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ACNC submission to the Productivity Commission's Philanthropy Inquiry

Introduction

About the Australian Charities and Not-for-profits Commission (ACNC)

1. We are 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.
2. We regulate approximately 60,000 registered charities.¹ This means that we regulate up to 10% of organisations within the wider Australian not-for-profit (**NFP**) sector, based on the Productivity Commission's 2010 estimation that the sector comprised around 600,000 organisations in total.²
3. It was contemplated when the ACNC was established that our regulatory remit could expand over time to encompass all Australian not-for-profits.³ There have also been

¹ ACNC, Australian Charities and Not-for-profits Commission, 2013, *Annual Report 2012-2013*, on page 4 reports 57,672 registered charities on 30 June 2013; there were 59,334 on 30 April 2023 (sourced from ACNC internal data). This indicates numbers have generally remained stable (a balance of newly registered charities and revocations – both voluntary and ACNC-initiated). New tax rules effective from 1 July 2023 may drive an increase in registrations; they require the approximately 144,000 self-assessing income tax exempt not-for profit entities with an active ABN to submit online self-review forms to the ATO to remain eligible for the income tax exemption. It is anticipated that a number of these entities will be registerable as charities with the ACNC (if registered with the ACNC these entities will not be required to submit the yearly reviews to the ATO, but instead comply with annual reporting to the ACNC which will vary according to their revenue). For further information see www.ato.gov.au.

² Productivity Commission, 2010 'Contribution of the Not-for-profit Sector', 58-60.

³ Explanatory Memorandum, *Australian Charities and Not-for-profits Commission Bill 2012* (Cth) and *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012* (Cth) and Australian Government the Treasury, 2018, 'Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, Report and Recommendations'.



suggestions over the ten years since that we could regulate a greater proportion of the NFP sector.⁴ However, we do not presently regulate any organisations within the Australian NFP sector that are not registered charities.

4. Additionally, registration with the ACNC is voluntary so it is possible some charities may choose not to register despite meeting the requirements for registration. An organisation does not need to be registered with the ACNC to be able to refer to itself as a 'charity', however, if it is an ACNC type of entity it must be registered to access Commonwealth tax concessions.⁵
5. The limits to our regulatory remit, particularly given the inclusion of 'and Not-for-profits' in our name, has proven confusing to some individuals and organisations within the NFP sector, and to the general public.⁶

Approach to this submission

6. We recognise increasing philanthropy is core to a sustainable charitable sector. This is consistent with our objects. In this submission, we have focussed on some challenges we have identified as the national regulator that specifically relate to the information requests in your *Call for Submissions* document.⁷ Some of these challenges were included in the submission we made in January 2018 to the Review of the ACNC Legislation (**Review**) and were included within the report, *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, Report and Recommendations, 13 May 2018 (Review Report)*.
7. We have divided our submission down into the following areas:
 - A. Our charity registration work
 - B. The Charity Register
 - C. Our compliance and review work
 - D. Our reporting and red tape reduction work
 - E. Public feedback to the ACNC
 - F. Our public affairs, and education work
 - G. Additional comments on giving

⁴ See, for example, Australian Government the Treasury, 2018 *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, Report and Recommendations*, 13.

⁵ See, for instance, section 50-47 of the *Income Tax Assessment Act 1997* (Cth).

⁶ See section below Public Feedback to the ACNC, which provides information on enquiries made to our Advice Service (which often involved suggests confusion with our role).

⁷ Productivity Commission, 2023 '*Review of Philanthropy - Call for Submissions*', www.pc.gov.au/inquiries/current/philanthropy/call-fo-submissions (accessed 11 April 2023).



A. Our charity registration work

Challenges presented by the tax concessions framework

8. Over the period 1 July 21 – 30 June 2022 (FY21-22), 6,015 applications for charity registration were lodged with the ACNC, resulting in 3,152 charity registrations. The volume of registration applications has increased over the period of our establishment. There were 3,841 applications for registration over the period 1 July 2013 – 30 June 2014 (FY13-14) compared to last financial year (63% increase). This trend appears to be continuing in the current financial year. In March 2023, we received 540 registration applications, which is the highest number of applications received in a single month since we were established.⁸
9. Registration as a charity, or as a certain subtype of charity is a pre-requisite for entitlement to various types of tax benefits and exemptions, in particular, income tax exemption. The benefits available also include entitlement to certain types of deductible gift recipient (**DGR**) endorsement. Approximately 24,000 registered charities (40%) are endorsed as DGRs.⁹ Charity registration is also a prerequisite for various goods and services tax concessions, the fringe benefits tax rebate available to charities which employ staff, and for the fringe benefit tax exemption available to Public Benevolent Institutions (**PBIs**) and Health Promotion Charities (**HPCs**) which employ staff.
10. The tax benefits and concessions attributable to charities and to different charity subtypes can drive distortionary behaviour in those seeking registration as a charity. Applicants will occasionally try to frame their applications for registration as a charity in a way that does not accurately reflect their operations, so they achieve a greater level of tax benefits (for example, they may need to focus on only one principal activity). This can cause additional work and extended timeframes for the applicant and the ACNC. See Hypothetical Case Example 1 (below).
11. Compounding this issue, applications for registration with the Public Benevolent Institution (**PBI**) subtype can be complicated by the fact that the term Public Benevolent Institution is not defined in legislation.¹⁰ Although the term has been considered judicially and on merits review, there remains an opportunity for further clarification surrounding aspects of the common law definition.¹¹ Recent consultation on a redraft of the Commissioner's Interpretation Statement: Public Benevolent Institutions demonstrated differing views within the sector, including advisers to the sector. This can increase the complexity of applications with the PBI subtype and, as mentioned above, can distort

⁸ ACNC, Australian Charities and Not-for-profits Commission, 2015, *Annual Report 2014-15*, Australian Charities and Not-for-profits Commission, 2022, *Annual Report 2021-22*, 2022 (and additional data sourced from ACNC internal data, not published).

⁹ ACNC internal data as supplied by the ATO on 16 March 2022.

¹⁰ *Estate Duty Assessment Act 1914*, s 8(5); *Income Tax Assessment Act 1927* (Cth).

¹¹ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-Profits Commission* [2021] AATA 3313 [80-89].



behaviour as PBI is a pathway to DGR status which can significantly impact a charity's ability to raise funds.

This challenge responds to Information request 4, *The Deductible Gift Recipient (DGR) Framework*, in particular the efficiency, effectiveness, and equity of the DGR framework, including whether its design and administration results in perverse outcomes) and Information request 5, *Other tax concessions for not-for-profit organisations*.

Hypothetical Case Example 1 – Registration of Earth Aid Ltd

Earth Aid Ltd (**Earth Aid**) was registered as a charity with the ACNC on 12 June 2016 with the charity subtypes of advancing social or public welfare and advancing the natural environment. Earth Aid was entitled to be registered as these two subtypes because it:

- runs ranger development courses for disadvantaged people who have experienced long-term unemployment that provide pathways to employment; and
- runs general environmental programs for the broader community, joining in on landcare initiatives and running environmental education programs in primary schools.

