queensland Competition Authority (2013), *Measuring and Reducing the Burden of Regulation: Final report*, February.

There are three key types of obligations:⁶¹

- Information obligations – these are requirements for entities ‘to procure or prepare information and subsequently make it available to a public authority.’⁶² Such information can be used for accountability purposes, assurance purposes and to collect data necessary for policy-making.
- Substantive compliance obligations – these are requirements for entities to undertake an act or course of action to achieve a desired regulatory outcome. As the Victorian Department of Treasury and Finance states:

‘To comply with substantive compliance obligations, an affected entity may need to make active changes to its operating processes, by implementing technical or other solutions (like adjusting a machine to ensure compliance with noise standards) or making provisions that involve capital investment.’⁶³

- Causes of delay – these are requirements that prevent an entity from commencing its intended operations due to delays caused by application or approval processes. These delays can impose costs on the entity – in the form of increased expenses and/or the loss of income.

It is important to note that obligations can be associated with regulatory requirements (e.g. the need for registered entities to provide financial reporting to the relevant government body on an annual basis), as well as with grant and service agreements (e.g. the need for some grant recipients to submit a final report outlining activities and outcomes funded by a grant).

Not-for-profit and charitable entities

This conceptual framework focuses on obligations imposed on NFP entities. We have defined NFPs in accordance with the definition adopted by the ACNC. That is, a NFP is an entity that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run it or their friends or relatives).⁶⁴

Charities comprise an important subset of NFPs. We have defined charities in accordance with the definition adopted by the Commonwealth Government in the *Charities Act 2013*. That is, a charity is an entity:

- a) that is a not-for-profit entity, and
- b) all of the purposes of which are:
 - i. charitable purposes⁶⁵ that are for the public benefit, or
 - ii. purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i), and
- c) none of the purposes of which are disqualifying purposes⁶⁶, and
- d) that is not an individual, a political party or a government entity.⁶⁷

⁶¹ Victorian Department of Treasury and Finance (2013), *Victorian Regulatory Change Measurement Manual*, Version 2.0, November.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ ACNC (2013), ‘Not-for-profit’, available at:

https://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_is_NFP/ACNC/Reg/NFP.aspx?hkey=0c89fa5a-38dc-49af-b7aa-e8a6515fe8b1

⁶⁵ Part 3 of the *Charities Act 2013* provides greater detail about what constitutes a charitable purpose.

⁶⁶ Division 3 of the *Charities Act 2013* provides greater detail about what constitutes a disqualifying purpose.

⁶⁷ This definition is derived from Division 1 of the *Charities Act 2013*.

Regulatory burden

To measure the regulatory and reporting burden on NFP entities, we first need a definition of what constitutes burden.

The existing literature tends to equate burden (explicitly or implicitly) with costs. For instance, the Industry Commission defined regulatory burden as ‘the costs imposed on businesses by the regulatory framework.’⁶⁸ Likewise, the SCM, the *Victorian Regulatory Change Measurement Manual* and the *Interim Regulation Impact Statement Process Guidance Note* all frame burden in terms of the costs imposed on individuals, organisations and the broader community by government obligations.⁶⁹

Accordingly, in our view:

Regulatory and reporting burden represents the incremental or additional costs incurred by NFP entities in complying with government obligations over and above their business-as-usual (BAU) costs.

The subsections below expand on key elements of this definition.

Types of costs

In undertaking acts or courses of actions to comply with an obligation, NFP entities can incur costs. These costs include:

- Administrative costs – costs incurred primarily to demonstrate compliance with a rule, usually record keeping and reporting costs, and the compliance costs associated with financial costs. This includes the costs incurred through complying with government taxes, fees, charges and levies (excluding the actual amount paid).⁷⁰
- Substantive compliance costs – costs that directly lead to the regulated outcomes being sought, usually purchase and maintenance costs.
- Delay costs – expenses and loss of income incurred by a regulated entity through an application delay or approvals delay.

It is important to note that, in line with the *Interim Regulation Impact Statement Process Guidance Note* issued by the OBPR, the following costs are excluded from the research project:

- Opportunity costs (unless they relate to a delay)
- The costs of non-compliance – this includes such costs as fines for failing to comply with a regulation and legal fees
- Indirect costs – these are costs that arise indirectly from the impacts of regulatory changes, including changes to market structures and competition impacts
- Direct financial costs – charges attached to a regulation which are payable to government, such as administrative charges, licence and permit fees, levies and mandatory insurance premiums, and taxes
- Regulatory impacts related to: (1) regulations imposed as a prerequisite to participation in international markets; and (2) criminal laws and the administration of courts and tribunals
- Internal Commonwealth Government red tape – that is, all regulation imposed by the Commonwealth on Commonwealth departments or agencies, other than regulation imposed by or on Government Business Enterprises.

