



Australian Government



Australian
Charities and
Not-for-profits
Commission

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Submission to the Treasury Consultation on Registry Fees (November 2018)

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to Treasury's consultation on registry fees (**the Consultation**).
2. The ACNC has made submissions to previous Treasury consultations on the modernising business registers project, in September 2017, and August and October 2018. This submission builds on views expressed in earlier submissions, with a focus on the discussion paper published to guide the Consultation (**Paper**).

Summary of the ACNC's submission

3. The ACNC generally agrees that the principles of making fees simpler, easier to understand and more equitable are a good guide in reviewing registry fees. We also encourage Treasury to consider the benefits of making more information easily and freely available, consistent with the government's Open Data policy.
4. Registered charities do not pay registration or other fees to the ACNC. This was a principle at the establishment of the ACNC regime. It is a recognition of the role of charities in contributing to the Australian community on an altruistic basis. The ACNC recommends that in reviewing registry fees, Treasury adopt that principle and registered charities be exempt from fees that would otherwise apply to them.
5. The ACNC also recommends that information currently made freely available on public registries continues to be made available fee-free.
6. Finally, the ACNC would recommend Treasury ensure that government agencies relying on free access to registry information to perform a public purpose retain the same access rights, and be excluded from any infrastructure fee.

The ACNC's role

7. The ACNC was established on 3 December 2012 by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). The objects of the ACNC Act are to:



- maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
 - support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
 - promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.¹
8. Over 56,500 charities are regulated by the ACNC.² Australia's charities deliver services, make grants and perform a wide range of other activities to advance health, education, welfare, religious and other charitable causes. Charities range in size from extra small (less than \$50,000 – around 40% of all charities) to extra large with revenue over \$100 million (less than 1% of all charities). Half of charities have no paid staff, and the sector is supported by 2.9 million volunteers.³

Current position for charitable companies

9. A number of registered charities are also registered with the Australian Securities and Investments Commission (**ASIC**). The largest proportion of these are companies limited by guarantee (with many being special purpose not-for-profits), some are proprietary companies, and some are registerable Australian bodies.
10. Concern about fees being imposed on charities has been well canvassed in discussions of ASIC levies in the past, and effectively resolved by exemptions for registered charities. This has been an approach adopted by the government since the establishment of the ACNC. As stated at paragraph 1.58 of the Explanatory Memorandum to the ACNC Act:
- NFPs play a unique role in Australia, and as a result are funded by governments, both directly and indirectly, and by donations from members of the public. This unique role means that governments often afford them special treatment by way of exemptions, concessions and benefits from a range of laws and fees.
11. Section 111L of the *Corporations Act 2001* (Cth) (**Corporations Act**) currently exempts charities registered under the ACNC Act from a number of the reporting obligations of body corporates to ASIC, including the requirement to complete ASIC annual reviews.
12. As a consequence, companies registered under the ACNC Act do not pay any annual review fees or late lodgment fees. Charities are also exempt from paying the annual levy payable under *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* (Cth), Schedule 2.
13. The ACNC recommends that any reforms to registry fees should not increase the financial burden on registered charities, as:

¹ ACNC Act, section 15-5.

² See www.acnc.gov.au for the most up to date figure for registered charities.

³ 2016 Australian Charities Report – available [here](#).



- the imposition of fees would be disproportionate to ASIC's actual regulatory oversight of charitable entities, given that the ACNC is the primary regulator of charities; and
 - fees paid by registered charities reduce funds charities would otherwise put toward their charitable purpose(s) for the public benefit.
14. Even if section 111L of the Corporations Act is amended in future to reintroduce reporting obligations for charities to ASIC or an equivalent regulator, we would urge that consideration be given to exempting charities from reporting fees for the reasons set out in paragraph 12. Registered charities do not pay registration or other fees to the ACNC. We suggest that the potential adverse effects on registered charities be taken into account in decisions about registry fees, and that exemptions for registered charities be provided where appropriate.

Search and infrastructure fees

15. The ACNC is supportive of the goal of making data more accessible, and removing fees where there is no imposition on government to make electronic information available. We also therefore have concerns about the prospect of introducing an infrastructure fee, where the use of the registries is for a public purpose.
16. To obtain and verify information required to maintain the ACNC Charity Register, the ACNC currently regularly uses information available through both the Australian Business Register and registries managed by ASIC. The ACNC will also sometimes refer entities to publicly available parts of these registries while performing its role, such as the ASIC banned and disqualified register. The ACNC uses these resources to perform legislative functions for the benefit of the public.
17. The ACNC recommends that no fees be imposed to access information that is currently made publicly available for free. The ACNC also requests that government agencies retain the same free access to information through services such as MASCOT.
18. The ACNC strongly supports the principle, indicated in Appendix E of the Paper, that government agencies not be charged to access registry data.

Further Information

19. The ACNC can provide further information on any of the above, should this be useful to Treasury. Contact information is provided below.

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