



Law Council
OF AUSTRALIA

Legal Practice Section

31 August 2020

Australian Charities and Not for Profits Commission
CANBERRA ACT 2600

By email: reporting@acnc.gov.au

Dear Sir/Madam

ACNC'S BEST PRACTICE GUIDE FOR FINANCIAL REPORT DISCLOSURES

1. The Charities and Not for Profits Committee of the Law Council of Australia's Legal Practice Section (**the Committee**)¹ welcomes the opportunity to make a submission to in relation to the Australian Charities and Not for Profits Commission's (**ACNC**) best practice guide for financial report disclosures.

Overall comments

Lack of comparability

2. The proposed additional reporting sought by the ACNC, particularly that focussed on disclosures about government funding, goes beyond what parliament has decided needs to be reported by charities. The additional information can, therefore, only be sought on a voluntary basis (as is acknowledged by the ACNC). The proposed reporting also goes beyond what the Australian Accounting Standards Board (**AASB**) currently requires in its (complex) reporting requirements.
3. **For these reasons (the voluntary nature of the disclosures and their addition beyond current AASB standards), the additional reporting will exacerbate, not improve, the current inconsistencies in disclosure. In turn, this exacerbates the risk of inaccurately comparing data between charities. Therefore, the proposal will not, in the Committee's view, address the reasons given for its introduction and should not proceed.**
4. Under *Who will benefit?* (table on page 2 of the Consultation Paper), it is stated that "Comparable disclosures will lead to a 'level playing field'". The Committee finds this statement confusing. As this additional financial reporting will not be mandatory, and the playing field will not 'be level' as some (possibly most) charities will not be on it. Funders and donors may be confused by having more information about some charities than others.

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

An increased burden

5. It is important to understand the broader context for any additional, even voluntary, reporting obligations.
6. **There are a series of significant further disclosures that will be required if the ACNC's legislation and regulations are amended in line with the Government's response to the ACNC Review Panel Report, making any (voluntary) reporting on government funding as 'but one of many' extra disclosures.**
7. The other disclosures include revenue, expenses, related party transactions and reserves. The need for these disclosures were highlighted in the ACNC Review Panel Report; a Report that flowed from an extensive submission and consultation process. The Review Panel did not highlight any concern or need for extra disclosure about government funding.

There is already disclosure and the ability to seek more detailed information

8. **There is already a clear (graphical) representation about the overall amount of government funding received by each ACNC registered charity.** This allows donors and funders to see at a glance the funding mix.
9. It is not clear why more detail is needed. If any funder or donor wants more information, they may find it in other documents such as the charity's annual report. Funders and donors can ask for extra detail they need – the charity will then have a clear understanding of why and what extra information is needed (and an incentive to provide it).
10. There are already government funding record-keeping platforms that ensure government knows who it is funding and for what. In line with a 'report once - use often' policy (consistent with the ACNC's third statutory objective, 'promote the reduction of unnecessary regulatory obligations on the sector'), it is the Committee's opinion that the case for reporting this same information more than once is not made out in the consultation document.
11. When coming to complete the 2020 Annual Information Statement (**AIS**), charities will need to decide what, if any, additional financial information they will provide. Many will be concerned about how potential government, philanthropic funders and public donors will interpret their provision of additional, more detailed information. Or how will the failure to provide this additional voluntary information may be interpreted.

Improved charity regulation?

12. It is stated in the *Who will benefit?* (table, page 2 of the Consultation Paper) that this proposed measure will "improve charity regulation". However, the ACNC has not provided information about what use it will make of this additional information if it is provided.
13. **If the regulator intends to make use of the information, it is important in this consultation to understand that purpose.**
14. In relation to the National Standard Chart of Accounts, not all charities use it (it is voluntary) so relying on an assumption that there will be minimal additional resources needed to comply with this is incorrect.

Government contract accountability

15. Charities are contracted to provide a range of welfare, housing, medical, legal, aged care and other services that government either cannot or does not provide. There are many reasons why that is the case. Government funding is invariably the subject of detailed agreement with the charity about the nature and scope of services, KPIs and with reporting and financial acquittal requirements.
16. Governments have sufficient accountability via their own funding contracts. **There is no indication that government funders will reduce their reporting requirements because they will be able to access more information via ACNC data. The ACNC reporting will be an additional impost.**

Greater regard needs to be had to ACNC statutory object 3

17. The third object of the ACNC Act is to 'promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.' The legislation contains a series of legislative requirements that a charity must meet in order to be registered and in order to maintain its registration. The current AIS financial reporting enables the ACNC to produce a pie chart breaking down income received by charities by source and is prominently displayed on the charity's entry on the register.
18. The current financial requirements include annual financial reporting, which for medium charities must be reviewed or audited and for large charities, must be audited. Additional reporting is proposed, which may be quite detailed, for charities receiving government funding from multiple sources.
19. It is noted that regarding reporting requirements, the Revised Explanatory Memorandum for the ACNC Bill stated:

6.6 The proposed framework will strike a balance between minimising the compliance burden placed on registered entities, while ensuring appropriate accountability and transparency.
20. Rather than meeting the object of reducing regulatory obligations, the proposed reporting will require charities to consider whether any additional reporting should be provided. Without having established the regulatory need, what is proposed will increase the burden (even just the time spent deciding if and what to disclose voluntarily). Charities will have to bear the cost of doing so during a time when, for many, there is higher demand for services and declining fundraising revenue.