⁶⁸ Industry Commission (1997), *Reducing the Regulatory Burden: Does firm size matter?*, Staff Research Paper.

⁶⁹ See: Office of Best Practice Regulation (2014), *Interim Regulation Impact Statement Process Guidance Note*, January; SCM Network (2005), *International Standard Cost Model Manual*; Victorian Department of Treasury and Finance (2013), *Victorian Regulatory Change Measurement Manual*, Version 2.0, November.

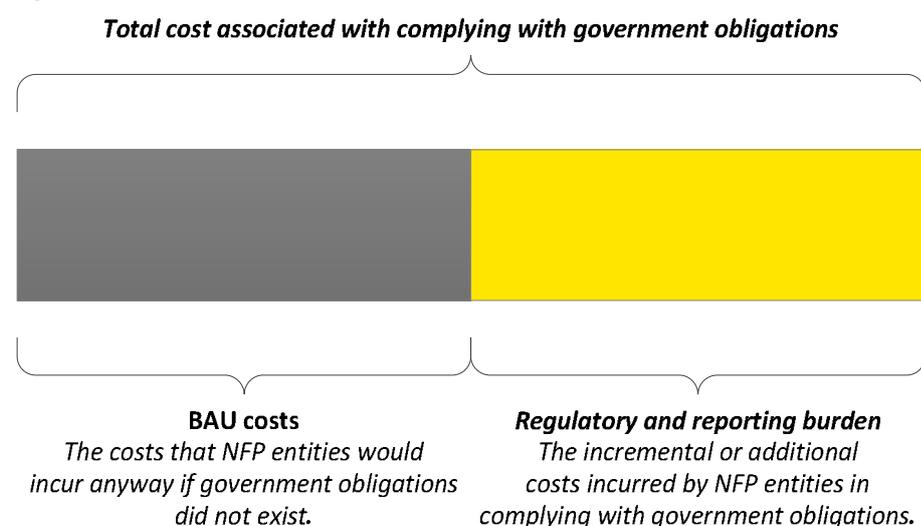
⁷⁰ These definitions of administrative costs, substantive compliance costs and delay costs are drawn from: Office of Best Practice Regulation (2014), *Interim Regulation Impact Statement Process Guidance Note*, January.

BAU Costs

NFP entities undertake a range of activities to comply with government obligations. It is unlikely, however, that all of these activities relate only to government obligations. For instance, a charity may prepare financial information not only to comply with a government obligation, but also to support its internal management processes.

In line with the *Interim Regulation Impact Statement Process Guidance Note*, this conceptual framework defines burden as the incremental or additional cost incurred by NFP entities due to government obligations. In other words, burden represents the costs that NFP entities incur directly because of government obligations, and not those costs that the entity would incur anyway if government obligations did not exist (Figure 1).

Figure 16: Burden and BAU costs



Red tape

In addition to measuring the burden imposed by government obligations on charities, this research project will estimate the potential savings⁷¹ that could be achieved by reforming the regulatory and reporting framework for charities. To identify areas for potential reform, this research project will focus on obligations that are believed to constitute red tape.

Red tape is a difficult concept to define. Outside of academic literature, it is rarely explicitly defined. Furthermore, the concept is used in some contexts (particularly in popular usage) as a synonym for regulatory burden, rather than being distinct from regulatory burden.

Nonetheless, a survey of the available literature suggests that 'red tape' is broadly defined as regulation that is particularly burdensome. For instance:

- In his theoretical overview of the concept, Bozeman defines red tape as 'rules, regulations, and procedures that remain in force and entail a compliance burden but do not serve the legitimate purposes the rules were intended to serve'⁷²

⁷¹ These savings are likely to be predominantly non-cash savings (e.g. freeing up staff time), but may include some cash savings (e.g. charities no longer having to pay for external advice).

⁷² Barry Bozeman (2000), *Bureaucracy and Red Tape*, Prentice Hall.

- Mazzarol recently defined red tape in the Australian context as ‘excess bureaucracy and regulation that serves as cost on business’⁷³
- The Australian Public Sector Commission (APSC) defined red tape as ‘regulatory or administrative requirements that are unwarranted, ineffective or not the most efficient option for delivering the required outcome’⁷⁴
- The Taskforce on Reducing Regulatory Burdens on Business, in its landmark report, *Rethinking Regulation*, identified a number of sources of unnecessary burden. Amongst these included overlapping and inconsistent regulatory requirements, excessive requirements and redundant or unnecessary requirements (Box 1).

