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## **SUBMISSION TO THE CONSULTATION ON MODERNISING BUSINESS REGISTRY SERVICES**

The Australian Charities and Not-for-profits Commission (ACNC) welcomes the opportunity to provide a submission to the consultation on modernising business registry services. This submission outlines the role of the ACNC and the ACNC's responses to the consultation questions relevant to the ACNC.

### **Summary of the ACNC's submission**

The ACNC supports measures to modernise the Australian Business Register (ABR) and the 31 identified registers operated by the Australian Securities and Investments Commission (ASIC)<sup>1</sup> (collectively, the Key Business Registers), provided these measures are complementary to the existing framework more recently put in place to reduce the regulatory burden on charities.

The ACNC operates the ACNC Register which contains information on charities registered with the ACNC under the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) (ACNC Act). The ACNC Register was created with the intention of reducing the regulatory burden on charities, by being a single repository of information for charities, where charities could easily update their details, and the ACNC would be the single point of contact. The ACNC is very active in working with other regulators to continue to clear administrative hurdles for charities, such as bringing an end to duplicative reporting requirements.

The charity and not-for-profit (NFP) sector satisfy their on-going regulatory obligations by using a number of business registry services at the commonwealth, state and territory level. The ACNC receives a large volume of feedback from the sector in relation to business registry services. Most commonly, charities state that the data across registers is inaccurate and inconsistent, that it is difficult to gain access to registers to update records, and that charities are not given enough assistance from relevant government agencies when using the registers.

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<sup>1</sup> Listed in Appendix B of the Discussion Paper 'Modernising Business Registry Services'.



## The ACNC's role

The ACNC was established on 3 December 2012 by the ACNC Act. The objects of the ACNC Act are to:

- maintain, protect and enhance public trust and confidence in the Australian NFP sector;
- support and sustain a robust, vibrant, independent and innovative Australian NFP sector; and
- promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.

The charity and NFP sector is estimated to comprise some 600,000 organisations.<sup>2</sup> While only just over 55,000<sup>3</sup> of these organisations are regulated by the ACNC, the ACNC also seeks to support the NFP sector at large, where appropriate.

Charities registered with the ACNC are responsible for 8.3 % of Australia's GDP.<sup>4</sup> Charities registered with the ACNC employ over 1.2 million Australians, and have nearly 3 million volunteers.<sup>5</sup> The income of Australia's registered charities in 2015 exceeded \$134 billion, and grew by 2% from the previous year.<sup>6</sup> The sector makes an invaluable contribution to our community, providing vital services, engaging volunteer effort, and helping beneficiaries all over Australia and overseas.

The ACNC Register contains the most accurate data available to the public on registered charities. Among other things, a registered entity's name, contact details, Australian Business Number (ABN), charity type, date of registration and its governing rules are displayed on the ACNC Register. In addition to submitting information when applying to register, charities are also generally required to submit Annual Information Statements and financial reports (with some exceptions)<sup>7</sup> and to update the ACNC of certain changes within specified time limits.

The data on the ACNC Register is also available at [data.gov.au](http://data.gov.au)<sup>8</sup> and in the Charities Passport (operated by the ACNC).<sup>9</sup> Currently, twenty government agencies access data

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<sup>2</sup> Productivity Commission (2010), *Contribution of the Not-for-Profit Sector*, Research Report, Canberra. While it is difficult to accurately estimate, as no records are kept of incorporated associations, the ACNC thinks the figures is closer to half of this estimate.

<sup>3</sup> As of 31 August 2017. See [www.acnc.gov.au](http://www.acnc.gov.au) for the most up to date figure for registered charities.

<sup>4</sup> See ABS (2016a) *Australian National Accounts: National Income, Expenditure and Product, June 2016*, Cat. No. 5206.0, Table 1, Key National Accounts Aggregates. Figure A.1 shows the charity sector's income and expenditure in relation to other industries.

<sup>5</sup> Cortis, N., Young, A., Powell, A., Reeve, R., Simnett, R., Ho, K., and Ramia, I. (2016) *Australian Charities Report 2015*. Centre for Social Impact and Social Policy Research Centre, UNSW Australia, 10.

<sup>6</sup> Ibid.

