Australian Government

Australian Charities and Not-for-profits Commission

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Office of Regulatory Policy
Department of Justice and Attorney-General
Queensland Government

Via email: nfpconsultation@justice.qld.gov.au

Our reference: ACNCSUB2022/10

ACNC submission – Changes to the *Associations Incorporation Regulation 1999* (Qld) and *Collections Regulation 2008* (Qld)

The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on potential changes to the:

a. *Associations Incorporation Regulation 1999* (Qld) (**AI Regulation**) and
b. *Collections Regulation 2008* (Qld) (**Collections Regulation**).

We have limited our comments to the matters of direct relevance to our jurisdiction, but we are available to further discuss any potential changes, their impact on the charity sector, and our experience regulating a diverse sector.

About the ACNC and the charity sector

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.

Currently, the ACNC has regulatory oversight of around 60,000 registered charities. For the purposes of this submission, it should be noted that around 3,500 charities are incorporated associations in Queensland, and covered by the AI Regulation, and around 3,500 charities have informed the ACNC that they are registered in Queensland for the purposes of the Collections Regulation.

We also make this submission in the context of recent changes to Queensland regulations, which will reduce the administrative burden for around 5,000 charities by removing the requirement for them to report on their financial affairs to the Queensland Office of Fair Trading if they have complied with their ACNC reporting obligations.

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Part 1: Grievance procedures

General Comments

The ACNC supports the development of a default grievance procedure, to be contained in the model rules within the AI Regulation, which will apply to incorporated associations unless they have developed their own procedures and their own procedures conform to minimum standards.

The ACNC does not directly intervene or mediate to resolve internal disputes. We will only get involved in a charity's dispute if there is a serious risk to public trust and confidence. Therefore, useable guidance on grievance procedures is necessary for charities. Non-existent or inadequate grievance procedures can stymie the charitable work of charities, and, as your consultation paper notes, the alternative of seeking resolution through the Supreme Court is unsatisfactory in most cases.

Clause 16 of the template constitution that the ACNC provides for companies limited by guarantee sets out a grievance procedure that is fit-for-purpose in most cases. The Consultation Paper notes that whatever model rule is developed must be suitable for as wide a range of incorporated associations as possible.

Unlike clause 16 of the ACNC template constitution, section 47A of the *Associations Incorporations Act 1981* (Qld) does not explicitly mention director/director disputes (neither do the Western Australian or Victorian models referenced, for comparison purposes, in the Consultation Paper). Such disputes, of course, are also member/member disputes and ultimately captured by all of these examples. However, some organisations may be inclined to distinguish between ordinary members and directors in the management of disputes, and smaller entities may have fewer members who are not directors. The default procedure may be more suitable for more entities if it explicitly called out director/director disputes.

For more information about the ACNC's approach to dealing with internal disputes, see the Commissioner's Policy Statement (2017/01): ACNC's approach to internal disputes within charities and the ACNC website guidance on this topic.

Question 1: Where a person attempts to initiate the grievance procedure, but the management committee is aware of grounds for disciplinary action, should the management committee be required to decide whether or not to act on those grounds within a certain timeframe?

Where a grievance and potential disciplinary matter converge, and a management committee has not yet decided whether to start a disciplinary proceeding, we do not consider it unreasonable for model rules to set a time limit for a management committee to decide whether to initiate a disciplinary proceeding, so as to not unduly delay the commencement of the grievance procedure. Otherwise, there is a risk that legitimate grievances may go unaddressed.

Part 2: Reporting of remuneration and benefits

General comments

The ACNC generally supports transparency around payments that charities make to responsible persons and senior employees. However, such requirements should not impose a significant administrative burden on charities and must take into account genuine privacy concerns and the operational circumstances and limited resources of charities. We understand that charities will not be exempt from the Queensland requirements, even though large charities must already include key management personnel remuneration in their ACNC reporting.

The ACNC does not set thresholds for what is reasonable remuneration. We expect that charities should have a robust process for setting remuneration, and decisions should be free of conflicts of interest.

Question 1: Broadly, are there any other things that might be considered remuneration or benefits that are not listed above?