Box 1: Key sources of unnecessary regulatory burden

In its 2006 report *Rethinking Regulation*, the Taskforce on Reducing Regulatory Burdens on Business identified a number of sources of unnecessary regulatory burdens on business. These sources included:

- *Excessive coverage, including ‘regulatory creep’.* The Taskforce identified a number of regulations which appeared to catch more activity than originally intended or warranted, or where the coverage of smaller businesses had become more extensive over time as the real value of thresholds had been eroded by inflation. Such ‘regulatory creep’ can be pervasive and impact on many small businesses.
- *Overlapping and inconsistent regulatory requirements.* While these arise within governments, the more vexed instances occur across jurisdictions. They impose significant costs for national companies seeking to operate in what should be a national market.
- *Regulation that is redundant or not justified by policy intent.* Some regulations have simply been badly designed and thus give rise to unintended or perverse outcomes. Others have become ineffective or unnecessary as circumstances have changed over time. In these cases, compliance costs are borne for no good reason.
- *Excessive reporting or recording burdens.* Companies face multiple demands from different arms of government for similar information, as well as information demands that are excessive or unnecessary. These are rarely coordinated and often duplicative.
- *Variations in definitions and reporting requirements.* Such differences generate confusion and extra work for many businesses on such basic questions as who is an employee or contractor, or what is a small business.

Source: Taskforce on Reducing Regulatory Burdens on Business (2006), *Rethinking Regulation*, January.

Drawing on this existing literature, we have defined red tape as obligations that are excessive, unnecessary or confusing.⁷⁵ In this context:

- An excessive obligation is one that imposes a burden disproportionate to the policy goals or benefits of the obligation
- An unnecessary obligation is one that is redundant, duplicative or does not generate a material benefit
- A confusing obligation is one that, due to inconsistencies in definitions and requirements, generates confusion and uncertainty.

We believe this definition:

- Summarises the key aspects of particularly burdensome regulation (as identified in the definitions outlined from Bozeman, Mazzarol, the ASPC and the Taskforce on Reducing Regulatory Burdens on Business).
- Is aligned with sector perceptions of what constitutes red tape. For instance, in its comprehensive study of the NFP sector, the Productivity Commission concluded that:

‘While overall the regulatory regime works well for these NFPs, there is confusion about the best form of incorporation and compliance costs are often not proportionate to size or scope of activity. It is the larger NFPs, and those operating in more than one

⁷³ Tim Mazzarol (2012), ‘What is red tape and why is it a problem for small firms?’ available at: <http://theconversation.com/what-is-red-tape-and-why-is-it-a-problem-for-small-firms-6601>.

⁷⁴ Management Advisory Committee (2007), *Reducing Red Tape in the Australian Public Service*, Australian Public Service Commission.

⁷⁵ See glossary on definition of red tape and its derivation.

jurisdiction (including federated models), that face an unnecessarily complex, confused and costly regulatory environment [emphasis added].⁷⁶

Likewise, the Australian Council of Social Services noted in its suggested priorities for reducing red tape that the concept related to 'overly onerous and unnecessary burden'.⁷⁷

We will primarily measure red tape by relying on the perceptions of the charity case studies as to which obligations are excessive, unnecessary or confusing.

Given that the Government's BCC does not provide an objective basis in which to identify and measure benefits, the data which will be used to measure red tape will be qualitative in nature and may involve the subjective judgements of the charities interviewed.

It is likely that the mapping process will provide some objective information about the extent of duplication that exists across regulatory and reporting requirements.

⁷⁶ Productivity Commission (2010), *Contribution of the Not-for-profit Sector*, February.

⁷⁷ Australian Council of Social Services (nd), *Improving community sector effectiveness and efficiency: Priorities for reducing red tape*, available in: http://acoss.org.au/images/uploads/Final_ACOSS_priorities_for_reducing_red_tape.pdf.

Appendix C Case Study Selection

A key component of the research project was to select and interview 15 case study charities. To select the 15 case study charities, EY worked with the ACNC to generate a 'master list' of charities. The master list was comprised of all registered charities from three targeted sub-sectors - namely:

- Social, welfare or community activities
- Other education (excluding schools, higher education and research)
- Health/aged care charities.

