

28 February 2018

Our ref WD NFP

Principal Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ACNCReview@treasury.gov.au

Dear Principal Advisor

Review of the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*

Thank you for the opportunity to provide comments on the review of the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (**ACNC Legislation Review**).

Queensland Law Society appreciates the opportunity to participate in this important process.

This response has been compiled with the assistance of the Not for Profit Law Committee who have substantial expertise in this area.

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise government on improvements to laws affecting Queenslanders.

Our policy committees and working groups are the engine rooms for our advocacy to government. QLS, in carrying out its central ethos of advocating for good law and good lawyers, endeavours to ensure that its committees and working groups comprise members across a range of professional backgrounds and expertise. In doing so, QLS achieves its objective of proffering views which are truly representative of the legal profession on key issues affecting practitioners in Queensland and the industries in which they practise.

In preparing this submission, QLS has had the benefit of reading the submission of the Law Council of Australia and supports and endorses that submission.

Review of the Australian Charities and Not-for-profits Commission Act 2012 and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012

QLS has also considered the submission made by the Australian Charities and Not-for-profits Commission (**ACNC**) to the ACNC Legislation Review.

The **enclosed** submission:

- Considers the questions posed in the Terms of Reference for the ACNC Legislation Review;
- Considers the recommendations made by the ACNC in its submission and comments on those submissions where relevant; and
- Sets out the QLS submissions and comments in response to both the questions and the ACNC recommendations.

If you have any queries regarding the enclosed submission, please do not hesitate to contact our Acting Principal Policy Solicitor, Wendy Devine on (07) 3842 5896 or by email W.Devine@qls.com.au.

Yours faithfully


Ken Taylor
President

Enclosure

ACNC Terms of Reference	ACNC submission- relevant discussion / recommendations	QLS submission and comments
Introduction and support for LCA Submission		The Society has had the benefit of reading the submission of the Law Council of Australia and supports and endorses that submission.
Queensland Law Society – further submissions		<p>Submission 1: We recommend that the term "Responsible Entity" where it appears in the governance standards be avoided. It is a term which causes confusion in the community. It would be better to simply use a term such as "officer", "responsible officer" or "director".</p> <p>Submission 2: As our earlier comments indicate, we are firmly of the view that the objects of the ACNC are best and most efficiently achieved through education and training to achieve compliant regulatory behaviour, including behavioural nudging. As noted earlier, consideration should be given to refocusing the education initiatives of the ACNC in its second 5 years of tenure on compliance, with a view to applying the savings achieved from that re-focus to funding objects (b) and (c) of the ACNC Act. This is the role that needs to be supported with appropriate resourcing. If resources are limited, then an appropriate methodology might well be outsourcing educational activities, other than those directed at compliant regulatory behaviour, to independent service providers with appropriate skills in relevant areas.</p> <p>Submission 3: We recommend a policy of the ACNC being funded to run test cases to bring clarity to aspects of the law relevant to the functions of the ACNC in a similar way to the ATO.</p> <p>Submission 4: We recommend further review of the ACNC Act in 5 years.</p> <p>Submission 5 We recommend that the references to all "charitable purposes" in the ACNC legislation should be set out in full or should specifically cross-refer to the complete definitions of these purposes as set out in the <i>Charities Act 2013</i>. For example, section 25-5(5) of the ACNC Act refers to the words "advancing health" with a reference to section 12(1) of the <i>Charities Act 2013</i>, but the complete definition is much more</p>

		<p>extensive than the words “advancing health”. Ensuring that there is clear consistency between the two Acts will avoid any confusion of the scope of the ACNC provisions.</p> <p>Submission 6 Subdivision 60F of the ACNC Act should be clarified in relation to a financial year being longer or shorter than 12 months, to allow movement to a substituted accounting period, or return to a regular financial year. It is recommended that this provision be changed to reflect the approach in the <i>Corporations Act 2001</i> definition of “financial year” and in particular, the flexible approach in section 323D of the <i>Corporations Act 2001</i> which requires the first financial year for a company, registered scheme or disclosing entity (an entity) to start on the day of its registration. The first financial year may last for 12 months or a period, no longer than 18 months, determined by the directors (section 323D(1)).</p>
<p>1. Are the objects of the ACNC Act still contemporary?</p>	<p>Recommendation 2 (pages 21-22):</p> <p>Consider adding the following objects in s15-5 of the ACNC Act:</p> <p>(a) To promote the effective use of the resources of not-for-profit entities; and</p> <p>(b) To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public.</p>	<p>The original objects should remain, however the second and third objects should be appropriately funded and legislative provisions added to allow the ACNC to achieve these objects. An example to enhance red tape reduction and harmonisation would be the creation of a state and territory advisory group consisting of officers responsible for fundraising and incorporated association regulation as well as the Attorney General. The AG is important as they have the <i>parens patriae</i> common law jurisdiction.</p> <p>The ACNC additional objects are not supported. A regulator should do no more education in the sector than is necessary to achieve compliant regulatory behaviour. Consideration should be given to refocusing the education initiatives of the ACNC in its second 5 years of tenure on compliance, with a view to applying the savings achieved from that re-focus to funding objects (b) and (c) of the ACNC Act.</p> <p>A potential source of funding for the resources required to effectively implement objects (b) and (c) would be to direct the newly introduced ASIC levy to the ACNC, where the levy is collected from public companies limited by guarantee that are charities. This levy has been introduced by the <i>ASIC Supervisory Cost Recovery Levy Act 2017</i> (Cth) and the <i>ASIC Supervisory Cost Recovery Levy Regulations 2017</i> (Cth).</p>