Earth Aid applies to be registered with the PBI subtype because the benefits associated with this subtype would allow Earth Aid to apply for grants from ancillary funds, obtain preferential tax options to attract employees, and seek donations from the public.

Earth Aid is not eligible to be registered with the PBI subtype because a significant proportion of its activities benefit the wider community. A PBI must be organised, conducted or promoted for benevolent relief, rather than organised, conducted or promoted for the benefit of the general community or for environmental purposes.

The ACNC helped Earth Aid's representative to understand in more detail:

- what benevolent needs are and what being organised, conducted or promoted for benevolent relief means
- why providing general environmental protection and education programs for the community is not benevolent relief, even though people in need are among those who benefit from these activities.

This was a time consuming and lengthy process for the ACNC and Earth Aid's representative, who was both overwhelmed and frustrated that Earth Aid could not achieve the full range of tax concessions even though its members considered that it was organised and conducted to help those most in need, including the environment in which they (and their surrounding broader community) lived.

Understanding the concept of a not-for-profit entity

12. To register as a charity an entity must be a not-for-profit entity. There is no statutory definition of 'not-for-profit' in ACNC legislation.¹² Often, we are asked to explain the meaning of the term. We define it by reference to the ordinary meaning as an entity "that

¹² Entity, however, is defined in s205-5 of the ACNC Act.



does not operate for the profit, personal gain or other benefit of particular people”.¹³ This aligns with the definition adopted by the Australian Taxation Office (ATO) prior to the ACNC’s establishment. A proposed statutory definition that was intended to apply for both the ATO’s and the ACNC’s purposes was never enacted.¹⁴

13. In most cases, the absence of a statutory definition has not presented difficulties. However, from time-to-time applicants ask detailed questions about the specific requirements that must be satisfied to demonstrate they are of a ‘not-for-profit’ character, particularly in relation to restrictions on the distribution of assets on winding up. Further discussion regarding the regulatory challenges we face regarding the distribution of a registered charity’s assets on winding up is provided below.

Understanding the concept of a government entity

14. A government entity is not eligible to be registered as a charity.
15. The definition of government entity in the legislative instrument¹⁵ is complex and is difficult to apply in practice.¹⁶ This has significant implications for entities created by or under statute that try to understand whether they are entitled to charity registration.¹⁷ It also has implications for entities that were registered as charities, particularly prior to the establishment of the ACNC, that we have subsequently worked with to revoke because we determined they were government entities.
16. As an example, our recent work reviewing the integrity of the Charity Register led to the revocation of 11 charities over the period 1 July 20 – 30 June 21 (FY20-21) because we determined that the charities were government entities.¹⁸ Aside from the loss of charity registration and associated tax concessions, this may impact the entities’ eligibility to receive grants (or to continue to receive grants) from ancillary funds. We note, however, that in these instances, we can provide written advice stating ‘but for’ an entity being a government entity, it would otherwise be charitable. We provide this advice so that trustees of an ancillary fund can take it into account when deciding whether they have the power to grant funds to a ‘charity like’ government entity, which section 13 of the *Charities Act 2013* (Cth) facilitates.¹⁹

¹³ ACNC, www.acnc.gov.au/for-charities/start-charity/not-for-profit (accessed on 2 May 2023).

¹⁴ The Explanatory Memorandum to the *Charities Bill 2013* (Cth) contemplated the definition of ‘not-for-profit’ that was to be inserted in subsection 995-1 (1) of the *Income Tax Administration Act 1997* (Cth) by the enactment of the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012* (‘NFP Concessions Bill’) would apply to the enacted *Charities Bill 2013* (Cth). This did not proceed.

¹⁵ *Charities Act 2013* (Cth) s4(1), *Charities (Definition of Government Entity) Instrument 2013* (Cth).

¹⁶ ACNC, Australian Charities and Not-for-profits Commission Legislation, 2018, Submission to the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation*, 65-66.

¹⁷ Ibid.

¹⁸ ACNC, www.acnc.gov.au/tools/reports/integrity-charity-register (accessed on 28 April 2023).

¹⁹ State and Territory legislation also affects whether an ancillary fund can distribute grants to ‘charity-like’ government entities. Section 13 of the *Charities Act 2013* (Cth) applies for Commonwealth purposes only.



17. The Review Report suggested that consideration should be given to the definition of government entity.²⁰

These two challenges respond to Information request 6, *Unnecessary regulatory barriers to philanthropic giving*, specifically the opportunity to reduce burdens on not-for-profit entities seeking charity registration.

The Charity Register

Use of the Charity Register and transparency

18. The Charity Register (**Register**) can be used by philanthropists, donors, and the public to check if a charity is registered. A charity's record on the Register also provides information about the charity's purposes and the activities it undertakes, whether a charity's reporting is up to date, financial information about the charity, and the names of the people managing a charity's governance and the roles they hold within the charity. This can assist the public in determining whether they want to support by way of donations or by volunteering.
19. The usage of the Register is rapidly increasing; with a total of 5.6 million searches over the period 1 July 21 - 30 June 22 (FY21-22) to more than 6.5 million searches this year to the end of March.²¹ We regularly undertake activities to promote the Register, which leads to increased visits.²² We also take the opportunity to build awareness of the Register during the period immediately following a disaster because we know Australians want to help and there is likely to be an increase in donations to disaster relief charities during those times.²³
20. Unfortunately, an increase in people wanting to help often coincides with an increase in charity scams, making our message about checking the Register prior to donating even more important.
21. Although we provide general guidance and promote scam awareness,²⁴ charity scams are generally not within the remit of the ACNC, and we refer all reports of scams to the relevant consumer protection bodies or the police. There were more than 794 reports of

²⁰ Australian Government the Treasury, 2018, 'Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, Report and Recommendations', 128.

²¹ ACNC, Australian Charities and Not-for-profits Commission, 2022, *Annual Report 2021-22* and ACNC internal data, Quarterly report for Q3 22-23.

²² Our messaging during and in the aftermath of the Summer 2019-20 bushfires that people check the Register for information about charities appeared to resonate with the public as visits increased from 1.2 million (January to June 2019) to 1.8 million (January to June 2020). ACNC, internal data.

²³ See here: www.acnc.gov.au/media/news/after-turkiye-and-syria-disaster-charity-regulator-says-give-generously-beware-scams (accessed on 28 April 2023).

²⁴ See here: www.acnc.gov.au/media/news/scams-awareness-week-beware-fake-charity-scams (accessed on 21 April 2023).



scam charities in 2022 to the Australian Competition and Consumer Commission's Scamwatch.²⁵ Charity scams include scammers:

- posing as fundraisers for charities,
- placing advertisements for fake charities,
- impersonating legitimate charities, and
- impersonating people in need seeking grants from charities.

