

14 April 2021

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Via email: [REDACTED]

Our reference: EXT2021/21

ACNC submission: Modernising Business Registers – Transitional Application Periods

The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the proposed transitional periods for directors to apply for a director identification number (**director ID**), which forms part of the Commonwealth Government's Modernising Business Registers program.

About the ACNC and the charity sector

The ACNC is the national regulator of charities established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). 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 Director IDs on the charity sector

Registered charities take many forms. The ACNC Act provides that an 'entity' is capable of being registered as a charity, and an entity may be an individual, body corporate, body politic, unincorporated association, or trust. In practical terms, the directors of the following entities will require a director ID:

- a. Companies established under the *Corporations Act 2001* (Cth) (**Corporations Act**),
- b. Incorporated Associations registered under section 601CA of the Corporations Act as a 'registered Australian body', and





- c. Indigenous companies registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**CATSI Act**).

Presently, about 1,000 registered charities are indigenous companies that are registered under the CATSI Act. We estimate that around 11,000 charities are companies that are subject to the Corporations Act.

The ACNC recognises that registered charities represent a small portion of the total number of companies in Australia that will be affected by the introduction of director IDs. However, we believe it is important that the practical implications of director IDs on charities are considered. Directors of registered charities are often unpaid and, because of their other obligations, may have limited time to devote to their respective charities. In this context, and consistent with the ACNC's object of reducing the regulatory burden for charities, we note that any additional administrative requirements on company directors may have an outsized impact on charity directors. The ACNC is cautious of regulatory provisions unintentionally acting as disincentives for people to serve as responsible persons for a charity.

The ACNC supports the introduction of director IDs, and the implementation of a transitional period. We understand that the intent of the new provisions is not to punish charity directors who do not obtain a director ID promptly. A reasonable transition period should minimise the likelihood of charity directors inadvertently not complying with these new obligations.

Consistency

Under the current proposal, existing directors of Corporations Act companies will not require a director ID until 30 November 2022, and for CATSI Act corporations until 30 November 2023. Onboarding CATSI Act directors will also not be a priority until the process is complete for Corporations Act directors. While we submit that the length of the proposed transitional periods is reasonable, we would prefer that charities are subject to the same regulatory framework, as far as is possible. In other words, the transitional period for charities subject to the Corporations Act should be extended until 30 November 2023.

In our view, consistent provisions across the sector would be easier to communicate, and compliance will be easier to check if there is no need to draw a distinction between CATSI Act and Corporations Act directors. Secondly, as a matter of fairness, the ACNC prefers that charities of similar size and structure have the same, or similar, legal obligations.

Timeframe for new directors

We understand that new directors appointed after the legislation commences, but before the transitional period ends, will have 28 days from their appointment to obtain a director ID.

The ACNC Act provides small registered charities – those with annual revenue of less than \$250,000 – with 60 days to notify the Commissioner of certain matters, including any change in their responsible persons. A 28-day period is provided for other charities. This allowance recognises that it is more difficult for small charities to meet administrative obligations in a timely manner. Again, the ACNC would prefer that these sorts of provisions are as consistent as



possible for charities, so that their regulatory obligations are easy to understand, and charities can find efficiencies by meeting different regulatory requirements at the same time.

If you have queries about this submission please contact [REDACTED] Policy Officer on [REDACTED]
[REDACTED]

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