		<p>In relation to the suggested additional objectives: Efficiency is a matter for the governance of organisations and a regulator should only intervene when there is a default. The sector rather than government should be responsible for sector governance capacity building as this enhances the independence of the sector, one of its hallmarks. In any case measuring efficiency is a disputed activity with questions of efficient/effective for whom? And agreement of measures is required to be settled and accepted. AASB accounting standards would need to be reformed if this object was to be successfully implemented. These issues are discussed in further detail in:</p> <ul style="list-style-type: none"> • McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) <i>Defining and Accounting for Fundraising Income and Expenses</i>, (The Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology and assisted by Chartered Accountants Australia and New Zealand, through its Academic Research Grant Scheme) (available at https://eprints.qut.edu.au/73420/8/73420%2830-7-14%29.pdf) ; • Flack, Ted, McGregor-Lowndes, Myles, Marsden, Stephen J., & Poole, Glenn (2014) Go your own way: reporting of fundraising in Australian charity financial statements. <i>Third Sector Review</i>, 20(2), pp. 9-25 (available at: https://eprints.qut.edu.au/81344/10/81344.pdf) <p>The second suggested objective is encompassed in the first objective.</p> <p>QLS also suggests that section 15-10 of the ACNC Act be relocated to Chapter 4 of the ACNC Act (“Regulatory powers of the ACNC Commissioner”) rather than in Part 1-2 “Objects of this Act”. QLS also notes that the principles outlined in section 15-10(e) of the ACNC Act are not defined in the ACNC Act. QLS suggests that the definitions of these principles in the <i>Tertiary Education Quality and Standards Agency Act 2011</i> could provide guidance for appropriate definitions of the principles in section 15-10(e) of the ACNC Act. Defining these principles will provide guidance to the sector on the interpretation and application of the ACNC Act.</p>
<p>2. Are there gaps in the current regulatory framework that prevent the</p>		<p>Yes.</p> <ol style="list-style-type: none"> 1. Fundraising & charity gaming is State based and inconsistent giving rise to paperwork burden and patchy enforcement and compliance. There is a great need for the harmonisation of fundraising laws.