Transparency

22. Increased use of the Register helps build public understanding regarding the work of the charity sector. It also provides for increased transparency of registered charities and the work they do for the public benefit and provides information for the public, including philanthropists and donors.
23. There are some circumstances in which a charity can apply to have information withheld from the Register.²⁶
24. In considering these applications, we weigh the desire for transparency against whether the publication of information may impact public safety, be offensive, inaccurate or likely to confuse or mislead, or disclose certain commercially sensitive information. There are additional considerations to consider where private ancillary funds seek the withholding of information.²⁷ Any charity can request the withholding of information that is otherwise required to be published on the Register, including its name or address, the names of its responsible people, or financial reports or documents.²⁸ For example, a charity that provides crisis accommodation and therapeutic support for women and children escaping domestic violence may request the charity's street address be withheld from publication on the Charity Register due to the potential risks of harm to clients or staff.
25. There are other circumstances where information is not on the Register because the charity is not required to provide it. This applies to small charities and basic religious charities – see below on financial reporting.

²⁵ Australian Competition and Consumer Commission, 2023, *Targeting scams appendices, Report of the ACCC on scams activity 2022*, 1.

²⁶ *Australian Charities and Not-for-profits Commission Act 2012* (Cth), s 40-10 and *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth), s 40.10.

²⁷ These are where the information is likely to identify an individual donor, and or publishing contact details would create an unreasonable administrative burden for the charity. See www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/reporting-annually-acnc/withholding-information (accessed on 1 May 2023).

²⁸ For additional information see www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/reporting-annually-acnc/withholding-information (accessed on 1 May 2023).



Information displayed on the Register

26. The Register is free, online and user friendly. It is possible to search by a range of filters including charity subtype, who the charity helps, size and location, and it is not necessary to know the name of a charity.
27. The Register search functionality was expanded in 2022 to enable searches by 'charity programs', with information about programs being added to the register since then.
28. In summary, continuous improvement has made the Register even more useful to the public, including potential philanthropists, volunteers, donors and partners, as they can search according to their interest and/or by charity name.

Example: Search by a program

home > Charity register > Search for a program

SEARCH FOR A PROGRAM

SEARCH BY CHARITY SEARCH BY CHARITY PROGRAM

TYPE OF ACTIVITY OR SERVICE LOCATION

Search or select Search suburb, state + 3km

ONLINE CHARITY PROGRAM WHO THE CHARITY HELPS

- Any - - Any - Search

List view Map view

Enter information in the fields above to search for a charity by the programs it runs.

Example: Search by a Charity name

home > Charity register > Search for a charity

SEARCH FOR A CHARITY

SEARCH BY CHARITY SEARCH BY CHARITY PROGRAM

CHARITY NAME OR ABN CHARITY LOCATION

Search charity name or ABN Search suburb or postcode Search

Additional search filters

Enter information in the fields above to search for a charity by name, ABN or location. Additional search filters below are optional and can be used instead of a name, ABN or location.

STATUS SIZE

- Any - - Any -

STATE OF OPERATION COUNTRIES OF OPERATION

- Any - - Any -

WHO THE CHARITY HELPS CHARITY SUBTYPE

- Any - - Any -

Enter information in the fields above to search for a charity by name, ABN or location. Click on the More Filters button to reveal more detailed search options.



29. Most information on the Register is drawn from the Annual Information Statement (**AIS**) that charities complete each year.²⁹ There are some differences in the information each charity must provide in its AIS depending on their size and other characteristics, such as if they are a Basic Religious Charity (which do not have to provide any financial information) or if they report the information to another regulator.
30. The public, including researchers, other government agencies and philanthropists, regularly ask whether additional information can be published on the Register, including:
- Whether a charity has DGR endorsement (allowing donors to search for charities that have DGR endorsement).
 - Legal structure and relevant registration numbers (to understand which other regulators the charity has obligations to)
 - More comprehensive information about formerly registered charities (which increases transparency of the sector)
 - Grounds for revocation (which increases transparency - see below for more discussion)
 - Whether a charity has entered into a compliance agreement (which increases transparency - see below for more discussion on this matter)
 - Date of lodgement of the AIS and Annual Financial Report (increases transparency of a charity's compliance).
31. There are limits in the information we can publish on the Register.³⁰ To incorporate additional information on the Register, the legislative framework would require amendment. We note that requiring more information from charities through the AIS would need to be balanced against the resulting regulatory burden upon charities. Although one option may be legislative amendment to allow us to collect and publish any information that is voluntarily provided by a charity,³¹ this should be considered carefully as even deciding whether to answer 'optional' questions in the AIS will increase the compliance burden on charities.

Which Register?

32. A further issue related to the Register arises with respect to charities incorporated under the *Corporations Act 2001* (Cth), is the interface with the 'Organisation and Business

²⁹ All charities are required to fully complete an AIS except those registered with the Office of the Registrar of Indigenous Corporations; basic religious charities and non-government schools complete the AIS but are not required to complete the financial component of the AIS. See here: www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/reporting-annually-acnc/ (accessed on 12 April 2023).

³⁰ *Australian Charities and Not-for-profits Commission Act 2012* (Cth), Division 40 (maintain the register, information and withholding and removing of information), and *Australian Charities and Not-for-profits Regulation 2022* (Cth), s 40.

³¹ ACNC, Australian Charities and Not-for-profits Commission, 2018, Submission to the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation*, 27-28.



Names' register maintained by the Australian Securities and Investments Commission (ASIC).

33. Due to the operation of section 111L of the *Corporations Act 2001*, charities are not required to report to or update their details with ASIC. The ACNC shares information with ASIC for the purpose of updating their records, however, it does not include details of Responsible People, therefore the ASIC Register is not kept up to date. Although there is a note on the ASIC Register directing users to ACNC when people search for companies registered with the ACNC, it is often overlooked. Consequently, financial institutions and members of the public searching the ASIC Register may rely on incorrect information.
34. We have received information from the sector that this has resulted in outcomes such as suspension of charity bank accounts or the inability to secure funding.³² The then Government's response to the Review Report supported the need to reduce these practical and administrative issues, suggesting this could be achieved through the Modernising Business Registers program led by the Australian Business Registry Services within the ATO.³³

These Charity Register challenges respond to Information request 7, *Consumer information on the effectiveness of not-for-profit organisations*, specifically the role of government in providing information to donors (and prospective donors), information donors would value on the effectiveness of not-for-profit organisations and data sources that are beneficial to donors. It also addresses weaknesses or gaps in data sources.

