Proposed amendments to the ACNC Act and Regulations

We have set out below a range of amendments to the ACNC Act and Regulations. Several of the reforms were proposed in the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, Report and Recommendations* report.

High impact opportunities

Proposal	Impact	Complexity[i]	Comments	
Enhancing ACNC capabilities to support a robust sector				
1. Address gaps in our regulatory framework that arise from our enforcement powers being limited to Federally Regulated Entities (FREs).	**High**. Inability to exercise enforcement powers means we are limited to revocation in situations where other enforcement powers would be a better and more proportionate response and deterrent. Also, without full range of powers very limited public visibility of our enforcement work.	High. Options for achieving this include co-operative model or referral of powers.	This gap undermines the operation of a consistent, national scheme for the regulation of charities and is the most effective way to comprehensively protect charitable assets. This was recommendation 28 in the ACNC Act Review.	**Budget impact.**
2. Amend information gathering powers to allow the Commissioner an express power to require a charity to provide information required to make an assessment about whether a charity is a FRE. Currently, we can only use the enforcement powers in Pt 4-2 against an FRE.	**High**. This would significantly improve our ability to investigate charities.	Low.	At present, this is not possible, as Commissioner could not form a reasonable belief that the entity has information or a document that is subject to monitoring under s 75-5 of the Act. It is therefore very difficult to make preliminary FRE assessments and this is a significant burden for the ACNC. This can be confusing for charities and for the public, because of the uncertainty as to whether the ACNC can exercise its powers. There is also a cost to the ACNC as AGS advice is required for each case.	**Budget impact.**

Released under FOI Act 1982 Australian Charities and Not-for-profits Commission

Proposal	Impact	Complexity[i]	Comments	
			It also constrains the ACNC's enforcement work as it may mean we must use the blunt instrument of revocation where, for example, an enforceable undertaking may have been more appropriate to enable the charity to get back on track.	
3. Widen the criteria to disqualify a person from being a Responsible Person if they have a conviction for terrorism, terrorism financing, money laundering, fraud, importation or distribution of illicit drugs or a child sexual offence under Commonwealth, State or Territory law.	High. This would improve public trust and confidence in the governance of charities.	Low - Medium. We suggest allowing the Commissioner the discretion not to disqualify. Inclusion of drug related offences may be controversial, for example with drug and alcohol support charities that may have Responsible Persons with historical drug convictions. However, Commissioner discretion could mitigate this concern.	This change would require the ACNC to be able to verify the identities of RPs – see the below proposal.[ii]	**Budget impact.**

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Proposal	Impact	Complexity[i]	Comments	
4. Amend the ACNC Act to enable the Commissioner to collect personal information and verify the identities of Responsible Persons, to enable us to combat phoenixing and misuse of charitable assets.	**High.** This would assist in identifying instances of phoenixing activity and combat misuse of charity assets.	Medium. We would need one-off funding to improve our IT security and enable our participation in Digital ID including offering alternative ways to verify identity.	Collection of this information would enhance our regulatory capacity and support public trust and confidence in the sector.[iii]	**Budget impact.**
5. Amend ACNC Act to allow the ACNC to deem a registration application as lapsed if the applicant does not respond to attempts to contact.	**High.** This would save the ACNC work for applications where we consider the entity is ineligible but are unable to contact the applicant to discuss withdrawing the application.	Low. Exceptions and methods of revitalising the application should be included, given that there may be many reasons why an entity is not responsive.	This would enable the ACNC to process applications more quickly, which will better support charities as they launch their activities, particularly at a time of greater volumes of applications because self-assessing income tax exempt NFP measure	**Limited budget impact.**
6. Amend the ACNC Act to include appropriate protections for whistleblowers	**High**. We are not an eligible recipient within the legislative framework for whistleblower protections. As a result, whistleblowers are likely reluctant to approach us.	Medium. We would need funding to improve our IT capabilities to hold	This would support our ability to receive and investigate complaints.[iv] Whilst there are current proposed amendments to the taxation laws and regulations that (if passed) would broaden the ability of the ATO to on-disclose whistle-blower	**Budget impact.**