We recommend that the definition of remuneration be consistent with the definition of 'compensation' used in the Australian Accounting Standard Board's standard AASB 124. In our view, if different definitions are applied, associations may need to undertake further work and, potentially, make changes to their accounting systems and procedures so that the same substantive reports can be adjusted to reflect the different definitions. Using an alternative definition of remuneration could also result in discrepancies between the amounts reported in an association's financial reports (in accordance with accounting standards) and at an association's Annual General Meeting, which would cause confusion.

Where benefits other than salaries and superannuation are provided, they may be characterised as fringe benefits and should already be accounted for, with fringe benefits tax potentially payable.

Question 2: Are there considerations around any of the remuneration or particular benefits listed above (or any other benefits) that should prevent their disclosure?

Consideration may need to be given to if, and how, fees paid to a separate management entity for the provision of some management-type services will be captured. For example, an accounting firm may provide a Chief Financial Officer to an organisation on a temporary basis, and their specific remuneration package may not be known to the association. If the requirements of AASB 124 were observed, the disclosure of any fees paid to the separate management entity for the provision of those services would be included in reporting, rather than payments to the individual.

Question 3. Should disclosure of salary, wages, bonuses and allowances be on an aggregate basis or an individualised basis?

Large charities must report remuneration of key management personnel to the ACNC on an aggregated basis. It is not clear to the ACNC that the benefits of individualised reporting would outweigh the potential privacy cost to individuals, especially for smaller charities that do not already need to include remuneration details in their reporting to the ACNC.

We note that the Consultation Paper proposes including payment of salary/wages to relatives of committee members. Under AASB 124, such payments are categorised as related-party transactions and should be reported as such. While the amount paid is ultimately reported under either approach, you may prefer to align the regulations to the Australian Accounting Standards (AAS) for consistency.

Question 4. If aggregated, is there a view that bonuses and rewards should nevertheless be disclosed on an individualised basis given these are likely to be of significant interest to the association's members?

Including such reporting with remuneration reporting on an individualised basis will create additional privacy concerns. In our view, this is a further reason to prefer reporting on an aggregated basis.

Question 5. Are there any other options, or any other matters that should be taken into account when considering individualised or aggregated disclosure?

The ACNC's approach to aggregated reporting is to include the number of remunerated key management personnel alongside the total remuneration paid. This approach does not carry the privacy concerns of an individualised approach, but still allows users to draw a reasonable understanding of the organisation's key management personnel remuneration practices.

Question 6. Do you support the reporting of benefits in the individualised manner referred to above? If not, what other options might be considered?

This approach goes beyond Australian Accounting Standards and ACNC reporting requirements. Reporting of benefits in this manner would increase the administrative burden and may also increase audit costs for associations.

Question 7. Should there be a disclosure threshold for benefits, and if so, what should it be?

We support the inclusion of a reasonable threshold or, preferably, a materiality assessment, below which gifts and payments do not need to be reported on. In our view, requiring small charities and other associations to report on gifts of negligible value, which may be mere tokens of appreciation, would create a burden for those organisations that would be disproportionate to the benefits gained from reporting. We have no view on what an appropriate threshold would be, however the ACNC has published guidance for charities to help them determine whether related-party transactions are 'material' and so must be disclosed. The Consultation Paper raised the risk that individuals could exploit a threshold to secure a gift for themselves to the full value of the threshold, even where it is not warranted. In our view, that risk may be overstated if the threshold is set low enough that any gift or payment whose value did not exceed the threshold or materiality assessment would not, objectively, seem unreasonable.

Question 8: Is the proposed level of disclosure for related-party transactions appropriate?

The Consultation Paper correctly notes that all charities, regardless of size, will be required to report on related-party transactions to the ACNC from the 2022-23 financial year. After consultation with charities

and professional advisors, the ACNC developed simplified versions of the AASB 124 definitions of related-parties and related-party transactions for small charities that will be required to report related-party transactions from 1 July 2023. These simplified definitions were developed to reduce the administrative burden for smaller charities with limited access to professional advisors.