C. Our compliance and review work

Challenge of protecting charitable assets upon revocation and winding up

35. Over the period 1 July 21 – 30 June 22 (FY21-22) we finalised 92 compliance investigations resulting in 15 charities having their registration *involuntarily* revoked for serious and ongoing non-compliance. The assets held by these charities totalled \$10.5 million.³⁴ In the same period, we revoked the registration of 815 charities for failure to meet their reporting obligations for two or more years³⁵ and a further 1,685 charities voluntarily sought revocation of their registration.³⁶
36. There is no provision within the ACNC legislation that allows us to take steps to protect the charitable assets of a charity which has had its registration revoked. The

³² ACNC, Minutes of meeting held with the ACNC Adviser Forum on 24 March 2023 and 19 October 2022, available at www.acnc.gov.au/about/corporate-information/our-vision-mission-and-values/acnc-stakeholder-engagement/acnc-adviser-forum.

³³ See here: www.abrs.gov.au.

³⁴ ACNC internal data to be published in the *Australian Charities Report 9th Edition* (due for publication before the end of FY22-23) under the heading "Revocation of charity registration by the ACNC".

³⁵ See: www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/reporting-annually-acnc/double-defaulters (accessed on 24 April 2023).

³⁶ ACNC internal data of 24 March 2023 (not published). Charities revoked for non-compliance 15; revoked double defaulter 815; voluntarily revoked was 1685; revoked DGR endorsed was 3. This is a total of 2518.



responsibility of protecting the assets rests with State Attorneys-General in their capacity as guardian of the public interest in the enforcement of charities.³⁷ While we do refer some matters to the States' following revocation, we have no oversight as to what (if any) action is taken.

37. We note that in some overseas jurisdictions with comparable charity registration systems, the regulator has the power to require deregistered charities to wind up within a specified time and distribute their surplus assets to a similar charity or pay a tax.³⁸

Challenges presented by multiple regulators

38. Operating within a system overseen by multiple regulators can be challenging. This also impacts our compliance work and has demonstrated a key role for the ACNC in identifying and liaising with the multiple regulators that might be involved in assessing and responding to a concern about a charity. Our investigations often rely on information-sharing and collaboration between regulators, which can be useful in achieving better regulatory outcomes, but also challenging due to the complexity and differences between Commonwealth and State and Territory regulatory frameworks. For example, while our regulatory approach focuses on 'the charity', other regulators can focus their investigations on a group of entities, including individuals. However, the action they can take in relation to the charity may depend on decisions taken by the ACNC.
39. Regulators may have different priorities for compliance activities involving charities, which may result in a high priority case for the ACNC being deemed a lower risk for a different regulator. Where the ACNC can act unilaterally, this may not have a high impact. However, if it requires action from another regulator, there is the potential for delay or that the charity must respond to different regulators on the same or related compliance matters.
40. Having multiple regulators can result in higher administrative burden for all stakeholders: the ACNC, other regulators,³⁹ and charities. Charities often have obligations to more than one regulator.⁴⁰

³⁷ GE Dal Pont Law of Charity (2010) [14-23]-[14.26]].

³⁸ Refer ACNC, Australian Charities and Not-for-profits Commission, 2018, Submission to the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation*. In Canada a 'revocation tax' is payable by a revoked charity 12 months after the revocation date. The tax is equal to 100% of all remaining assets after payment of debts. During the 12-month period charities may apply their charitable assets to their charitable purposes or transfer them to an eligible donee. In New Zealand a deregistered charity has 12 months from the date of deregistration to distribute its accumulated income and assets for charitable purposes or in accordance with its governing rules. Net assets (with some exceptions) and income retained at the end of this period are taxed as income.

³⁹ In addition to the state and territory regulators and the Australian Securities and Investments Commission these may include, but are not limited to, the following bodies at the Commonwealth level the National Disability Insurance Agency, the National Disability Insurance Scheme Quality and Safeguards Commission, the Department of Health and Aged Care, the Aged Care Quality and Safety Commission, Department of Education, Department of Foreign Affairs and Trade. Commonwealth grant making bodies.

⁴⁰ Although the ACNC has worked with state and territory regulators to streamline annual reporting, there remains inconsistencies in what is required by each state or territory and the ACNC.



41. Hypothetical Case Example 2 provides a further example of the complexity of multiple regulators, and the role that the ACNC plays in helping to determine the best placed regulator to respond to an issue at hand.

Challenges presented by the legislative framework

42. We have a range of enforcement powers available to us in addition to being able to revoke the registration of a charity. They are to issue warnings and directions, enter into enforceable undertakings, apply to the courts for injunctions, suspend or remove a responsible person of the entity, and appoint an acting responsible person.⁴¹ However, these can only be applied to a registered charity that is a 'federally regulated entity' (FRE).⁴² Determining whether an entity is an FRE is a point in time assessment and is resource intensive.⁴³
43. This means that other than the imposition of administrative penalties⁴⁴ we have limitations as to how we can respond to findings from our investigations. In cases involving lower risk non-compliance we provide regulatory advice or seek the charity's cooperation to enter into a compliance agreement, neither of which rely on legislative powers. Where we determine there has been serious or deliberate non-compliance though, in the absence of a charity being an FRE, we are limited to revoking the charity's registration. This is a blunt instrument, particularly where the charity is otherwise working for purpose, and can result in the charity continuing to operate outside the ACNC framework (ie, without the same oversight).
44. The introduction of Director IDs⁴⁵ for directors of companies, registered Australian bodies and Aboriginal and Torres Strait Islander corporations means directors of approximately 20% of all registered charities will have verified their identity. We do not have a similar legislative requirement for verification of Responsible Persons of charities with other legal structures, creating a difference in requirements depending on legal structure.

These challenges respond to Information request 6, *Unnecessary regulatory barriers to philanthropic giving*, specifically the benefits of reducing unnecessary regulatory restrictions and burdens, and inconsistent restrictions, emerging risks or regulatory gaps.

⁴¹ *Australian Charities and Not-for-profits Commission Act 2012* (Cth), part 4-2.

⁴² *Australian Charities and Not-for-profits Commission Act 2012* (Cth), Part 4-1 and s205-15.

⁴³ An assessment is carried in accordance with paragraph 2.1 the *Legal Service Directions 2017* (Cth) which requires legal work on a range of topics, including constitutional law is tied to 'government providers of legal services'. This is relevant to the definition of federally regulated entities within the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), s 205-15(a) and (b). We also note limitations to our information gathering and monitoring powers in order to make an assessment of FRE status, *Australian Charities and Not-for-profits Commission Act 2012* (Cth), Part 4-1.

⁴⁴ Penalties can apply for providing false or misleading information, or where the charity is required by us in the carrying out of an investigation, or generally by the legislative framework to give a report, return, notice, statement or other document (e.g., the AIS) by a particular time and does not do so. *Australian Charities and Not-for-profits Commission Act 2012* (Cth), Part 7.3. The amount of the penalty can be affected by the charities willingness to work with the ACNC, s175-60. Administrative penalties are managed through the ATO.

⁴⁵ See abrs.gov.au/director-identification-number for further information.



