

28 February 2018

Mr Murray Crowe
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ACNCReview@treasury.gov.au

Dear Mr Crowe

Review of Australian Charities and Not-for-profits Commission (ACNC) legislation

The Australasian Council of Auditors-General (ACAG) welcomes the opportunity to comment on the review of the operation of the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (ACNC (C&T) Act) (collectively known as the ACNC legislation). The views expressed in this submission represent those of all Australian members of ACAG.

ACAG supports the review of the ACNC legislation to ensure the regulatory environment continues to be relevant and achieves its objects.

ACAG's comments are primarily in the context of the audit and reporting requirements of public sector entities registered with the ACNC.

ACAG appreciates the opportunity to comment and trust that you will find the attached comments useful.

Yours sincerely



Andrew Greaves
Chairman
ACAG Financial Reporting and Accounting Committee

Issues and recommendations for the Review Panel's consideration

Independence declarations

ACAG recommends the requirement for auditors to provide ACNC registered entities with an independence declaration in accordance with section 60-40 of the ACNC Act be reconsidered.

During 2016, Australian Auditing Standard ASA 700 'Forming an Opinion and Reporting on a Financial Report', was revised to require the auditor¹ to assert independence with the audited entity in accordance with relevant ethical requirements, and compliance with other responsibilities in accordance with those requirements. These requirements include a specific reference to APES 110 'Code of Ethics for Professional Accountants', the standard required under the ACNC Act, and appear to result in the same words used in the auditor's report as that used in the ACNC independence declaration.

ACAG believes the requirements in ASA 700 satisfy the requirements in section 60-40 of the ACNC Act and providing an additional independence declaration is an unnecessary duplication of effort.

Definition of auditor in the ACNC Act

ACAG recommends greater clarity, or legislative amendments be made, to ensure that the definition of 'auditor' in section 60-30 of the ACNC Act includes delegates of the Commonwealth, States and Territories' Auditors-General.

The definition of 'auditor' in section 60-30 of the ACNC Act refers to a 'registered company auditor' in the *Corporations Act 2001* (Corporations Act). Under section 1281 of the Corporations Act:

- an Auditor-General is considered to be a registered company auditor
- a person the Auditor-General delegates the function/power of conducting an audit is taken to be a registered company auditor for the purposes of applying Chapter 2M to the audit.

ACAG considers that clarity on the 'auditor' definition is needed because of diversity of views as to whether the delegation process is appropriate, including:

- (a) if a person is ordinarily a delegate for conducting audits under the Corporations Act 2001, whether they meet the requirements under section 60-30 for being a 'registered company auditor'
- (b) if the charity is not audited under the Corporations Act 2001, whether the delegate would meet the requirements under section 60-30 for being a 'registered company auditor'.

ACAG believes that the delegation process available under Chapter 2M of the Corporations Act should be available under the ACNC Act.

¹ ASA 700 paragraph AUS 28.1(c)

"Includes a statement that the auditor is independent of the entity in accordance with the relevant ethical requirements relating to the audit, and has fulfilled the auditor's other ethical requirements relating to the audit, and has fulfilled the auditor's other ethical responsibilities in accordance with these requirements. The statement shall identify the relevant ethical requirements applicable within Australia".

Auditor's and Reviewer's report on the annual financial report

ACAG recommends sections 60-45(3)(b) and 60-50(3)(b)² of the ACNC Act be amended to confine the requirement to only 'material deficiencies, failures or shortcomings'.

ACAG is of the view the requirement to 'describe any deficiency, failure or shortcoming' regardless of materiality is:

- onerous for auditors
- inconsistent with the concept of materiality in the financial reporting framework
- may be misleading to users of financial reports and disproportionately impact on a registered entity's reputation.

Continuation of transitional reporting arrangements for ACNC registered entities

ACAG recommends greater clarity be provided as to whether the transitional reporting arrangements in section 10 of Part 4 in Schedule 1 of the ACNC (Consequential & Transitional) Regulations will continue to apply for 2017-18³ years and going forward.

Use of transitional reporting arrangement for ACNC registered entities audited by Auditors-General

ACAG notes apparent diversity in how jurisdictions implement the transitional reporting requirements.

Under section 10 of ACNC (C&T) Act the transitional provisions operate if a financial report is given under an Australian law to an Australian government agency (other than the ACNC). There are diverse views as to whether the tabling of those reports with the applicable parliament meets that requirement.

There is already a robust reporting framework in place for public sector entities such as educational organisations, hospitals, cultural institutions, and indigenous bodies; where they are required to submit financial statements and/or annual reports to Parliament and have them audited annually by an Auditor-General of either the Commonwealth, State or Territory. ACAG believes imposing additional requirements on these entities to produce the Annual Information Statements or annual financial reports in accordance with the ACNC Act, in addition to their existing obligations, would not provide increased benefits to the regulator.

² Sections 60-45(3)(b) and 60-50(3)(b) require auditors and reviewers reports to describe any deficiency, failure or shortcoming in respect of the following matters:

- whether the auditor/reviewer has been given all information explanation and assistance necessary for the conduct of the audit/review
- whether the registered entity has kept financial records sufficient to enable a financial report to be prepared and audited/reviewed
- whether the registered entity has kept other records as required by Part 3-2.

³ The Australian Charities and Not-for-profits Commission (Consequential and Transitional) Regulation 2016 extended the transitional reporting provisions up to and including the 2016-17 financial year.

To that end, ACAG recommends relief be provided in the ACNC legislation to allow a statement, report or other document given under an Australian law to an Australian government or government agency by a registered entity as being an Annual Information Statement or an annual financial report. Clarification that this relief includes public sector entities that submit their financial statements/annual reports to Parliament and audited by an Auditor-General or their delegate would be highly beneficial.

Public sector entities registered with the ACNC

ACAG notes that numerous public sector entities are registered with the ACNC, yet the current definition of charities excludes government entities as defined in the Charities Act 2013. ACAG also notes the ACNC Commissioner's Interpretation Statement: Meaning of 'Government Entity' to assist public sector entities determine whether or not they are a government entity.

When the ACNC was first established, those entities on the Australian Tax Office's Deductible Gift Recipient listing were automatically given ACNC registration. In line with the review of the 'government entity' definition and application, ACAG recommends the appropriateness of public sector entities' registration be reassessed, given the duplication of accountability mechanisms for these entities.

ACAG recommends a review of the framework for registering public sector entities with the ACNC and whether the definition of 'government entity' in the Charities Act 2013 is appropriate for entities currently registered and those seeking to register.