Section 70D(1) of the AI Act refers to "remuneration paid or other benefits given". As discussed in the Consultation Paper, clarity may be needed about whether this is meant to capture related-party transactions that may not provide a vendor with a net benefit, or could be described as a 'win/win'. Such transactions may still present concerns around probity and real or perceived conflicts of interest.

We suggest that any provision which requires an assessment of 'benefit' may be difficult for smaller associations with limited access to professional advisors to reliably comply with.

Question 9. Are there any other considerations that need to be taken into account? For example, could the value of such arrangements be considered commercial-in-confidence? If so, are there any circumstances where a related-party transaction could be disclosed without a dollar value, along with a declaration that the consideration paid by the association is equivalent fair market value for the service (or better than fair market value)?

Smaller associations without professional advisors will need support and guidance to help them understand, record and appropriately disclose related-party transactions. ACNC guidance on related-party transactions includes a template register of related-party transactions for small charities.

Question 10. Is it appropriate for associations to have the option of making the necessary disclosure either within their annual financial statement, or in a separate statement of remuneration and benefits?

It is noted that changes to the AI Regulation to give effect to section 70D of the *Associations Incorporation Act 1981* (Qld) will create a requirement for affected small and medium charities to report on remuneration and benefits in some form. To ease the administrative burden for charities, the ACNC prefers – as far as possible - consistent rules and practices across agencies that charities must interact with. In our view, there may be merit in exempting small and medium sized charities from the requirement to report on remuneration and benefits, which would align with the ACNC standard. However, we acknowledge there may be little appetite for such an exemption, and it would require changes to the AI Act. In that context, our preference is for a model that creates a low-imposition option for small and medium charities to meet the requirement, such as informing their Annual General Meeting of remuneration and benefits (this is less relevant for large charities, that already have an obligation to the ACNC).

Question 11. If the disclosure is made in a separate statement of remuneration and benefits, should the statement be subject to the same level of external professional verification (audit or review) that would apply to the association's financial report under the Associations Incorporation Act?

We consider it would be appropriate for the level of external professional verification of remuneration reporting to match the level that is required for an association's broader reporting, depending on its size. As long as the standards for reporting on remuneration and benefits match the Australian Accounting Standards, such an approach would generally limit the additional imposition on associations, especially those that are already required to submit an audited financial report.

Question 12. Should management committees be required to make a formal statement or declaration that no remuneration or benefits were received by or paid to the relevant persons?

It may be better to require associations to still report on remuneration and benefits to their Annual General Meeting in years where no such payments have been made. Such a requirement may encourage smaller charities to establish remuneration reporting as an annual routine and would help distinguish charities that have no remuneration to report from those that are non-compliant with their reporting obligations.

Question 13. Could the statement or declaration that no remuneration or benefits were received be given verbally at the AGM (and recorded in the minutes) – at least for small associations?

In our view, it should be sufficient for small associations to provide a verbal statement to their Annual General Meeting which is recorded in the minutes. Of course, a formal written statement would always be preferable.

Part 3: Thresholds

Question 1: Taking into account the information above, which revenue thresholds are most appropriate?

We have noted the possible issues with aligning the thresholds with the ACNC thresholds, as set out in the Consultation Paper. While the ACNC understands these arguments, we note that consistent thresholds will reduce confusion for associations and advisers, especially among not-for-profit incorporated associations, as well as simplify any communication to affected stakeholders.

Question 2: If your preferred option is option 1D or 1E, what information can you provide to assist in justifying the thresholds?

The recent changes to exempt registered charities from Queensland reporting requirements significantly eased the regulatory burden for those charities whilst maintaining sufficient transparency and probity. The eventual thresholds that apply will have little impact on most registered charities because of these exemptions and will mostly affect incorporated associations that are not charities.

However, we note that our thresholds align with the principle of proportionate regulation, and impose an administrative burden on small, medium, and large charities that is commensurate to their size and manageable for them. External audits can be costly, and, for smaller entities, the benefits of these audits do not always outweigh the costs.

We also note that not all registered charities that are incorporated associations in Queensland benefit from the exemption. The exemption is not available to a small number of charities that are included in group reporting to the ACNC or whose financial information is withheld from the ACNC charity register. These charities would benefit from consistent frameworks. Not-for-profit incorporated associations that are not registered charities also do not benefit from the exemption.