<sup>7</sup> Certain charities are exempt from this requirement, see generally *Australian Charities and Not-for-profits Commission Act 2012* (Cth) Division 60.

<sup>8</sup> This is a site that provides the public with an easy way to find, access and reuse datasets from the government.

<sup>9</sup> The ACNC Charity Passport enables authorised government agencies to access ACNC charity data via a file transfer protocol process and was designed for the purpose of reducing red tape for charities.



through the Charity Passport, reducing the need for charities to provide their information multiple times.

The ACNC currently uses the Key Business Registers, in particular the ABR and ASIC registers 1, 2, 4, 12, 15 and 27,<sup>10</sup> in performing its role under the ACNC Act.

- The ACNC has an active Memorandum of Understanding with the ABR and provides regular updates to the ABR identifying changes to charity registration status. The ABR also has access to the ACNC Charity Passport.
- The ACNC has an active Memorandum of Understanding with ASIC and provides regular updates to ASIC identifying changes to charity registration status. Due to limited resources, ASIC is unable to update its records to incorporate these changes.

### **Business registry services and the NFP sector**

Registered charities need to register and access the following business registers to update their records and meet their on-going regulatory obligations:

- Charities must apply for an ABN with the Registrar of the ABR and have the ABN appear on the ABR. To be registered under the ACNC Act, availing the charity to certain Commonwealth exemptions and concessions, a charity must have an ABN.<sup>11</sup>
- Bodies corporate must apply for registration on the Companies Register with ASIC. There are currently approximately 7,000 registered charities on the Companies Register.<sup>12</sup>
- Charities other than bodies corporate, such as co-operatives, incorporated associations and fundraisers, must satisfy the requirements of relevant state and territory regulators. Relevant charities' details appear on the relevant state and territory registers. In 2017 there were 156,000 state and territory regulated NFP incorporated associations.<sup>13</sup>
- Charities other than bodies corporate, which carry on a business, must also apply to ASIC to have their name registered and placed on the Business Names Register.<sup>14</sup>

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<sup>10</sup> Listed in Appendix B of the Discussion Paper 'Modernising Business Registry Services'.

<sup>11</sup> *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 25-5(3)(c).

<sup>12</sup> Based on the ACNC's internal records.

<sup>13</sup> ACNC-AUSTRAC, *Australia's non-profit organisation sector: money laundering and terrorism financing risk assessment* (28 August 2017) [www.acnc.gov.au](http://www.acnc.gov.au) p 28.

<sup>14</sup> *Business Names Registration Act 2011* (Cth) s 23.



- Charities other than bodies corporate, which do not carry on a business, are required to satisfy the regulatory requirements in the relevant state and territory, in relation to the use of names.
- Charities that are registered as Aboriginal and Torres Strait Islander corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) are regulated by the Office of the Registrar of Indigenous Corporations (ORIC). Relevant charities' details appear on the ORIC register.<sup>15</sup>

## **Modernising Key Business Registry Services – responses to consultation questions**

### **1. What do you see as the main strengths with existing business registry services? How does this support your business?**

The use of business registry services is critical to charities meeting their regulatory obligations. For example, a charity can only be registered under the ACNC Act if it has an ABN on the ABR. We use the ABN as a unique identifier in our systems.

The availability of data online assists the ACNC in performing its role under the ACNC Act, and promotes trust and confidence in the charity and NFP sector.<sup>16</sup>

### **2. What do you see as the main weaknesses with existing business registry services? Does this significantly impact on your business (e.g. time or costs)?**

A number of weaknesses with existing business registry services significantly impact the ACNC in performing its role and create unnecessary red tape for charities.

- There is a lack of consistency between business registers in relation to the processes for accessing and updating data. Currently, a charity needs to separately register for access to each of the registers and there are different definitions of who can register for access to each register, complicating the process for charities. For example, responsible persons<sup>17</sup> are given access to the ACNC register while access to the ABR is given to an authorised representative.<sup>18</sup>
- While charities are required to update certain details on the ABR, charities often abandon any attempt, because of the difficulties associated with accessing and updating the Register.