<p>objects of the Act being met?</p>		<p>The recent CAANZ review of the Australian Consumer Law led to publication of A Guide to the Australian Consumer Law (ACL) for Fundraising & Other Activities of Charities, Not-for-profits and Fundraisers (Guide). The Guide demonstrates the broad application of the ACL to fundraising. However, the ACL does not necessarily do away with some of the unique challenges of charitable fundraising. A single regulatory body as recently suggested by the Inquiry into the NSW RSL may be an appropriate solution. We recommend that a task force representative of all States be charged with responsibility for developing a working framework for a single regulatory body controlling charitable fundraising. It may be that this could be the ACCC and Offices of Fair Trading under the Consumer Law.</p> <p>2. Incorporated associations should remain with the State jurisdictions, but there should be co ordination with the ACNC in relation to opportunity to cut the paper work burden through one point of truth register of details and returns. Another area that needs to be considered is the interaction between the duties of officeholders under State-based incorporation legislation and ACNC governance standards. Appropriate harmonisation between the two on the assumption that State-based incorporated association legislation will continue needs to be addressed.</p> <p>3. The intersection of companies and the ACNC is not clear because of drafting oversights and requires attention. There are two issues, one being the co operation between the two agencies (ASIC and ACNC) over integrating databases and administrative matters and the second is technical drafting issues of turning off Corporations Law provisions. In this regard, it is noted that the ASIC Register of charity information has been out of date for a number of years. ASIC continues to register and wind up charitable companies (such as companies limited by guarantee, which comprise 10% of registered charities), but otherwise, these entities now report to the ACNC and their up-to-date data is on the ACNC Charity Register. The lack of alignment between the two registers causes significant practical and administrative challenges for registered charities and this needs to be addressed. As noted in the 2014-2015 ACNC Annual Report (page 36), this out of date information has particularly affected charities in their interactions with banks and financial services providers. A further practical challenge is that the New Zealand Companies Register relies on ASIC's company director information. For Australian companies limited by guarantee</p>
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<p>3. Should the regulatory framework be extended beyond just registered charities to cover other classes of not-for-profits?</p>		<p>This should be considered on a regulatory risk basis irrespective of NFP structure; we do not recommend that it apply to all not-for-profits. The test for regulation of not-for-profits should be one based around size rather than just tax status or entity type working on the theory that it is better to have a proportionate response to a potential issue. It may require consideration of the referral of powers. The risks to be considered are use of non-charity NFPs in disguise as "charities" to avoid the higher standards of an ACNC charity, tax abusive behaviour which can be cured by greater barrier to entry that the ACNC provides or on going supervision through regular reporting and audit. Consideration should be given to shifting the tax concession endorsement power from the ATO to the ACNC (as suggested in the 2010 Productivity Commission Report) on the basis that such a move:</p> <ul style="list-style-type: none"> • Would reduce the regulatory overlap between the ATO and the ACNC (e.g. section 50-50(2) of ITAA 1997); AND • Create a greater nexus between the taxation power and the regulation of charities (potentially too tax-exempt NFPs which are not corporations). <p>The tax concession issues moving to the ACNC would also provide a basis for then moving the balance of tax exempt NFPs into the remit of the ACNC (regardless of size).</p>
<p>4. What activities or behaviours by charities and not-for-profits have the greatest ability to erode public trust and confidence in the sector?</p>		<ol style="list-style-type: none"> 1. Departure from high standards of governance and maintenance of fiduciary duties by governors of charities and not-for-profits. 2. Inappropriate fundraising and charitable gaming behaviours which are out of step with current community attitudes.

<p>5. Is there sufficient transparency to inform the ACNC and the public more broadly that funds are being used for the purpose they are being given?</p>	<p>Recommendation 4 (pages 25-26) Amend s 40-5 of the ACNC Act and s 40.1 of the ACNC Regulation (as appropriate) to include the additional data items described in paragraph 4.5.</p>	<p>R4: Agree. We strongly support inclusion on the register of historical data such as terms of appointment etc (along with a copy of Compliance Agreement if applicable). Publishing the mission statement of a charity may not be helpful and in fact leads to confusion. The constitution which should articulate the formal objects of the entity is already available on the register, so this is duplication. As many recent cases have shown the determination of the actual charitable objects of an entity is a task of holistic consideration of a number of matters. For unsophisticated smaller charities, their mission statement may only serve to confuse or require expensive legal consideration to be accurate.</p>
	<p>Recommendation 5 (pages 26-27): Amend s 40-5 of the ACNC Act to give the Commissioner a discretion to: (a) extract information from a registered charity's AIS and display it on the face of the Register entry for the charity; and (b) display information on the Register in text or in a graphical format.</p> <p>Recommendation 6 (pages 27-28): Consider amending the ACNC Act to authorise the Commissioner to collect and display on the Register information provided voluntarily by a registered charity for that purpose where the information would assist the public to understand the structure, operations or impact of the registered charity.</p>	<p>R5: We do not agree that the Commissioner should have the discretion as to what to extract from a registered charity's AIS. If there is to be a discretion, then the basis for it should be specified in any amendment to section 40-5. Giving the Commissioner a discretion has the potential to allow him or her to target particular types of information or charity sub-types from time to time. Any discretion could be reflective of current sensitive issues which are not necessarily in the best interests of the charity. We also refer to the academic discussion noted in our response to Question 1 above, in relation to the lack of standardised financial reporting which makes any attempt to compare financial or fundraising information across different charities ineffective as different metrics are used from organisation to organisation.</p> <p>R6 Agree, may be beneficial for large religious groups, but should be voluntary. This will however lead to inconsistencies in the Register. The voluntary disclosure should therefore be in a clearly identified separate section.</p>
<p>6. Have the risks of misconduct by charities and not-for-profits, or those that work with them, been appropriately addressed by the ACNC legislation and</p>		<p>The establishment of the ACNC has significantly addressed the risks of charity misconduct evident before its inception on any measure. There are some areas where the ACNC lacks power and influence to mitigate risks effectively. These are:</p> <ol style="list-style-type: none"> 1. Fundraising abuse 2. Attorneys General failing to act in their jurisdiction in appropriate ways, particularly when charities are referred to them by the ACNC for investigation.