We note the Australian Accounting Standards Board's current project to develop a new reporting framework for all not-for-profit (NFP) private sector entities in Australia. The new framework may include an additional reporting tier for smaller not-for-profits with simplified recognition and measurement requirements. This potential new reporting framework would, ideally, be applied consistently across different regulators to ensure entities of similar sizes and complexity are treated comparably.

Question 3: Which approach to asset thresholds is preferred?

We do not express a view on which approach would be most appropriate for the wide spectrum of incorporated associations in Queensland. For the charity sector, we highlight the observation that was made at page 56 in the final report of the review of the ACNC's legislation in 2018: "basing thresholds on assets would create costs for registered entities, particularly small registered entities, by requiring the valuation of assets in accordance with accounting standards. This would be inconsistent with reducing the regulatory burden for the sector". We note that the Consultation Paper does not consider the option of a framework without assets thresholds, and that non-current assets - which are most likely to be difficult for associations to accurately value - are excluded from the Queensland framework.

Question 4: Should all entities who request funds from the public for charitable or community purposes in Queensland be subject to an audit requirement, or should an audit threshold apply?

While the Consultation Paper correctly notes that registered charities are now exempt from reporting under the Collections Act, the requirements imposed on registered fundraising organisations are of interest to the ACNC and charity sector, given charities may work closely with, and rely on, such organisations.

In our view it is not unreasonable to require all registered fundraising organisations to submit to a level of transparency by annually submitting financial information. We note that with registered charities, the principle of proportionate regulation applies when determining the required level of financial information, and we consider that a requirement to submit an audited annual financial report could be excessive for smaller organisations.

The ACNC reporting framework has a proportionate approach to assurance by providing for the alternative option of a review rather than an audit for medium sized charities.

Question 5: If an audit threshold should apply, what should the threshold be?

A common view within the charity and not-for-profit sector is that fundraising frameworks should be harmonised across jurisdictions. The ACNC supports work that will achieve greater consistency. We do not have a view on which jurisdiction's approach is preferred, but we note the advantages of the states and territories aligning with each other as far as possible. We also note that the threshold should be high enough to avoid creating an unreasonable burden for small organisations, and, in our view, subjecting all entities to an audit requirement would be unreasonable for small organisations.

Question 6: Is it necessary to prescribe specific financial documents that must be retained by incorporated associations and Collections Act organisations, given the broad requirement for those entities to keep financial records that correctly record and explain transactions, etc.?

It may be more effective to set a broad requirement, or a general standard, and develop guidance for organisations covered by the AI Act and/or Collections Act. This approach would better reflect the diversity of organisations; as a regulator, our expectations of the precise type of records that a charity will retain vary depending on several factors, including the charity's size, history, rules, and the nature of its operations (COVID 19, for example, highlighted the risk that external factors may prevent well-governed organisations from complying with some prescriptive rules and technical requirements).

Question 7: Does prescribing specific documents assist relevant entities to ensure compliance with the requirement to retain financial records that correctly record and explain transactions, etc.?

In our view, tailored guidance that sets out how an association may comply with a broad requirement may be more beneficial, as it can be adapted to suit the association's circumstances. Such guidance should be drafted in a way that ensures it is useful for smaller associations with limited access to lawyers and professional advisers.

Question 8: Using the above as a starting point, do the lists of prescribed documents require any adjustments?

The ACNC provides no comment.

Question 9: Noting that the list of prescribed documents will apply to all incorporated associations and all Collections Act entities, does any requirement create an unnecessary burden in terms of national harmonisation?

We support drafting any provisions that prescribe documents in light of analogous provisions in other states and territories. We also note the risk that the list of prescribed documents may be drafted in a way that is ambiguous or confusing for organisations, or where terms can be defined in a way that reporting creates an unreasonable administrative burden for associations.

Next steps

If you have queries about this submission, please contact John Aitkin, Red Tape Reduction Manager, at redtapereduction@acnc.gov.au or on (03) 8632 4729.

Regards,

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Australian Charities and Not-for-profits Commission