Rationale provided to establish need for proposed changes

21. The Consultation Paper gives examples of a lack of consistency of detail, but the Committee remains unclear about why this is a serious or significant problem and given that adding voluntary and varying degrees of detail will not solve this problem. The AIS gives total government revenue which is adapted into a pie chart for each charity on its registration page and enables 'apples to be compared with apples' at the macro level. The Committee also notes:
 - Governments already have access to information about funds received by charities and do not need to have the information provided here too. The information of Commonwealth Government grants is already available a searchable internet database. It can be searched by charity recipient here:

<https://www.grants.gov.au/?event=public.GA.list>. It is also available for state governments, for example here: <https://www.vic.gov.au/grants>.

- In the Background section (page 1, Consultation Paper), reference is made to 'regular media reports' on charities lacking transparency on government funding, but no references or examples are provided. After seeking clarification from the ACNC and examining some of the media reports relied upon, it was found they related to increased transparency in a general way and did not establish a need for increased financial reporting of government funding.
- Paragraph 6 (page 1, Consultation document) refers to the *AASB Staff FAQ – Accounting for Government Support as a guide*. While these FAQs promote clear and tailored disclosure for not-for-profits, similar to for-profit (business) entities, they do not specifically suggest disclosure of funding from each level of government, department or agency. It is unclear how this reference provides guidance on this proposal.

Response to the proposals 1-4 set out in the Consultation Paper (table pages 4-5 and to the specific feedback questions on page 3)

Proposal 1: (and specific question 5a)

22. The disclosures will not provide increased transparency. The assumption made is that all charities will provide the information proposed to be sought; as a voluntary disclosure, this assumption is not valid.
23. **Disclosing the level of government and the name of the government department does not identify what the funding was for.** There is no proposed differentiation between the different types of government revenue (fee for services compared with grants, for example). One department may provide different types of revenue to different charities (or even to one charity) and a single line will not differentiate this.
24. **Would the revenue be reported on a cash basis or an accrual basis?** Some grants are paid in advance, some in arrears and these can cover across multiple reporting periods. If this is not clarified there would be inconsistent reporting with some charities using the cash basis and others using the accrual basis for the disclosure amounts.
25. **Question 5 a. ii.** The information sought will not always be readily available. Providing additional information on each level of government from each department/ agency, especially for charities that run multiple programs, may well be a considerable impost. Much government funding is annual, some does not neatly align with financial years and may require reporting across several years. Would variations need to be reported including, for example, significant variations that have occurred during the COVID-19 crisis? This will increase the burden of work on charity financial management teams to produce this information.
26. **Question 5 a. iii.** It is not clear that charities and their auditors have the skills to implement this. **It could be particularly difficult for the large number of small/ volunteer-run charities with volunteer auditors.** As a result, there will not be full take up of the disclosures and there will not be a level playing field.

Proposal 2:

27. It is unclear how a charity could comply with this disclosure.
28. For example, how would a charity know who are “government funded beneficiaries” for their revenue disclosures. Would a list of potential beneficiaries be provided to ensure consistency? It will be a significant additional impost on charities to identify, track and record this as it would not currently be recorded in a finance system. How would a charity know whether to include their revenue in this disclosure as they do not usually have that level of information about organisations they are invoicing? A charity’s invoicing is related to the services provided by the charity, but this disclosure requires the charity to know about the remainder of the other organisation’s revenue base (which would not be known).
29. **There would be very few, if any, charities who could easily meet this disclosure.**
30. Reporting on funding received for the provision of goods and services to beneficiaries is already a matter on which the charity will have reported extensively to the government funder. It is not sufficiently clear how it is proposed this would be reported to the ACNC. If it requires anything more than a very high-level overview, it would be resource intensive; an unreasonable additional burden for which charities would receive no assistance (funding to cover staff time, for example).

Proposal 3:

31. **Charity boards and management already have to consider the degree of reliance on government funding and their continuation as a going concern as part of their ongoing governance and disclose this in their Annual Financial Statements.**
32. A charity may have very good reasons for not wanting to provide information in a public forum. For example, a charity that has one main government funding source would need to disclose this which could potentially put it at a disadvantage if others do not disclose this. **Some government funding may even be ‘commercial in confidence’.**
33. In the paper, the ACNC relies on only one sector peak body, Australian Council for International Development (**ACFID**) which works with a small number of specialist aid charities operating overseas. The nature of the funding base and the nature of the work of its members, explain the need for ACFID’s (sector-based) Code of Conduct and related increased transparency and reporting. This specialist sub-sector is very different to the full breadth of the ACNC charity base – for example, small volunteer run peer support groups. **There needs to be consultation with other sector peak bodies.**
34. If the 2020 twin crises of bushfires and COVID-19 have taught us all anything, it is that we cannot make assumptions about the services that will be required, and how charities may need to adapt their service provision quickly. Also, about how charities may seek additional funding to meet sudden increases in demand, and how governments may be seeking urgent assistance from charities to meet this demand.

Proposal 4:

35. Where funding is provided for a longer period, and crises or other unforeseen events have interrupted the flow of planned work, charities are not always able to meet expected KPIs. In such a case, this may not come across in the reporting.
36. Multi-year funding agreements will have work programs over the relevant period, in which case funding is provided in tranches, not all at once and hence this proposal would not be relevant.
37. The introduction of general purpose financial statements may well meet the charity's obligations here. Adding a line to the cash flow statement will not provide information about future performance obligations, just a dollar value of those obligations. The value is also reflected on the balance sheet in a 'Grants in Advance liability' so this requirement will not provide increased transparency.

Proposal 5:

38. In relation to Proposal 5(b), the Committee would welcome confirmation from the ACNC that it will consult on each of the proposed new pieces of guidance and not rely on responses to this short question and limited consultation with no further information.
39. The Committee would welcome the opportunity to discuss this submission with the ACNC. In the first instance, please contact Charities and Not for Profits Chair, Jennifer Batrouney QC at jennifer_batrouney@vicbar.com.au

Yours sincerely



Michael Tidball
Chief Executive Officer