<p>the establishment of the ACNC?</p>		
<p>7. Are the powers of the ACNC commissioner the right powers to address the risk of misconduct by charities and not-for-profits, or those that work with them, so as to maintain the public's trust and confidence? Is greater transparency required and would additional powers be appropriate?</p>	<p>Recommendation 10 (pages 36-27) Amend the ACNC Act to give the Commissioner a discretion to publish the reasons for decision on an application for registration where the Commissioner considers that it would be in the public interest to do so.</p> <p>Recommendation 11 (page 38): Amend s 40-5 of the ACNC Act to provide that the ACNC Register is to include the grounds under s 35-10(1) on which a decision to revoke a charity is based, and a summary of the reasons for revocation.</p> <p>Recommendation 12 (pages 38-39) Amend Subdivision 150-C of the ACNC Act to provide that ACNC officers are authorised to disclose protected ACNC information for the purpose of making a public comment or publishing information about the Commissioner's regulatory activities when it is in the public interest to do so. Specifically, this may include confirming that an investigation has been commenced, disclosing action that the ACNC has taken or is proposing to take in relation to a registered charity or a responsible person and disclosing a regulatory outcome (e.g. that the ACNC and a registered charity have entered into a compliance agreement or that the ACNC has provided regulatory guidance to a registered charity).</p> <p>See also Recommendations 13, 14 and 15 (pages 39-41)</p>	<p>R10: Agree, provided that due regard is paid to the notion that there are no bad charities, just bad people who control them. Any such publication should be de identified.</p> <p>R:11 Agree that transparency is warranted, but note R10, it is not the charity that is bad, but its operators. Charity assets should be protected at all times and if charity status is revoked, then Attorneys General must play their part in the regulatory schema or reform should be made to give the ACNC remit to intervene.</p> <p>R12: Agree, but with reservations. The reservation is that announcing an investigation which later turns out to be of no moment can adversely affect the reputation of a charity both in the short and long term. There needs to be appropriate checks and balances on the discretion of the Commissioner in making such an announcement. Charities or NFPs can also be defamed and the risk of litigation may need to be considered.</p>
<p>8. Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further</p>	<p>Recommendation 13 (pages 39-40) Amend subdivision 150-C – Authorised Disclosures of the ACNC Act to include a provision that expressly authorises ACNC officers to disclose protected ACNC information in bulk to an Australian government agency if the disclosure is reasonably necessary:</p>	<p>The ACNC has made remarkable progress in reducing the paperwork burden given:</p> <ol style="list-style-type: none"> 1. Lack of specific funding to achieve this object 2. Lack of tools to achieve outcomes 3. A perceived lack of political will to support the ACNC generally and specifically in relation to the Charity Passport. <p>Opportunities exist to bring all states on line with harmonised reporting and a single register of truth, and fundraising harmonisation.</p>

<p>reduce regulatory burden?</p>	<p>(a) to enable data-matching, analysis or research for the purpose of assisting that agency or another Australian government agency to carry out its law enforcement or investigatory functions or activities or for the purpose of assisting the ACNC to carry out its functions; or (b) to enable the implementation of arrangements between the ACNC and other government agencies for the purpose of reducing regulatory duplication.</p> <p>Recommendation 14 (pages 39-41) Amend s 150-30 of the ACNC Act by replacing 'under this Act' with 'in the performance of his or her duties as an ACNC officer'.</p> <p>Recommendation 15 (pages 39-41) Amend s 150-50 of the ACNC Act by removing the requirement that the disclosure be for the purposes of the ACNC Act.</p> <p>Recommendations 20-28 Re reporting requirements and reducing regulatory burden-discussed in detail from pages 48-57) (not reproduced here)</p>	<p>Opportunities exist for all government agencies in Australia to adopt the charity passport and the National Standard Chart of Accounts for grant acquittal. Massive opportunities exist for the implementation of Standard Business reporting for charities in acquitting the data requirements all government departments.</p> <p>R13-15: Agree, with usual checks and balance.</p> <p>R20-28: Agree. And in respect of R22 remove the discretion of the Commissioner to reduce administrative burden. See item 8.25, 8.26 of the ACNC submission. The Charity Passport should be mandated in any Commonwealth Government grant protocols and state governments should consider following this practice.</p> <p>We refer to our observations above concerning the need for 'fit for purpose' NFP accounting standards.</p>
<p>9. Has the ACNC legislation and efforts of the ACNC over the first five years struck the right balance between supporting charities to do the right thing and deterring or dealing with misconduct?</p>	<p>See Recommendation 13 , 14 and 15 (pages 39-41)</p>	<p>The ACNC as a new regulator has performed well above expectations. Of particular note is its creation and adoption of a public regulatory strategy and approach which has served it well. Its use of behavioural nudging to improve compliance is leading other charity regulators and other agencies, nationally and internationally.</p> <p>See Charity Regulation: The Inside Story for further evidence and international assessment of its performance. https://www.routledge.com/Regulating-Charities-The-Inside-Story/McGregor-Lowndes-Wyatt/p/book/9781138680548</p> <p>Regulators mature and their regulatory environment alters and thus its balance between activities will as well.</p>
<p>10. Other.</p>	<p>Recommendation 1 (pages 15-16): Consider whether measures could be introduced at the Commonwealth level to protect a charity's accumulated charitable income and assets after its ACNC registration has been revoked.</p>	<p>R1: Agree, this may involve an extension of the reach of the legislation constitutionally. An obligation to engage A-Gs is required.</p>