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<sup>15</sup> ORIC and the ACNC are working together to reduce the regulatory burden on these charities, for example, annual reports lodged with ORIC will satisfy the corporation's reporting obligations with the ACNC.

<sup>16</sup> The availability of data online is also consistent with the Australian Government Public Data Policy dated 7 December 2015.

<sup>17</sup> *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 300-5 'Responsible Entity'.

<sup>18</sup> *A New Tax System (Australian Business Number) Act 1999* (Cth) s 10A.



- There is no requirement for charities registered with the ACNC to update their details with ASIC.<sup>19</sup> This has led to data on ASIC registers being out-of-date and inconsistent with the data on the ACNC Register, in the Charity Passport and at data.gov.au.<sup>20</sup> One of the problems resulting from ASIC registers holding outdated data is that this outdated information is sold to third parties, such as banks. This causes significant problems for charities, as banks use the outdated information to assess applications for finance, among other things.<sup>21</sup>
- The 'entity type' recorded on the ABR does not always accurately reflect the legal structure of an entity. An 'incorporated association' and a 'non-distributing co-operative' would each be recorded as 'other incorporated entity' on the ABR.<sup>22</sup> Entity type 'other incorporated entity' is also often incorrectly selected by organisations when registering for an ABN or changing legal structure. This causes problems for the ACNC given we use the ABN as a unique identifier for charities. If the data is insufficient or inconsistent, the ACNC has to direct more of its resources into finding and examining other sources of data.
- Generally, charities are advised to obtain a new ABN when they change their legal structure (depending on the change of legal structure). This can lead to charities having multiple ABNs. When a charity has multiple ABNs it makes it more difficult for the ACNC to determine a charity's registration status and the ACNC has to undertake further enquiries. Not being able to identify a charity with certainty also makes it difficult for the public to know which charity they are donating to and can lead to a loss of trust and confidence in the sector.
- Commencing 1 November 2018, the Registrar of the ABR will no longer have an obligation to publicly display business names on the ABR.<sup>23</sup> Some charities are only distinguishable by their business name. For example, branches of a religious charity often have the same legal name and are only identifiable by their business name. As detailed in the point above, it makes it difficult for the ACNC and the public at large, when a charity is not able to be easily identified with certainty.
- There is a lack of consistency between registers in relation to the withholding of information. For example, charities registered with the ACNC may apply to the ACNC to have information withheld from the ACNC Register on certain

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<sup>19</sup>It should be noted, registered charities that are bodies corporate are still required to notify ASIC when under external administration or when deregistering, among other things.

<sup>20</sup> The ACNC Charity Passport and data.gov.au includes data from the ACNC Register and therefore, the data on ASIC registers is also often inconsistent with data from these sources.

<sup>21</sup> In the 2014-15 financial year, the ACNC received 748 complaints from charities in relation to inconsistent data on the ACNC Charity Register including banks relying on out-of-date information on ASIC registers, see ACNC Annual Report 2014-15, p 36.

<sup>22</sup> Currently, the ACNC asks charities for this information directly but does not display this information publicly on the ACNC Charity Register.

<sup>23</sup> *A New Tax System (Australian Business Number) Regulations 1999* (Cth) reg 8.



grounds.<sup>24</sup> Information on the Business Names Register may be withheld on a different set of grounds.<sup>25</sup> This makes it complex for charities to request the withholding of information across the business registers, because charities have to apply a different set of rules for each register. It is also possible that information withheld on one register is not withheld on another, potentially undermining the protections otherwise afforded to charities under these rules.

### **3. What would you like modernised business registry services to deliver for you in the future? How would you prioritise these?**

The ACNC has the following suggestions for modernising Key Business Registers:

- The prompt correction of out-of-date and inconsistent data. The intention behind the introduction of the ACNC Register was to provide a single point of contact for registered charities. Accordingly, data on the ACNC Register should be used to update data on the other business registers in relation to registered charities. The preference would be to update the data through automated systems based on defined business rules, and common data definitions, supported by routine audits against all registers.
- Joined-up services which are easily accessible to charities so that they can update their records on the Key Business Registers.
- IT infrastructure, systems and/or data transfer arrangements that allow data on ASIC registers and the ABR to be regularly updated when a charity updates the same data on the ACNC register.
- The rules regarding access should be more consistent across registers, so that it is easier for the same person to register and gain access to all relevant business registers.
- Greater consistency across business registers in relation to the withholding of information from business registers. The legislation and guidelines on withholding information should be consistent across registers and information withheld on one register should also be withheld on the other registers.
- Continued collection and publication of more detailed data, such as legal structures and business names.
- Registered charities should be able to register and access business registers at no cost.