From the master list, 45 charities were randomly chosen - so as to avoid familiarity with an organisation or sector leading to a biased result. From the short list of 45 charities, 15 were selected based on the following key parameters:

- Even representation across sub-sectors (i.e. five each from the social welfare, other education and health/aged care sub-sectors)
- Even representation across charity sizes (i.e. five each from small, medium and large charities) - using the ACNC's definition of small (less than \$250,000), medium (\$250,000 or greater, but less than \$1 million) and large (\$1 million or more) charity sizes
- Geographical representation based on the actual geographical distribution of charities - to determine an appropriate geographical distribution for the case study charities, EY relied on ACNC data derived from the 2013 AIS (accessed on 29 January 2014). This data, and how we used it to determine the spread of the case study charities, is outlined in Table 21.

Table 21: Population of charities by jurisdiction and proportional representation by jurisdiction within the interview sample

Jurisdiction	Number of charities registered by jurisdiction	Percentile share of the charities sector by jurisdiction (%)	Proportional share of the interview sample by jurisdiction	Number of charities to be interviewed by jurisdiction (rounded)
ACT	1,210	2.08	0.31	1
NSW	19,609	33.78	5.07	5
WA	6,097	10.50	1.58	1
VIC	13,921	23.98	3.60	3
QLD	10,411	17.94	2.69	2
NT	749	1.29	0.19	1
TAS	1,554	2.68	0.40	1
SA	4,496	7.75	1.16	1
Total	58,047*	100	15	15

Note: *This excludes registered charities that do not have a designated principal jurisdiction.

Table 22 summarises the key characteristics of our case study sample, reflecting the sub-sector, size and geographical parameters detailed above.

Table 22: Key characteristics of the 15 charities that participated in the research study

No.	Sector	Size	Location
1	Health/Aged Care	Small	Australian Capital Territory
2	Health/Aged Care	Small	Victoria
3	Health/Aged Care	Large	New South Wales
4	Social Welfare	Large	New South Wales
5	Other education	Large	New South Wales
6	Health/Aged Care	Large	New South Wales
7	Social Welfare	Medium	Northern Territory
8	Other education	Small	New South Wales
9	Social Welfare	Large	Victoria
10	Other education	Small	Victoria
11	Social Welfare	Medium	Tasmania
12	Other education	Medium	Queensland
13	Other education	Small	South Australia
14	Health/Aged Care	Small	Queensland
15	Social Welfare	Medium	Western Australia

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Appendix E Online Survey Questionnaire

Question 1

Please enter your charity's Australian Business Number (ABN) in the comment box below.

Question 2

Does your charity receive Commonwealth-funded grants?

- Yes
- No

Question 3

From which Commonwealth department or agency does your charity receive the majority of its funding?

- Department of Social Services
- Department of Health
- Department of Employment
- Department of Education
- Department of Industry
- Department of the Environment
- Department of Infrastructure and Regional Development
- Department of Agriculture
- Department of the Prime Minister and Cabinet
- Department of Foreign Affairs and Trade
- Department of Immigration and Border Protection
- Attorney-General's Department
- Other

Other (please specify)

Question 4

Who in your charity is primarily responsible for activities that support your charity meeting its regulatory and reporting obligations? You may select more than one response.

'Regulatory and reporting obligations' refers to legal obligations, reporting requirements, grant conditions and other administrative requirements imposed by government departments and agencies.

- CEO / Coordinator
- Corporate Team (finance, governance, HR)
- Operational Staff (those involved in delivery – eg. project officer, social worker)
- Board of Directors
- Volunteers
- Other (please specify)

Question 5

How much time in an average week does your charity spend on activities required to meet regulatory and reporting obligations (please estimate the total number of staff/volunteer hours)?

	0-5 Hours	5-15 Hours	15-30 Hours	30-50 Hours	50 Hours +
ALL regulatory and reporting obligations (Commonwealth AND state/territory)	<input type="radio"/>				
COMMONWEALTH ONLY regulatory and reporting obligations	<input type="radio"/>				

Question 6

How many full-time employee equivalents has your charity allocated to activities required to meet your charity's regulatory and reporting obligations (estimate)?

	Less than 1	2-3	4-5	6-7	8+
ALL regulatory and reporting obligations (Commonwealth AND state/territory)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
COMMONWEALTH ONLY regulatory and reporting obligations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 7

In the last financial year, approximately how much did your charity spend on activities associated with meeting its regulatory and reporting obligations (estimate)?

Include:

- Internal costs (wages for staff whose work is directly involved in meeting your organisation's regulatory and reporting obligations, relevant staff and volunteer training, and internal systems such as IT software); AND
- External costs (professional services employed by your organisation to assist with regulatory and reporting requirements – eg. legal/accounting/IT professionals).