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Proposal	Impact	Complexity[i]	Comments	
		information of this degree of sensitivity and resourcing to assess whistleblower complaints.	complaints to the ACNC, those proposed changes will not allow the ACNC to accept whistle-blower complaints directly.	
Improving the Charity Register to sustain public transparency				
7. Expand what information the ACNC Act and Regulations permit publication of on the Register – for example: • more information about formerly registered charities • whether the charity has merged • whether a charity is in external administration • the charity's legal structure and other relevant registration numbers • if the revocation was voluntary or as a result of ACNC compliance action (and if so the nature of that action).	**High**. Increased transparency is important to support public trust and confidence in the sector. We have also received feedback that these items are sought after by users of the Register.	Low. We expect that publication of these items would be uncontroversial. Subject to the scope of what is added to the Register, we may need some funding for any required changes to our IT systems.	The examples listed are either items we already collect or are publicly available on other registers. Enabling publication on the Charity Register would help achieve the aim of having a one-stop Charity Register. In addition to supporting public trust and confidence in the sector, increasing the quantity of information could support users to transition away from relying on the ASIC Register to relying on the ACNC Register.[v]	**Budget impact.**
Supporting charities				
8. Include provisions enabling users to rely on information on the Charity Register, which override provisions in	**High**. This would help prompt users to rely on the Charity	Low. There may be other legislative	Such reforms would achieve the original policy intent of a single source of easily accessible information regarding charities.	**Budget impact.**

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Proposal	Impact	Complexity[i]	Comments	
the *Corporations Act 2001* (Cth) regarding relying on ASIC Registers.	Register instead of the ASIC Registers.	provisions that should also be overridden, or an alternative approach taken. The drafting will need to consider that entities not incorporated under the *Corporations Act* may also be on the ASIC Register.	The issues raised by the current system were highlighted by *Re Leeuwin Ocean Adventure Foundation Limited (In Administration)* [2023] WASC 480, where the administrators of the charity were required to spend charity funds on an application to the Supreme Court of Western Australia for orders that they were validly appointed.	
9. Consider enabling the ACNC to share personal information about Responsible Persons with select entities, such as financial institutions.	**High**. This may address issues that charities have when interacting with financial institutions.	Medium. Consider potential privacy risks.	Currently, the ASIC Register provides personal information regarding company directors. To avoid publishing this information on the Charity Register, it may be preferable to enable the ACNC to provide this information to select entities, such as financial institutions. We have already had interest from a financial institution in whether we had the ability to share data.	**Budget impact.**
10. Allowing the ACNC to make questions in the AIS mandatory where we are collecting information for another state/territory regulator (see below	**High**. Will further reduce red tape for charities that forget to provide information (in the AIS) that is required by another regulator.	Low.	To reduce red tape, the ACNC collects a range of information on behalf of state/territory fair trading regulators. However, the ACNC Act does not allow us to make the collection of this information mandatory. Many charities forget to provide the information required by a regulator. The regulator then contacts these charities, who often need to resubmit their AIS (some may choose to lodge separately and pay the annual fee).	**Budget neutral!**

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Proposal	Impact	Complexity[i]	Comments	
			This creates unnecessary red tape for charities, the ACNC and relevant regulators. Fixing this problem is budget neutral, is supported by ex-official members and would be supported by the sector.	

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Additional (technical) improvements to the ACNC Act

We consider that these amendments are straightforward and uncontroversial, while improving the operation of the ACNC Act and our effectiveness as a regulator (including our ability to deliver on our statutory object to promote the reduction of unnecessary regulatory obligations on the Australian NFP sector). This will enable us to concentrate our resources on other priorities.

Amendment	Impact	Complexity	Comments
11. Amend s 150-50 to remove the requirement that disclosure be for the purposes of the ACNC Act. This section is about disclosure of information lawfully made available to the public.	Medium. This will streamline internal processes and mean that the section is consistent with the wording of the equivalent exception in the secrecy regime that applies to taxation officers.	Low.	This was included in Appendix B of the ACNC Act Review Report. An ACNC officer considering disclosure of protected ACNC information that is already lawfully public must also consider if the disclosure is for the purposes of the ACNC Act. This is an unnecessary hurdle, if the information is already lawfully public.
12. Amend s 40-10 of the ACNC Act to replace 'and' with 'or' in sub-s(2)(a). Currently, this test for withholding commercially sensitive information requires that we also consider whether it has the potential to cause detriment. This proposed amendment would instead enable us to withhold information that is commercially sensitive or may cause detriment if published.	High. This would not significantly expand the range of information that may be withheld from the Register, mitigating concerns as to maintaining a transparent Register. It would, however, simplify ACNC decision-making processes, enabling the ACNC to process these requests more quickly.	Low.	This was included in Appendix B of the ACNC Act Review Report.