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<sup>24</sup> *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) Subdivision 40-B.

<sup>25</sup> *Business Names Registration Regulations 2011* (Cth) reg 10(2).





- 4. What would be the advantages of bringing together the ASIC registers and the ABR within a single agency? How might these impact businesses, intermediaries or other users? Do you have concerns about a single agency being responsible for consolidated registry services?**

The ACNC would only support bringing together the Key Business Registers within a single agency, if significant improvements were made to ensure existing services were more easily accessible to charities. Feedback received by the ACNC indicates that charities experience significant difficulties using existing business registers.

- 5. Do you see other opportunities to reduce duplication of business registers and associated services across government?**

Where there is duplication of data, updating data on registered charities based on the data on the ACNC Register would ensure consistency.

- 6. What advantages or disadvantages would there be in a consolidated set of business data, for example in accessing data, updating business information, data confidentiality?**

A consolidated set of business data should reduce inconsistency and duplication of data and streamline reporting obligations for charities. This would benefit charities by allowing them to focus more resources on pursuing charitable purposes.

- 7. Would more open and accessible registry data benefit business and/or the wider economy? How/why?**

The charity sector has a considerable and growing impact on the Australian economy and is one of the country's largest employers. More open and accessible business registers would reduce red tape for charities and allow the sector to continue to expand. Open and accessible registry data would also help to promote public trust and confidence in the sector.

- 8. Do you have a view on the steps the Government could take to make registry data more open and accessible? For example, do you have a view on the format of data, frequency of data released, platforms for release, or pricing?**

Charities registered with the ACNC should be able to register with, and access business registry services, free of charge.

- 9. Is there business data that would be useful to collect in a modernised registry service, but currently is not being collected or published? Do you have concerns about the publication of certain data?**

As detailed in response to consultation question 2, including more detailed data on legal structures and continuing to display business names in the Key Business Registers would assist the ACNC in performing its role, and provide the public with greater transparency in relation to the sector.



**10. Is there any information currently collected by the Commonwealth that is, in your view, redundant?**

The ACNC has no comment in response to this consultation question.

**11. Information confidentiality and security is paramount. Do you have a view on how security should be maintained, and/or how users can be empowered to manage permissions relating to their data held in registers?**

The ACNC has no comment in response to this consultation question.

**12. What are the implications for business of changes to the way registers are currently delivered? For example, the cost of updating systems, products, or changes to any customer services?**

The ACNC has no comment in response to this consultation question.

**13. We understand any changes may impact your business and sufficient lead time will be required. How would you like to be involved in any future changes?**

The ACNC must be included in all future discussions in relation to any proposed changes to the business registers. As already detailed in this submission, any changes to the business registers would significantly impact the charity and NFP sector and change the way the ACNC operated.

**14. How long would parallel services (new and old) be required for you to transition your software and customers?**

The ACNC has no comment in response to this consultation question.

## **Conclusion**

The ACNC supports measures to modernise and simplify Key Business Registers, provided these measures are complementary to the existing framework put in place to reduce red tape for charities, such as the ACNC Register and the Charity Passport.

Improvements to the Key Business Registers should include making the rules around access, updating records and withholding information, more consistent across registers. Registered charities should be able to easily access registers to update their records free of charge. Inaccurate data in the Key Business Registers ought to be updated based on the data available in the ACNC Register. Data in relation to business names ought to continue to be collected and published and more detailed data in relation to legal structure should be published on the business registers.

The ACNC must be involved in all future discussions regarding changes to business registry services, given the impact these changes would have on the ACNC's operations, registered charities and the NFP sector. The ACNC is well placed to provide useful insights, based on its experiences with the ACNC Register, the Charities Passport,





data.gov.au and its data sharing arrangements with other regulators, which could assist with the design and implementation of any new measures.

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