	\$0 - \$20,000	\$20,001- \$50,000	\$50,001- \$100,000	\$100,001- \$500,000	\$500,001- \$1 million	\$1 million+
ALL regulatory and reporting obligations (Commonwealth AND state/territory)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
COMMONWEALTH ONLY regulatory and reporting obligations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 8

Please rate the following Commonwealth departments/agencies on a scale of 1 to 5 for the costs associated with meeting your regulatory and reporting obligations to them.

Please use the following scale:

1 = minimal cost

5 = greatest cost

[blank] = department/agency in question imposes no cost

'Regulatory and reporting obligations' refers to legal obligations, reporting requirements, grant conditions and other administrative requirements imposed by government departments and agencies.

Australian Taxation Office (ATO)	<input type="text"/>
Australian Charities and Not-for-Profit Commission (ACNC)	<input type="text"/>
Australian Securities and Investments Commission (ASIC)	<input type="text"/>
Office of the Registrar of Indigenous Corporations (ORIC)	<input type="text"/>
Australian Bureau of Statistics (ABS)	<input type="text"/>
Australian Competition and Consumer Commission (ACCC)	<input type="text"/>
Fair Work Commission (FWC)	<input type="text"/>
Department of Social Services	<input type="text"/>
Department of Health	<input type="text"/>
Department of Employment	<input type="text"/>
Department of Education	<input type="text"/>
Department of Industry	<input type="text"/>
Department of the Environment	<input type="text"/>
Department of Infrastructure and Regional Development	<input type="text"/>
Department of Agriculture	<input type="text"/>
Department of the Prime Minister and Cabinet	<input type="text"/>
Department of Foreign Affairs and Trade	<input type="text"/>
Department of Immigration and Border Protection	<input type="text"/>
Attorney-General's Department	<input type="text"/>

Question 9

Is there a month or are there months of the year in which your charity has to undertake more work in order to meet its COMMONWEALTH ONLY regulatory and reporting obligations?

- No - our compliance activities are mostly constant throughout the year
- Yes. (Please specify in the box below which month[s])

Question 10

Of the time your charity spends on meeting its regulatory and reporting obligations, what percentage is spent on obligations you consider to be unnecessary, burdensome or confusing?

An 'unnecessary' obligation is one that is duplicative (e.g. duplicates another obligation) or redundant (e.g. an obligation that does not serve an accountability purpose and/or does not serve to achieve its policy goals).

A 'burdensome' obligation is one that imposes a cost which is disproportionate to the obligation's policy goals or the 'benefits' (for individual charities and/or the community as a whole) generate by that obligation.

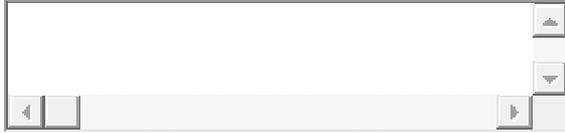
A 'confusing' obligation' is one that, due to inconsistencies in definitions and requirements, generates confusion and uncertainty.

(Select one % band).

- 0 - 10%
- 11% - 20%
- 21% - 30%
- 31% - 40%
- 41% - 50%
- 51% - 60%
- 61% - 70%
- 71% - 80%
- 81% - 90%
- 91% - 100%

Question 11

Please describe examples of regulatory and reporting obligations - and activities associated with meeting those obligations - that your charity considers to be unnecessary, burdensome or confusing.



Question 12

What is the medium through which your charity submits forms, documents and other information in order to meet its regulatory and reporting obligations?

This includes Commonwealth and state/territory regulatory and reporting obligations.

- Mostly paper based
- Mostly electronic forms submitted through an online tool

Question 13

In the past three (3) years, have the costs associated with meeting your organisation's regulatory and reporting obligations increased or decreased?

This includes both Commonwealth and state/territory regulatory and reporting obligations.

The regulatory burden has:

- Increased
- Decreased
- Stayed the same
- Don't know

Question 14

What changes would you like to see from the current regulatory regime that would ease the costs associated with meeting your charity's regulatory and reporting obligations?



Question 15

Does the current regulatory and reporting burden (imposed by the Commonwealth on your charity) and its associated costs impact your charity's ability to achieve its charitable outcomes?

The regulatory burden has:

- A significant impact on our ability to drive outcomes
- Only a minor impact on our ability to drive outcomes
- A negligible or nil impact on our ability to drive outcomes

Question 16

What is your charity's size?

- Small (annual revenue less than \$250,000)
- Medium (annual revenue \$250,000 or more, but less than \$1 million)
- Large (annual revenue more than \$1 million)

Question 17

What is the number of employees in your charity (excluding volunteers)?

- Less than 10
- 10 - 100
- 100 - 500
- 500+

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