



Australian Government

OFFICIAL



Australian
Charities and
Not-for-profits
Commission

20 September 2022

Market Conduct Division
Treasury
Langton Crescent
PARKES
ACT 2600

Via email: mbcomms@treasury.gov.au

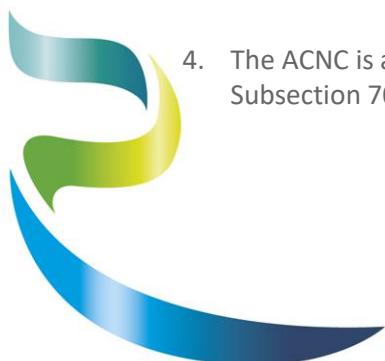
Our reference: ACNC SUB2022/11

**ACNC submission – Treasury Laws Amendment (Modernising Business Communications) Bill 2022:
Virtual Hearings and Examinations**

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the *Treasury Laws Amendment (Modernising Business Communications) Bill 2022 (Cth) (the Bill)*.
2. The Bill will amend relevant legislation to clarify that certain regulators within the Treasury portfolio may use technology to conduct hearings and examinations virtually. The changes will affect the: Australian Prudential Regulation Authority; Australian Securities and Investments Commission; Financial Services and Credit Panel; Companies Auditors Disciplinary Board; Australian Competition and Consumer Commission; Australian Energy Regulator; and the Tax Practitioners Board.

About the ACNC and the charity sector

3. The ACNC is 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.
4. The ACNC is an independent statutory body that also sits within the Treasury portfolio. Subsection 70-5(2)(b) of the ACNC Act gives the Commissioner the power to compel an entity to



GPO Box 5108 Melbourne VIC 3001
Tel 13 ACNC Fax 1300 232 569

OFFICIAL

acnc.gov.au



attend and give evidence, which may be considered analogous to the power of other regulators to conduct hearings and examinations.

5. The ACNC currently has oversight of around 60,000 registered charities. Depending on a charity's structure, location, and operations, it may also be accountable to other state, territory and Commonwealth regulators, including some of those mentioned at paragraph 2. Many registered charities also rely on the services of professional advisors (such as company auditors and tax practitioners) and indirectly benefit from the legislative frameworks covering those industries being both rigorous and efficient.

ACNC submission

Support for proposed change

6. As noted in the draft Explanatory Memorandum, COVID-19 and the associated restrictions on travel and social contact forced regulators and entities to adjust their practices so regulatory frameworks could continue to be administered fairly. In the ACNC's experience, there are sound reasons to maintain – and cement, by legislative amendment - some of the flexibility that regulators showed during the pandemic. There is an obvious efficiency dividend for businesses (including charities) to be able to interact with regulators virtually as much as possible, and there is no real loss to transparency or oversight in allowing such arrangements. Regulators may also benefit by being able to administer their legislation more efficiently.
7. The draft changes place the onus on the regulators to ensure that any technology used for a virtual hearing or examination allows the entity to participate fully in the proceedings and to be represented appropriately. This is an important condition, and charities, in particular, should not be compelled to use charitable resources to invest in technology solely to participate in hearings and examinations with a regulator.

Virtual hearings under the ACNC Act

8. The Bill does not propose any changes to the ACNC Act. In our view, there may be merit in a consistent approach across regulators within the Treasury portfolio. However, it is not critical that the proposed changes extend to the ACNC. The ACNC Act generally provides the ACNC with enough flexibility to achieve its regulatory objectives. Noting that the ACNC is based in Melbourne, and was itself subject to lengthy restrictions on movement and social contact, it has been able to fully administer the ACNC Act throughout the pandemic using mostly virtual alternatives, and expects to be able to continue to do so. The ACNC was committed to being a 'digital by default' agency before the pandemic.
9. On occasion, as part of its compliance activities, the ACNC may visit charity premises to further its investigations and may also ask (or, less commonly, compel under subs 70-5(2)(b)) charities to meet in person. However, the ACNC is usually able to conduct most of its business without compelling entities to attend in-person, and the ACNC expects to continue with that approach.

OFFICIAL



10. If you wish to discuss this submission, or have any queries, please contact Mitch Tucker, Policy Officer, at mitch.tucker@acnc.gov.au or on (03) 8632 4662.

A handwritten signature in black ink that reads "Anna Longley". The signature is written in a cursive style with a large loop at the end of the name.

Anna Longley
Assistant Commissioner General Counsel

OFFICIAL

acnc.gov.au