

04 April 2022

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Via email: [REDACTED]

Our reference: ACNC SUB2022/5

ACNC submission – Associations Incorporation Act review 2022

Thank you for inviting us to comment on the review of the *Associations Incorporation Act 2015* (WA) (the Act).

The ACNC is the national regulator of charities. As such, our comments are limited to charities rather than the broader not-for-profit sector. Further, our submission focuses on the questions in the discussion paper that have a direct impact on our regulation of the charity sector.

Question 3 - Should the Act permit electronic attendance and voting at meetings as the default position, with members able to make provision in their rules if they do not want to permit electronic attendance?

We agree that the amended Act should expressly allow associations to hold meetings electronically.

We recommend that the amended Act provide associations with the flexibility to determine whether they want to hold/not hold electronic meetings without needing to amend their rules.

Question 4 - Do you believe that an association should be provided with a time limit for complying with the requirement of section 54 of the Act to provide access to the register? If so, what is a reasonable time to allow?

Registered charities, in compliance with the Governance Standards contained in the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (ACNC Regulation), must be accountable and transparent to their members.

Where members have a statutory right to access certain information, the ACNC agrees that charities should meet requests for information in a timely manner. Including a time limit may help achieve this, and we are not opposed to a time limit.





However, the diversity of the sector should be considered in identifying a reasonable time. Smaller, less sophisticated, and less established charities may genuinely need a longer timeframe compared to established charities.

Question 7 - Do you believe that the Act should specify a fee for provision of a copy of the register to a member? If so, what do you believe is a reasonable fee?

Where members have a statutory right to access certain information, we do not believe members should face significant obstacles in obtaining that information. Charities should generally also keep registers in good order, so that meeting requests is not an onerous or costly task.

However, there are clear reasons to offset the cost to charities in meeting administrative obligations and discouraging vexatious requests.

In our view, there may be merit in specifying a maximum fee that is relatively low, and largely reflects cost-recovery principles.

Question 11 - Do you believe that all associations should have the same reporting thresholds, or could thresholds for associations that are charities be different?

In December 2021, the ACNC Regulation was amended to reflect new charity size thresholds. These thresholds were endorsed by State, Territory and Commonwealth governments through the Thresholds Working Group.

From 1 July 2022, charities will report to the ACNC using the following thresholds:

- Small charities - annual revenue less than \$500,000
- Medium charities - annual revenue of \$500,000 to \$2,999,999
- Large charities - annual revenue of \$3 million or more

While the ACNC expresses no view as to whether the thresholds for not-for-profit associations should be the same as those for charities (that are registered associations), we encourage you to introduce thresholds for charities that are identical to the ACNC thresholds as a matter of priority.

Our data shows that up to 460 charities (19 percent of all charities that are associations in Western Australia) will be required to prepare reviewed or audited financial reports due to the different reporting thresholds in the Act. These charities will not benefit from the time and cost savings associated with the introduction of the new ACNC thresholds.



Question 12 - Do you believe that it is important for reporting thresholds for associations to be the same as those applying to charities registered with the ACNC?

While the ACNC expresses no view on the importance of having identical reporting thresholds for all associations (regardless of whether they are charities), we note that consistent thresholds will reduce confusion in the broader not-for-profit sector. It will also simplify any communication to affected stakeholders.

Appendix A – miscellaneous changes

The Discussion Paper proposes changes to section 24 of the Act.

The proposed amendment (and current Act) is problematic for the ACNC. It does not ensure that surplus assets are distributed to charitable organisations or for charitable purposes.

Charity law requires charities to only distribute surpluses to organisations with charitable purposes.

To ensure that funds are distributed to like-minded organisations and to promote transparency of the association's obligations, we recommend that any amendment to this section be explicit in ensuring that funds are distributed to associations with similar purposes.

Further discussions

If you have queries about this submission, or wish to discuss further, please contact [REDACTED], Red Tape Reduction Manager, at [REDACTED]

Regards,

[REDACTED]

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