



Australian Government



Australian
Charities and
Not-for-profits
Commission

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Senate Standing Committee on Economics
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Canberra ACT 2600

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Submission to the Committee inquiry on the Commonwealth Registers Bill 2019 and 4 related bills

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to the Committee inquiry on the Commonwealth Registers Bill 2019 and 4 related bills (**the Consultation**).
2. The ACNC has made submissions to previous Treasury consultations related to the project of modernising the Commonwealth Registers. These submissions were lodged in September 2017, August 2018 and October 2018. This submission builds on those submissions.

Summary of the ACNC's submission

3. The ACNC supports the introduction of this reform to introduce a modern registry regime that is flexible and technologically neutral. We support the framework in the Commonwealth Registers Bill for the appointment of a registrar (or registrars) that would then set data standards and disclosure frameworks. The ACNC is also supportive of the concept of a Director Identification Number (**DIN**).
4. The ACNC currently uses information that is publicly available on Commonwealth registers in performing its regulatory role. Any reduction in the availability of such information as a result of the operation of this legislation would impact on the ability of the ACNC to effectively undertake its work, and should be guarded against.
5. The ACNC has some concern over the imposition of civil penalties and strict liability offences for directors of charities who fail to apply for a DIN.
6. The ACNC is encouraged by the prospect of consistent withholding of information across all government agencies as set out in clause 19 of the Commonwealth Registers Bill.
7. The ACNC appreciates the work that Treasury has undertaken to date to ensure that the legislation will not negatively impact the ACNC or the charity sector. As many of the operational aspects of the reform will be specified in legislative instruments, the ACNC would expect to continue to work closely with Treasury and the Registrar to ensure the relevant legislative instruments and business





procedures take into account the operational needs of the ACNC and the unique characteristics of the charity sector.

Ensuring ACNC can access information required to perform legislative functions

8. Under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**), the ACNC Commissioner is responsible for maintaining the ACNC Charity Register, which involves the following core functions:
 - determining, upon application, whether entities are entitled to registration as a charity;
 - assessing whether registered charities continue to meet the legislative requirements to be entitled to registration as a charity; and
 - receiving, reviewing and publishing information provided by registered charities.
9. In undertaking these functions, examples of relevant information required by the ACNC includes:
 - an entity's ABN, name(s) and legal structure;
 - details of an entity's registration with other regulators; and
 - the names of the entity's responsible persons (i.e. the persons responsible for the governance of the entity).
10. To obtain and verify information required to maintain the ACNC Charity Register, the ACNC currently regularly uses information available through the ABR 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.
11. The bills do not specify the information that will be recorded, or what will be publicly available from the Registrar.
12. The ACNC would therefore urge the Committee to recommend that the information the Registrar freely provides be at least equal to the information currently freely available on the registers that will be replaced. This will help ensure that the project does not create practical difficulties for the ACNC or charities in future.

Withholding provisions

13. The ACNC notes that clause 19 of the Commonwealth Registers Bill enables the Registrar to withhold information from disclosure should this be requested. The ACNC Commissioner may withhold or remove information from the Charity Register under s 40-10 of the ACNC Act. Currently, information withheld from the ACNC Register may nevertheless remain available on other government registers.
14. The ACNC is therefore encouraged by the ability of the Registrar to withhold information, as it creates the opportunity to align withholding of information across all government agencies.



Use of data standards and disclosure frameworks

15. Under the ACNC Act, the Commissioner is required to include a specific set of data items with respect to a registered charity on the Charity Register (see s 40-5 of the ACNC Act). The Commonwealth Registers Bill provides for data to be collected and displayed in accordance with data standards and disclosure frameworks which are legislative instruments. The ACNC notes that the Registrar or Registrars will be given more freedom to determine the types of information to be collected and displayed than the Commissioner has under the ACNC Act, and that this may lead to inconsistencies with respect to information available about entities that have the same legal structure, depending on whether the entity is a registered charity.

Director Identification Numbers and charities

16. The Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 sets out amendments that will provide the basic framework for the introduction of DINs for directors of all relevant entities. Once implemented, DINs would need to be obtained by directors of charities of the following entity types:
 - companies established under the Corporations Act;
 - Incorporated associations registered under section 601CA of the Corporations Act as a 'registered Australian body'; and
 - Indigenous companies registered under the CATSI Act.
17. The ACNC is supportive of requirements for directors to have a DIN. To ensure a seamless introduction of DINs, the ACNC suggests that ACNC registration and related arrangements are considered when making key decisions about the practical implementation of the DIN provisions.
18. Section 111L of the Corporations Act currently exempts registered charities from a number of the reporting obligations of body corporates to ASIC, including the requirement to notify ASIC of changes in directors or other officers.
19. Corporations Act entities (companies and registered Australian bodies) that are registered charities are only required to report changes to their responsible persons to the ACNC. Accordingly, it is optional for them to report changes in directors to ASIC. As a result, ASIC's records for some of these organisations are out of date.
20. Consideration will need to be given to how the requirement for all directors to have a DIN will interact with the current reporting obligations of registered charities. To properly implement the requirement, it may be that the Registrar will need to be notified of any changes to directors of a charity. Alternative arrangements may also require additional steps to be taken by the ACNC.

Penalties

21. The penalties for the failure of a director to obtain a DIN within 28 days of becoming required to have a DIN are contained in the proposed section 308-20 of



the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**CATSI Act**) (maximum 25 penalty units), and additions to Schedule 3 of the *Corporations Act 2001* (Cth) (**Corporations Act**) (maximum 60 penalty units).

22. The ACNC notes that 67% of charities are small (earning less than \$250,000 in revenue in a financial year), with 40% of charities being extra small (annual revenue less than \$50,000). While these figures are for all charities registered with the ACNC, and therefore not directly applicable to charities covered by the bill, the point remains that the majority of charities are small.
23. Further, most directors of companies that are registered charities are not remunerated for their role and commonly perform their duties in limited time around work and other commitments. Charities are often reliant on donations for their funding, and are frequently run by volunteers who are seeking the betterment of society. One-off volunteer directors of charities are not likely to be involved in phoenixing, but are more likely to be unaware of the requirement to obtain a DIN. Charities already face challenges in finding appropriately skilled personnel to volunteer as directors or in similar governance roles. The introduction of large penalties for failing to acquire a DIN within a specified timeframe may make it more difficult for charities to recruit directors and could adversely affect the governance of the sector.
24. The ACNC notes that the DIN amendments would allow the relevant Registrar to extend the application period beyond 28 days for certain classes of persons. The ACNC supports this approach and would suggest that directors of charities could be such a class of persons. In addition, the ACNC notes that persons who are directors at the time the requirement to have a DIN commences will be required to apply for a DIN within the period specified in a legislative instrument made by the Minister. The ACNC suggests that the transitional period for those who are solely directors of charities at that time be determined having regard to the matters referred to above.

Further Information

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

Contact:

[Redacted contact information]

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The Hon Dr Gary Johns
ACNC Commissioner