Hypothetical Case Example 2 – BlueSide Disability Services Inc

BlueSide Disability Services Inc (BDS Inc) is a registered charity. BDS Inc provides services across multiple cities in northern Western Australia. Because of the nature of BDS Inc's activities, it was regulated and funded by two Western Australian government agencies, and five Commonwealth government agencies.

The ACNC had concerns that BDS Inc's funds were being misused for the private benefit of its responsible people and that the responsible people were engaging in fraudulent behaviour. The ACNC launched an investigation into BDS Inc's compliance with ACNC obligations, including the Governance Standards and its entitlement to registration as a charity.

The investigator's first step was to contact other federal and state regulators to confirm whether they had concerns, and what if any action they were taking against BDS Inc. Where there are multiple jurisdictions, it is important to identify if another agency is best placed to act, if the scope of their investigations is aligned with ours, and how we might address investigative gaps. The ACNC contacted:

- Consumer Protection (WA), as SDS Inc was incorporated under the *Associations Incorporation Act 2015* (WA);
- Aged Care Quality and Safety Commission (Cth), as SDS Inc provided aged care services;
- Department of Disability Services (WA), which regulated WA NDIS providers until 30 June 2019; and
- Australian Taxation Office (Cth), which regulates the Commonwealth tax and tax concessions of SDS Inc.

The regulators contacted provided information essential to the investigation – confirming details around use of funds, complaints received, and regulatory action taken. But it involved a significant amount of work for the investigating officer to identify the relevant regulators, their regulatory priorities, and any cross-over in compliance work. Information sharing can be undertaken if permitted by the relevant statutory provisions. In some instances, where there is a Memorandum of Understanding (MOU) (about collaboration, cooperation and mutual assistance in regard to statutory functions) information could be shared (subject to legislative restrictions) for example, when it would be likely to assist the other agency in administering or enforcing the particular laws for which the agency is responsible. In the absence of an MOU, some regulators required formal notices for information sharing and are limited in what information they could provide in response to our requests.

Along with ACNC's action in relation to the matter, the NDIS Quality and Safeguards Commission (Cth) and law enforcement agencies undertook their own inquiries into the misuse of funds and took subsequent action relevant to their own powers and functions.

Challenges presented by the public and donor expectations

45. As outlined above, the Australian public is very generous. The public response to Australia's catastrophic 2019-20 summer bushfires was more than \$640 million raised for relief and recovery. Due to the scale of the crisis and the amount of donations, there was increased demand from donors for assurance that their donations were reaching people in need.⁴⁶ It was reported in the media that some charities were not distributing money to

⁴⁶ See: www.acnc.gov.au/tools/reports/bushfire-response-2019-20-reviews-three-australian-charities (accessed on 17 April 2023). A survey by the Fundraising Institute of Australia between 16 and 19 January 2020 indicated that 53% of



people in need fast enough, that charities were stockpiling donated money, or they were spending too much of the donated money on administration. We conducted a review of three charities.⁴⁷ As we discussed in our submission to the ACNC Review, our legislative framework does not set benchmarks for charities' administration costs because, as every charity operates differently, benchmarks are not reliable measures of effectiveness. This issue is also explored in our guidance.⁴⁸ It is vital that donors understand that while it is important that each dollar given is used well, assessing and comparing charity administration costs is difficult and it can be misleading. There is not agreed definition of what is an "administration cost". Similar issues can exist in attempts to rate the effectiveness or impact of charities, as the services provided by the charity, its operating location and those it seeks to help, can change what constitutes reasonable administration costs.

46. In our review of three charities involved in the 2019-20 summer bushfires response, we found all three charities were transparent; they produced public information about their programs to support the bushfire response.⁴⁹ This included updates on the funds the charities had distributed, information about the programs the charities were implementing, and information about future programs and funding. Administration costs for one charity were reported to be as low as four cents in the dollar of donor funds, although we note this was achieved only through additional corporate support rather than through better financial management. A side-by-side comparison could not be achieved against the other charities because of the differences in their purposes, their beneficiaries, and their operating models.

Challenges presented by the ACNC's secrecy provisions

47. What we can say about our work is governed by the secrecy provisions in Division 150 of the ACNC Act. These provisions usually prevent us from making information about specific charities public.
48. Where a charity consents, we can say more. For example, we considered publicly sharing the outcome of the review into the three charities (as described above) was important to maintain trust and confidence in the sector and we did so with the express consent of the relevant charities.⁵⁰ Without the consent of the charities, we would not have been able to publicise our findings. It was important that we publicised our findings because they had the effect of countering claims being made in the media and restoring a more balanced narrative about charities' response to the bushfires.

Australians had donated to a bushfire appeal, with a median value of \$50. Most important, the survey also indicated that 88% of donors expected donations to be used within a few months.

⁴⁷ See: www.acnc.gov.au/tools/reports/bushfire-response-2019-20-reviews-three-australian-charities (accessed on 17 April 2023).

⁴⁸ See: www.acnc.gov.au/for-public/understanding-charities/charities-and-administration-costs (accessed on 28 April 2023).

⁴⁹ Our findings were communicated through a promotional campaign that included a nationally syndicated media release. A Commissioner outlining the key lessons that was sent to all charities. We also produced a webinar and three podcast episodes. See here: www.acnc.gov.au/tools/reports/compliance-reviews-report

⁵⁰ Ibid.



49. More recently, after media reporting, a charity publicly acknowledged the ACNC was investigating it. With the consent of the charity, we made public comment about the investigation in part because some of what was being reported was incorrect (see below for commentary on whistleblowers).
50. The public is also often frustrated by these provisions. For example, we have received the following feedback:
- *“I would like to express my deep dissatisfaction at the Commission’s inability to advise me of any action it make take”⁵¹;*
 - *“I am also very concerned that you have secrecy written into your procedures re outcomes. Charities should surely be managed and overseen with complete transparency”⁵².*
51. On this matter, the Review Report said *“A perceived lack of action by the ACNC may undermine confidence in the ACNC and the regulatory framework under the ACNC Act, even where compliance action is taken. In turn, this may have an impact on the trust and confidence of the public in the sector”*. The Review Report specifically recommended legislative change to allow for publication of a decision to revoke registration and a summary of the reasons for revocation. We note the Treasury has begun work on the Review Report’s recommendation relating to the Commissioner’s discretion to disclose information about regulatory activities.⁵³
52. Similarly, the secrecy provisions do not allow publication of our reasons for decision on registration applications, although we can on a deidentified basis. The complexity of registration decisions has increased over time (over the last six months some 1,160 have been categorised as such; this is 30% of the caseload). Some of these applications raise novel questions and the Commissioner’s decision in such a case may therefore be of broader public interest or have precedential value.
53. As a result of the ‘Treasury Portfolio – additional resourcing measure’ in the 2023-24 Federal Budget, we will be increasing disclosures of our regulatory activities.⁵⁴

These challenges respond to Information request 7, *Consumer information on the effectiveness of not-for-profit organisations*, specifically the role of government and the non-government sector in providing additional information to donors, Information donors would value on the effectiveness of not-for-profit (NFP) organisations, but cannot access and why; and Weakness or gaps in existing data sources relating to the effectiveness of NFPs that limit their reliability and usefulness or create perverse incentives by focusing on metrics that may be easier to collate but do not provide an accurate measure of effectiveness.