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Amendment	Impact	Complexity	Comments
13. Delete or clarify s 60-30(3)(d) and (4)(d) of the ACNC Act to make clear that an assurance practitioner is not required to form an opinion over operational records or amend subsections 60-45(3)(b) and 60-50(3)(b) so that the auditor's report refers to 'any material deficiency, failure or shortcoming' and (ii) only applies in respect of the matters mentioned in paragraph 60-30(3)(b) or (c).	High. This would clarify requirements for auditors.	Low.	This was included in Appendix B of the ACNC Act Review Report.
14. Amend s 150-30 of the ACNC Act to replace 'under this Act' with 'in the performance of their duties as an ACNC officer'.	High. This would enable ACNC officers to disclose information in performance of duties under other legislation (e.g. FOI).	Low.	This was included in Appendix B of the ACNC Act Review Report.
15. Subdivision 150-C of the ACNC Act be amended to include a specific section permitting disclosure of protected ACNC information in bulk to government agencies for data matching or to implement arrangements to reduce red tape.	High. This would greatly simplify ACNC internal processes for disclosing information.	Low. See for example s 355-70 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) which permits disclosure to prescribed taskforces. The taskforces are prescribed by reg 67 of the *Taxation Administration Regulations 2017* (Cth).	This was included in Appendix B of the ACNC Act Review Report. As part of this, the ACNC Act could be amended to allow disclosure to prescribed taskforces (such as the Fraud Fusion Taskforce).

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Amendment	Impact	Complexity	Comments
16. Amend the ACNC Act to give the Commissioner broader powers to delegate functions or powers to staff.	High. This would enable the ACNC to process applications more efficiently, as there would be more decision-makers with delegated functions and powers. With the reforms to not-for-profit self-reviews increasing the numbers of applications, this would be particularly useful.	Low. We expect that this would not be controversial.	This was Recommendation 7 of the ACNC Act Review. The previous government indicated its support for this but did not implement it.

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

Amendments to ACNC Regulations

We consider that these amendments are also uncontroversial while improving the operation of the ACNC Regulations.

Amendment	Impact	Complexity	Comments
17. Reg 60.30 of the ACNC Regulations dealing with Special purpose financial statements should be amended to add the term 'remunerated' under reg 60.30(4)(b). The revised wording would state: "…consists of only one remunerated individual."	This would resolve the current issue, where the language suggests that the exemption from remuneration reporting requirements applies only when a large charity has a single individual as a key management personnel (KMP).	Low.	The exemption was intended to be applicable when only one KMP is receiving remuneration so that a single person's salary is not published.
18. Amend reg 45.25(3) of the ACNC Regulations to require RPs of trusts to disclose conflicts of interest to all other RPs unless another comparable governance standard applies	This would strengthen charity governance and clarify requirements.	Low.	See Appendix B of the ACNC Act Review Report.
19. Amend ACNC Regulations to state that an audit or review can be undertaken by a member of the Chartered Accountants Australian and New Zealand, Society of Certified Practising Accountants or Institute of Public Accountants	This would make it easier for charities to have their accounts audited or reviewed as required, particularly for charities in regional or rural areas where there may not be as many auditors.	Low.	See Appendix B of the ACNC Act Review Report.

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission

[i] Our assessment of complexity includes factors such as whether the measure may be controversial, whether additional funding for the ACNC would be required to implement the measure, and whether drafting the amendment is likely to be complex.

[ii] This was recommendation 23 of the ACNC Act Review Report. That review found that the current disqualifying criteria for Responsible Persons is too narrow.

[iii] Recommendation 18 of the ACNC Act Review was that the Commissioner be authorised to collect personal details of RPs involved in unlawful activity. We suggest collecting all RP personal information is preferable, to combat phoenixing and misuse of assets.

[iv] This was included in Appendix B of the ACNC Act Review Report.

[v] Expanding the range of items published on the Charity Register was raised in our submission to the ACNC Act Review.

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission