

21 March 2021

Thresholds Working Group
C/- Not-for-profit Unit
Individuals and Indirect Tax Division
The Treasury

(submitted by email: Thresholds@treasury.gov.au)

Increasing financial reporting thresholds for ACNC-registered charities

Justice Connect welcomes the opportunity to respond to the Treasury's consultation paper, *Increasing financial reporting thresholds for ACNC-registered charities*.

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and achieve social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our community thrive.

We work to ensure people and organisations can access the right legal help at the right time, to avoid the negative impacts on their wellbeing or organisational health due to legal problems. We believe in a fair and just world, where communities are supported to engage with and fully participate in our legal system.

We have been serving the community for more than 25 years. We are a registered charity, operating nationally.

Our expertise – our Not-for-profit Law service

This submission draws on the experience of our specialist Not-for-profit Law service which provides free and low-cost legal assistance to not-for-profit community organisations and social enterprises, many of whom are registered charities.

In the 2019/2020 financial year, we assisted more than 1,600 not-for-profit groups. We help those involved in running not-for-profits and social enterprises navigate the full range of legal issues that arise during the lifecycle of their organisation, including charity registration and fundraising compliance.

The focus of our legal advice service (delivered by in-house lawyers and via pro bono referrals) is on **small volunteer-run not-for-profits** that would not otherwise be able to access this help. Many of these groups are in regional, rural or remote communities.

We also deliver training, with governance being our most popular module – in the last financial year we **delivered 123 sessions to 5,441 people**.

Many of our staff hold volunteer board and committee positions so have firsthand experience of the challenges of keeping up with compliance in resource constrained organisations.

Guiding principle: reporting schemes must be aligned as the highest priority

Justice Connect is pleased that the Council on Federated Financial Relations has recognised the importance of national harmonisation of the reporting requirements for charities. Charities structured as incorporated associations currently have duplicative reporting requirements in some jurisdictions.

In this submission we emphasise the following:

- 1. Before the current Commonwealth financial reporting thresholds are increased, there should be full alignment across all Australian governments** to ensure a ‘report once, use often’ approach. Once an entity is registered as charity it should only report to the ACNC, with the ACNC securely sharing data with other regulators.
- 2. A system should be set up to ensure that future changes to financial reporting thresholds are made in a way that supports ongoing alignment.**

We now comment on the consultation questions.

Question 1: suitability of the proposed new thresholds (levels and transparency)

We support the proposal to raise the reporting thresholds for ACNC-registered charities and see it as a positive step towards cutting red tape.

In our view the preferable threshold for large charities is \$5 million, but we accept the lower increase (to \$3 million) if this is a level agreed across all jurisdictions.

The higher threshold of \$5 million, as recommended by the ACNC Review Panel,¹ would provide better proportionality between charity size and the level of financial reporting. The gap between \$1 million and \$3 million is proportionately quite small – charities significantly smaller than us have the same reporting obligations as household names such as the University of New South Wales and World Vision.

¹ *Strengthening for purpose: Australian Charities and Not-for-Profits Commission Legislative Review 2018*, Recommendation 12, discussed on pp 51-58.

We support transparency and accountability which is why (with many others), we called for the establishment of the ACNC with its free, online register. The ACNC register should be the single source of truth for the public and other charity stakeholders.

For the ACNC register to reach this potential there needs to be reporting alignment across all jurisdictions; then will there be a single register for charities, with data shared securely by the ACNC with the states and territories. This is the most efficient and effective way to preserve regulatory and charity resources.

We support the current requirements for all charities to provide basic financial information in their ACNC Annual Information Statements, with the tiers of medium and large charities providing additional transparency. The need for transparency and accountability is why we have consistently called for the Basic Religious Charities (BRCs) exemption to be removed, so those BRCs that are medium or large have to provide the same transparency as other charities.

Finally, we note the purpose of the tiered thresholds (as articulated by the legislature) was to *minimise* the compliance burden placed on registered charities.² For comparison, in the 'for profit' (business) sector, the revenue threshold for 'large' proprietary companies is \$50 million which was doubled in 2019 from \$25 million.³

Question 2: alignment across jurisdictions

We repeat our guiding principle: it is crucial for the financial reporting thresholds to be aligned across all jurisdictions before they are increased.

For registered charities that are structured as incorporated associations, the current reporting framework is not fully aligned. As outlined in Attachment A to the Consultation Paper, several states and territories have their own thresholds for financial reporting that do not align with the current ACNC thresholds. For example, while a registered charity incorporated in Victoria will only need to report once to the ACNC, a charitable association incorporated in Queensland will need to report to the ACNC in one tier, and then again to the Queensland regulator in another tier.

Although the proposed threshold changes will benefit some charities (particularly those dropping from medium to small), in our view it would be easier for the vast majority of charities

² Revised Explanatory Memorandum to the Australian Charities and Not-for-profits Commission Bill 2012, paragraph 6.23.

³ <https://asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/are-you-a-large-or-small-proprietary-company/>

to wait for a fully aligned reporting system across all jurisdictions, rather than grappled with the introduction of successive changes and overlapping transition periods.

We note below a range matters that mean the actual number of charities benefitting from the thresholds changing is likely to be significantly less than the total number of possible charities that *could* benefit (as shown in Table 3 in the Consultation Paper), especially if there is no alignment:

- funding agreements often require audited figures as part of reporting and acquittal processes
- some charities have governing documents that require an audit
- some boards will want a review or audit as part of their financial stewardship despite the changes, and
- if any jurisdiction does not align, charities that report in that jurisdiction will need to continue to conduct a review or audit regardless of the ACNC changes.

Significantly, a fully aligned tiered reporting system is the foundation for a nationally consistent fundraising scheme. Red tape associated with inconsistent fundraising laws is the biggest red tape burden for the sector.⁴

In implementing these changes, it is also important to set up a system to ensure that future changes to the thresholds maintain alignment. **We recommend the establishment of an intergovernmental agreement to review the thresholds every two years.**

3. Lead in time for implementing change

As the thresholds are proposed to *increase* there is less imperative for a long lead-in time.

Charities that fall into a lower tier may want to immediately take advantage of the reduced reporting requirements. Others may prefer to wait until the next financial reporting period. As described above, some may still need to prepare audited financial accounts for other reasons.

We recommend that charities be given the option of reporting according to the requirements of their lower tier for the start of their next financial reporting period.

4. Reporting by non-ACNC registered incorporated associations

We recommend a consistent approach to financial reporting by not-for-profit incorporated associations.

⁴ <https://www.acnc.gov.au/tools/reports/cutting-red-tape-report> Deloitte Access Economics 2016

We consider the standards of accountability and transparency applicable to registered charities are also appropriate for incorporated associations of a similar size.

The harmonisation of reporting regulations across jurisdictions will ensure simpler financial reporting for incorporated associations. This red tape reduction will be a positive outcome, particularly for small associations.

A consistent approach to financial reporting is a precursor to the harmonisation of fundraising laws. The fundraising laws in some jurisdictions are broader in application than ACNC registered charities. Fundraising should have similar reporting requirements and levels of public accountability, regardless of the organisations legal structure.

We note that the ACNC Act envisages the ACNC will regulate not only charities, but a broader range of not-for-profit organisations, in particular those organisations that engage in public fundraising. The foundation is there.

5. Issues caused by differences in reporting thresholds

There should not be any differences in reporting thresholds for charity and non-charity incorporated associations. It is simpler for organisations to understand and comply with one set of requirements.

If the changes to reporting thresholds mean that ACNC-registered incorporated associations have somewhat reduced financial reporting obligations, then donors and members of the public can take comfort in the fact that the ACNC is a specialist regulator requiring charities to report on their activities annually and backed by governance standards. A harmonised fundraising scheme would also ensure that all registered charities are subject to a uniform set of conditions attached to their fundraising licence.

6. Other issues? Nexus between fundraising and financial reporting requirements

The nexus between fundraising and financial reporting requirements is crucial.

Fundraising is the biggest red tape burden for charities. If a charity wants to collect donations online, it must comply with seven different fundraising regimes as well as the Australian Consumer Law and local government by-laws. Over more than a decade we have seen the confusion and time wasted as a result of this incoherent regime.

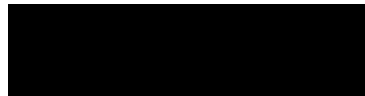
We are pleased that the Commonwealth, states and territories have committed to establish a national charitable fundraising scheme. It is important that this scheme, and the changes to the ACNC's financial reporting thresholds, are implemented in a way that embraces the 'report once, use often' approach.

We would be happy to discuss or expand on any of our comments. We agree to this submission being made public (with signature redacted).

Yours sincerely,



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