⁵¹ ACNC internal data, not published. Record CAS-1029169-H3P8X9 made on 23 May 2022.

⁵² ACNC internal data, not published CAS-962751-T5Y8X1 made on 5 January 2022.

⁵³ See: www.treasury.gov.au/consultation/c2021-190067 (accessed on 24 April 2023).

⁵⁴ See p 213 of Budget 2023-24, Budget Paper No. 2 available at budget.gov.au/content/bp2/index.htm (accessed 10 May 2023).



D. Our reporting and red tape reduction work

The challenge of no common definition of charity

54. The ACNC can only register and regulate entities that fit within the definition of 'charity' in the *Charities Act 2013* (Cth). Although there is now an enunciation of the definition at the Commonwealth level, there remains the challenge that there is no common definition of charity across all jurisdictions. This issue was explored prior to the introduction of the *Charities Act 2013* in a 2011 Treasury paper which included the history of the debate of attempting to legislate a definition (otherwise provided for in the common law), including a specific inquiry in 2001.⁵⁵
55. As we explored in our paper "*A common charity definition?*"⁵⁶ in 2016, the term 'charity' is defined in more than 40 separate pieces of legislation (often in State-based revenue legislation). The multitude of definitions presents regulatory and compliance burden for charities and for all regulators, as well as the potential for inconsistent treatment of entities across jurisdictions.
56. The Review Report made a broader recommendation for a national single scheme, which may have dealt with this issue. The Government rejected this recommendation on that basis it would require a referral of powers and instead stated "*the Government is consulting with States and Territories on the development of a common statutory definition of charity across jurisdictions to replace 45 existing definitions. This will reduce complexity and regulatory burden for charities when seeking tax concessions.*" We understand this work is not presently being actively pursued. We applaud the work jurisdictions have done in relation to fundraising reform (with agreement on a national set of principles reached in February 2023),⁵⁷ which demonstrates the outcomes that can be achieved through collaboration. We further discuss fundraising reform below.

Challenges presented by financial reporting frameworks

57. We note that the lack of consistency in annual reporting requirements across Australia has been a persistent issue predating our establishment. The intent behind the ACNC's establishment was that the ACNC would operate as a 'one stop shop', thereby resolving the issue of charities having to report under different frameworks.⁵⁸ This is consistent with one of the ACNC's objects: to 'promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector'.
58. Over the past decade progress has been made on streamlined annual reporting across all jurisdictions with all registered charities only being required to report once through the ACNC (the information can be used 'often' by other government agencies and departments through the 'Charity Passport').⁵⁹

⁵⁵ See: treasury.gov.au/sites/default/files/2019-03/definition_v6.pdf (accessed on 19 April 2023).

⁵⁶ See: www.acnc.gov.au/tools/reports/common-charity-definition (accessed on 28 April 2023).

⁵⁷ See: www.ministers.treasury.gov.au/ministers/andrew-leigh-2022/media-releases/agreement-reached-reform-charitable-fundraising-laws (accessed on 19 April 2023).

⁵⁸ Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012, Australian Charities and Not-for-profits Commission (Consequential and Transitional Bill) 2012.

⁵⁹ See: www.acnc.gov.au/about/red-tape-reduction/charity-passport (accessed on 5 May 2023).



59. However, there are some minor exceptions for financial reporting (for small ancillary funds and for Northern Territory and Western Australian incorporated associations) and for fundraising licences (in four jurisdictions) or renewals (two jurisdictions). Our website sets out these variations.⁶⁰
60. There remain differing approaches to accounting standards for financial reporting. The Australian Accounting Standards Board (AASB) is developing a new reporting framework – a new ‘Tier 3’ under which all charities required to lodge financial statements would prepare a general-purpose financial statement rather than special purpose financial statement, as they currently do.⁶¹
61. We see the potential benefits of the proposed reporting framework as it is simpler than the current framework, and we support consistent financial reporting. This helps build public trust and confidence in a sector. However, in considering the implementation of this framework – where each regulator at the Commonwealth, State or Territory government level may have different thresholds for applying Tier 3 (whether by virtue of legislation or administrative process) – there may be confusion and an unnecessary (and unintended) regulatory burden. Having to understand the application to their particular circumstances and implement changes by reporting on different requirements for different government bodies will use limited resources.
62. There are good examples where regulators have worked together to reduce the inconsistency between jurisdictions. For instance, agreement to address the issue of inconsistency of fundraising regulations by the Commonwealth, State and Territory governments collaborating on a single national fundraising framework (see below). A similar agreement on uniform reporting thresholds based on a new AASB standards could prevent a new impost on the sector.

These challenges respond to Information request 6, *Unnecessary regulatory barriers to philanthropic giving*, specifically the benefits of reducing unnecessary regulatory restrictions and burdens, and inconsistent restrictions, emerging risks or regulatory gaps.

Challenges presented by performance reporting

63. We acknowledge that service performance reporting is of significant interest to stakeholders, including donors and funders, seeking to assess the progress and impact of charities in achieving their charitable purposes. It can improve levels of trust and confidence in charities. Many charities already report information about their activities, effectiveness, and outcomes in their annual reports or websites.
64. There is no agreed framework for service performance reporting; the AASB has previously consulted on a model and has proposed it remain on the AASB’s consultative agenda. As part of that consultation process, we commented that a framework for service performance reporting, for example, along the lines of the New Zealand model, could

⁶⁰ See: www.acnc.gov.au/about/red-tape-reduction (accessed on 14 April 2023).

⁶¹ See: https://www.aasb.gov.au/admin/file/content105/c9/AASB_DP_Tier3NFP_09-22.pdf (accessed on 1 May 2023) for the discussion paper released by the AASB, and see www.acnc.gov.au/about/acnc-submissions for our “Submission to the Australian Accounting Standards Board’s Tier 3 Discussion Paper”.



result in more consistent and comparable information about service performance for charity stakeholders,⁶² however, that would depend on how it was implemented.

65. We cautioned that any service performance reporting framework should be voluntary, as some charities may not have the funds or resources (or may reasonably prioritise these elsewhere in efforts to achieve their purpose), or there may not be some services where there is limited quantifiable information that could be appropriately used to track service performance or progress.⁶³ A voluntary framework would also be more fitting with the overall composition of the sector: mostly small charities⁶⁴ (65.3% are small, and 31.4% of small charities have less than \$50,000 in annual revenue) that are run by volunteers (51% of charities report no paid staff). Our financial reporting requirements respond to this composition by imposing differing reporting requirements based on the size of a charity except for basic religious charities (they are exempt from providing this information).⁶⁵
66. A voluntary framework may also be more appropriate to minimise potential for unsophisticated comparisons between charities or their services (i.e., providing shelter for a night will differ if the provision is for a child, is crisis accommodation during the middle of the night or is in a remote location (compared to a capital city), or is provided as part of broader specialist services (also addressing identified mental health or medical issues, problematic drug or substance or alcohol use). Such comparisons could have the unintended consequence of declining trust within the sector. Reporting this information (voluntarily or not) on the Charity Register would require legislative change as outlined above.

