

28 September 2020

Submitted online at [REDACTED]

Our reference: ACNC SUB2022/12

ACNC submission – Inquiry into the 2022 Federal Election

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to make a submission to the Joint Standing Committee on Electoral Matters regarding its inquiry into the 2022 Federal Election.

About the ACNC and the charity sector

2. The ACNC is the national regulator of charities established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). It currently has oversight of around 60,000 registered charities. The ACNC applies the ACNC Act, *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (**ACNC Regulation**) and the *Charities Act 2013* (Cth) (**Charities Act**) to determine whether applicant entities are entitled to charity status, and whether charities are compliant with their ongoing obligations. The objects of the ACNC Act are to:
 - a. maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
 - b. support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
 - c. promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

Impact of changes to disclosure rules for registered charities

3. The ACNC notes that any change to the disclosure thresholds may have a minor impact on the ACNC. The ACNC maintains a register (the Charity Register). In most cases, each charity's entry on the Charity Register must include key details about its location, activities, and responsible persons, as well as its governing rules and annual reporting to the ACNC. Since 2021, the ACNC Regulation has required the ACNC to publish, on a charity's register entry, a link to the Australian Electoral Commission's Transparency Register if that charity has incurred electoral expenditure which has been published on the Transparency Register.





4. A small number of charities have incurred electoral expenditure above the current disclosure thresholds, and, accordingly, their Charity Register entries have been linked to the Transparency Register. Reducing the disclosure threshold may result in more charities needing to have a link to the Transparency Register included on their Charity Register entry.
5. The ACNC does not have a view on the correct setting for the disclosure thresholds. The ACNC generally prefers transparency and acknowledges that there may be genuine public interest in charities incurring electoral expenditure below the current disclosure threshold. However, lowering the threshold may create an additional reporting burden for some charities to the AEC. Easing the administrative burden for charities is a key objective of the ACNC, recognising that it is preferable for their time and resources to be directed to charitable endeavours.
6. If there is movement towards 'real-time disclosure', consideration will need to be given to whether the ACNC is expected to update the Charity Register in real time to reflect a charity's recent electoral expenditure, and whether its current resources and systems allow that. Any required disclosure of this nature will be an impost on charities through additional regulatory burden.

Electoral participation by charities

7. Registered charities must have only charitable purposes, or purposes which are incidental or ancillary to a charitable purpose. 'Charitable purposes' are defined in the Charities Act. A charity must not have a disqualifying purpose, which includes "the purpose of promoting or opposing a political party or candidate for office" (subs 11(b) of the Charities Act). This must be distinguished from advocacy about an issue and the legitimate charitable purpose of promoting or opposing a change to the law or public policy. It should also be noted that 'purpose' is distinct from 'activity'. The ACNC undertakes a holistic assessment of a charity's activities, circumstances, and intentions, to determine what its purposes are.
8. The ACNC provides free and accessible guidance to charities about their involvement in elections and advocacy.
9. The ACNC welcomes concerns from the public wherever charities may not be complying with their obligations, including where charities may be demonstrating a disqualifying purpose. Such concerns inform many of the ACNC's compliance activities. However, the secrecy provisions contained in the ACNC Act generally prevent the ACNC from disclosing what action it takes in response to the concerns it receives, or the outcome of most of its compliance activities.
10. Any concerns the ACNC receives about charities potentially demonstrating a disqualifying purpose – including during the 2022 Federal Election – are addressed consistently with the ACNC's [regulatory approach](#). While the ACNC will revoke an entity's charity status when it is warranted, most of its compliance activity is resolved with regulatory action that is proportionate to, and directly targets, the risks that exist for the charity in question.



Next steps

11. If you have queries about this submission, please contact [REDACTED], Policy Officer, at [REDACTED].



[REDACTED]
Acting Assistant Commissioner
Australian Charities and Not-for-profits Commission