This challenge responds to Information request 7, *Consumer information on the effectiveness of not-for-profit organisations*, specifically the role of government and the non-government sector in providing additional information to donors, Information donors would value on the effectiveness of not-for-profit (NFP) organisations, but cannot access and why; and Weakness or gaps in existing data sources relating to the effectiveness of NFPs that limit their reliability and usefulness or create perverse incentives by focusing on metrics that may be easier to collate but do not provide an accurate measure of effectiveness.

⁶² ACNC, Australian Charities and Not-for-profits Commission, 2023, *AASB Discussion Paper – Development of Simplified Accounting Requirements (Tier 3 Not-for-Profit Private Sector Entities)*, not yet published.

⁶³ ACNC, Australian Charities and Not-for-profits Commission, 2022, *ITC46 Agenda Consultation 2022-2026.pdf* accessed at www.acnc.gov.au/about/acnc-submissions

⁶⁴ A small charity is a charity which has less than \$500,000 in annual revenue in a reporting year. See here: www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/reporting-annually-acnc

⁶⁵ Small charities are not required to submit a financial report (in addition to their AIS), but medium and large charities (those with revenue of \$500,000 or more) must submit a financial report. www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/reporting-annually-acnc; and the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s60-60 (basic religious charities).



E. Public feedback to the ACNC

Feedback to the ACNC

67. We operate both a phone and written enquiry line (called our Advice Services). Over the period 1 July 21 – 30 June 22 (FY21-22) we answered 20,449 calls and responded to 13,165 written enquiries.⁶⁶ Most of these contacts were from charities seeking to access the Charity Portal to update their details, provide reporting or understand their obligations under the ACNC Act.

68. Sometimes there are concerns raised. Many of these are about challenges we have mentioned within this submission. For example, we had enquiries (over the last six months) about:

- Not-for-profits that were not registered charities (we explained how this might occur and how we have no oversight of non-charitable NFPs, and charities are not required to register with us, but do so voluntarily).
- The legitimacy of a charity (if the person making the enquiry was aware of and had checked the Register their enquiry may have been resolved) and allegations of scams (i.e., not a registered charity). We explained we were unable to assist and provided referral contacts.
- How a charity is using its funds (if the charity had its registration revoked, and we have no oversight of it).
- Fundraising (215 enquiries over six months; most of which were about charities wanting to fundraise and were confused about the framework and wanted to ensure they were compliant; or from individuals wanting to start their own campaign for a particular cause or in response to a disaster, and some were from individuals concerned about donations they were making that they were unaware of or wanted to cease making). We explained we do not regulate these issues and, in most instances, referred the person making the enquiry to the relevant State regulator.⁶⁷
- Other matters about the general governance of a charity including management of its workers (paid or unpaid), and internal disputes (we referred them back to the charity or the relevant regulator, include NSW Fair Trading, Australian Competition and Consumer Commission, Fair Work Australia, and the Office of the Australian Information Commissioner).

Of the concerns raised with our Advice Services most covered charities focusing on health, then animal welfare, followed by social welfare, poverty, and housing. These charities were of various sizes and operated in various States and Territories across Australia. Some provided direct services, others did not. Our Advice Services refer these concerns to our Compliance team.

⁶⁶ ACNC, Australian Charities and Not-for-profits Commission, 2022, *Annual Report 2021-22*.

⁶⁷ ACNC internal data, for the period 1 October 2022 to 31 March 2023, of enquiries responded to by Advice recorded as “Fundraising” or “Donations” provided to author on 26 April 2023.



Alleged mischief and whistleblowers

50. Members of the public can also raise concerns directly through the website.⁶⁸ Our compliance team also deals with these concerns. Over the past 12 months a total of 2,575 concerns were raised with us.
51. The majority of these were concerns about private benefit, political advocacy (this period included the federal election and so the quantum of complaints increased considerably compared to other reporting periods), mismanagement and other (not categorised).
52. Most concerns (1,426) were from the public. The next largest category (this is an internal category we have put in place for the purpose of our own records) was employees (328), and excluding the category 'Other', this was followed by current or former responsible people (163) and the media (154). We do not categorise donors separately from funders or volunteers. However, collectively this group raised 110 concerns over the 12-month period.
53. We take concerns about registered charities seriously. We review each one to understand the issues raised and refer concerns to other agencies if needed. Information from the public provides us with valuable information about the charities we regulate, contributes to our understanding about how charities are governed including risks.
54. Some employees contacting us with allegations of mischief seek advice about protections. We have had complaints about the lack of protections for whistleblowers.⁶⁹ We are unable to provide this protection as we are not an eligible recipient within the legislative framework, and this is highlighted on our website. We recently corrected the public record concerning claims that we had not accepted a complaint under whistleblower provisions in relation to allegations made against the Hillsong Church (Hillsong consented to us publicly confirming our investigation).⁷⁰
55. This matter was also raised in the ACNC Review, with the Review Report stating *"attention was drawn to the need to protect whistleblowers. Without appropriate protections in place, whistleblowers may be reluctant to approach the ACNC to disclose matters of concern. The Panel has recommended that amendments to the ACNC Act to protect whistleblowers be considered with other legislative amendments detailed in Appendix B"*.⁷¹ We also note that while relevant statutes provide protections to the ATO and ASIC,⁷² there may be instances where the disclosure would relate to the application of the ACNC Act, and not directly to, for example, tax legislation.

This challenge responds to Information request 6, *Unnecessary regulatory barriers to philanthropic giving*, specifically the benefits of reducing unnecessary regulatory restrictions and burdens, and inconsistent restrictions, emerging risks or regulatory gaps.

⁶⁸ See our Raise A Concern page at acnc.gov.au/raise-concern.

⁶⁹ ACNC internal data, record CAS-903583-B2Z5T9 made on 21 September 2021.

⁷⁰ See acnc.gov.au/tools/factsheets/whistleblower-protections (accessed 11 May 2023) and www.acnc.gov.au/media/news/acnc-confirms-it-investigating-hillsong (accessed on 28 April 2023)

⁷¹ Australian Government the Treasury, 2018, *'Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review, Report and Recommendations'*, 45.

⁷² *Corporations Act 2001* (Cth) and *Taxation Administration Act 1953* (Cth)



F. Our public affairs, and education work

56. The charity sector can attract considerable media interest. Interest is heightened when there are concerns about the activities or governance of a particular charity, in times of natural disaster and for particular causes at key points. For example, our media release in response significant media coverage of the earthquakes in Türkiye and Syria (with a key message to be generous but check the Charity Register), led to widespread media coverage⁷³, with an estimated audience reach of approximately 1.1 million people and valued (if it were paid advertising) was approximately \$345,000.⁷⁴
57. Our educational role involves the publication of guidance; including factsheets (eg, engaging volunteers), guides (eg, 2022 Annual Information Statement Guide) and some template documents (eg, notice of annual general meeting) that are aimed at small charities. We publish information for the public (eg, donating and volunteering) and run webinars. Our ACNC website (of more than 990 webpages) had more than 14 million views over the period 1 June 21 – 30 July 22 (FY21-22), which has seen an increase of 7% year on year.⁷⁵
58. During the period 1 June 21 – 30 June 22 (FY21-22), our Executive and senior leadership team met with 178 charities, sector representatives and peak bodies. On-the-ground meetings provided us with additional valuable insights into the day-to-day issues affecting charities.⁷⁶
59. Where we consider guidance on a particular topic would assist charities to better understand risks or meet their obligations, we consider the most effective way of developing and sharing appropriate guidance. For example, we knew some charities were considering receiving donations of crypto-currency, but were uncertain of the risks involved, so we have published guidance on this topic and responded to media requests after the FTX collapse.⁷⁷
60. We issue a monthly newsletter that is sent approximately 60,000 subscribers (charities and individuals).⁷⁸ The newsletter includes the Commissioner's monthly column. We are active on social media (Facebook, Twitter, and LinkedIn). While we take steps to ensure that our material meets the accessibility guidelines, most of our material is published in

⁷³ ACNC Commissioner Sue Woodward AM was interviewed by several outlets including ABC TV News 24, ABC NewsRadio, SBS Turkish program, Radio 2GB News (commercial) and community radio The Wire. ABC grabs were used across ABC Radio News and programs and repeated on NewsRadio. The Wire grabs ran across more than 60 community radio stations.

⁷⁴ Isentia who conducts media monitoring for the ACNC estimates audience reach of approximately 1.1 million. This is likely to be an underestimate as calculating reach for some outlets can be difficult. The ASR (the value of air time/ column space if it were paid advertising) was estimated at approximately \$345,000.

⁷⁵ ACNC, Australian Charities and Not-for-profits Commission, 2022, *Annual Report 2021-22*.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ See: www.acnc.gov.au/media/news/acnc-10-years-reflections-commissioner-hon-dr-gary-johns (accessed on 28 April 2023).



English only, so may not be accessible to people who only speak languages other than English.

We have included this information as it provides a snapshot of the work we do to build trust and confidence in the charity sector, whether that be information for charities, the public, or donors and funders. While we do not have any specialist regulatory remit over charitable fundraising and do not set policy with respect to philanthropy, our core work (the Register, our media and education work and compliance, for example) supports a culture of giving.

G. Additional comments on giving

Giving: Fundraising

61. We welcomed the announcement that federal, State and Territory treasurers have agreed to a set of nationally consistent fundraising principles. A report we commissioned and published in 2014 highlighted charities' major concerns about the burden of red tape relating to fundraising regulation and recommended reform. We support understanding and compliance with fundraising laws by providing information and links on our website, which is often the place charities look to for information as they will not otherwise be aware that a State fair trading regulator is relevant to their activities.⁷⁹
62. The fundraising red tape reform has the potential to save Australia's charity sector millions of dollars each year and may also better address concerns of the public.
63. We also note that fundraising remains a concern to our Sector and Adviser forums. It has been raised at every forum held over the past 18 months, with questions about the harmonisation of fundraising principles and the timeline for implementation; divergent regulatory positions on giving platforms; and the regulation of raffles and lotteries (which are generally covered by gaming statutes and are directed at protecting the consumer as compared to fundraising regimes that are focused on who receives the funds).⁸⁰
64. Fundraising can also be a concern for us where it raises governance issues, for example, if there is a misuse of the funds (charities need to ensure they maintain their not-for-profit status and that their fundraising goes toward their charitable purpose, particularly if there is a commercial element involved). We regularly communicate with State and Territory regulators about fundraising (eg, as part of scheduled quarterly meetings or as required on specific matters).

This is relevant to Information request 6, *Unnecessary regulatory barriers to philanthropic giving*, specifically the benefits of reducing unnecessary regulatory restrictions and burdens, and inconsistent restrictions, emerging risks or regulatory gaps.

⁷⁹ See: www.acnc.gov.au/tools/factsheets/acnc-fundraising-hub (accessed on 28 April 2023).

⁸⁰ For example, the purpose of the *Fundraising Act 1988* (Vic) is to 'regulate the raising and application of money and other benefits ...'. The main objectives of the *Gambling Regulation Act 2003* (Vic) are to foster responsible gambling, minimise harm caused by problem gambling, accommodate those who gamble without harming themselves or others and to promote tourism, employment and economic development'.



Giving: Volunteering

65. The 9th edition of the Australian Charity Report will be published shortly. It provides a summary of data reported to us by 49,904 registered charities⁸¹ and this year's report has a spotlight on giving and philanthropy, drawing on data provided by Australia's grant making charities.
66. This year's Charity Report shows an increase in the total revenue, funding, and donations to the charity sector. The less positive news, given the linkages between donations and volunteering,⁸² is the report confirms the widely observed decline in Australian volunteering, with volunteer numbers dropping to 3.2 million from 3.4 million in 2020. The picture is more sobering when we look at the data from 2018, which shows a loss of more than half a million volunteers (595,000) over this period.

This is relevant to Information request 2, *Vehicles, trends and motivations for giving* and Information request 10, *Public strategies to increase the status of giving*.

Further discussions and questions

We look forward to working with the Productivity Commission as it carries out this important Inquiry. We also invite the Productivity Commission to participate in our annual Regulators Day on 28 July 2023, which we think is a good opportunity to meet with members of the charity sector, professional advisers and other regulators, who will have worthy contributions to make to this Inquiry.

[Redacted signature block]

Sincerely,

[Redacted signature block]

[Redacted line]

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⁸¹ The Charities Report is primarily based on the 49,904 charities that submitted a 2021 Annual Information Statement (AIS). This is a lower figure than the total number of charities as, in some situations, we allow a group of charities to submit a single AIS (for example, we had 295 Group 2021 AIS lodged on behalf of 1,462 charities) and some charities fail to comply with the AIS reporting requirement. Information on the total number of charities was based on 59,967 registered on 8 February 2023.

⁸² Data from the *Giving Australia 2016* (led by the Australian Centre for Philanthropy and Not-for-Profits Study at Queensland University of Technology) reports accessed at www.volunteeringaustralia.org (1 May 2023) with survey results finding 87.4% of volunteers in the Individual giving and volunteering survey were also donors.