	<p>Recommendation 3 (pages 23-24) Consider whether a statutory definition of 'not-for-profit' should be introduced for the purposes of the ACNC Act and the Charities Act.</p> <p>Recommendation 7 (pages 29-32) Consider whether the ACNC Act should be amended to require registered charities, other than trusts and BRCs, to have a minimum number of three responsible persons, and at least two responsible persons who ordinarily reside in Australia, with the Commissioner having the power to exempt entities should there be special circumstances where different governance arrangements are appropriate.</p> <p>Recommendation 8 (pages 32-33) Amend the ACNC Act to expressly authorise the Commissioner to collect: (a) the personal details (as defined in the Corporations Act) of responsible persons at the point of registration and to require registered charities to provide the personal details of a person who becomes a responsible person after registration; and (b) information about the involvement of a responsible person in unlawful activity (including that a responsible person has been convicted of a criminal offence) from a person other than the responsible person where the collection of the information is reasonably necessary for the purposes of determining whether an entity is entitled to be registered as a charity or for the purposes of determining whether a registered charity has contravened the Act or failed to comply with the governance standards or the external conduct standards.</p> <p>Recommendation 9 (pages 33-35) Amend s 45.20(3) of the ACNC Regulation to include the following suitability conditions to be a responsible person:</p>	<p>R3: A definition of not-for-profit which was widely accepted for all federal legislation without unintended consequences would be beneficial in the administration of the ACNC and other acts. Previous failed bills which have included such a definition have been defective, so care is needed in its drafting. We recommend that a separate issues paper and consultation occur before the introduction of any statutory definition. For example such a definition would need to deal with Charitable Trusts and Social Enterprises.</p> <p>R7: Agree, but discretion to have less in appropriate circumstances.</p> <p>R8: Agreed as present situation unnecessarily restricts the ACNC and in most cases small charities do not have the resources to properly vet responsible persons. Consider allowing charities to pre vet with the ACNC candidates for positions in governance and senior levels of paid employment. Appropriate privacy checks and balances need to be present (eg. suppression of residential address and use of alternate addresses for silent elector in the same manner as ASIC for officeholders). The broad powers in (b) require appropriate checks and balances</p> <p>R9: Agreed – but refer pre vetting suggestion above to avoid difficulties of removing unacceptable persons. Subject to appropriate checks and balances on the exercise of discretionary powers. Lessons should be taken from the uneven application of similar provisions in Canada and the UK.</p>
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	<p>(a) that the person does not have a 'disqualifying conviction' for a terrorism, terrorism financing or money laundering offence under Commonwealth, State or Territory law; and (b) that the person does not have a 'disqualifying conviction' for a 'relevant offence', being an offence that is relevant to the operation of the charity.</p> <p>Recommendation 16 (pages 42-47) Consider options for addressing the issues arising from the inability to check the names of current directors and company secretaries of charitable companies by searching the ASIC register.</p> <p>Recommendation 17. (pages 42-47) Turn off s 195 of the Corporations Act for charitable companies and amend governance standard 4 to restrict participation in decision making with respect to the governance or management of a registered charity by a responsible person with a material conflict of interest.</p> <p>Recommendation 18. (pages 42-47) Amend the Corporations Act to provide clarity for charitable companies as to the requirements for a special resolution.</p> <p>Recommendation 19. (pages 42-47) Amend the Corporations Act to turn off the requirement to appoint an auditor in ss 327A and 327B for charitable companies, or at least for charitable companies that are small or medium registered companies.</p> <p>Recommendation 29. (page 58) Amend s 35-10(1) of the ACNC Act to include as a ground upon which the Commissioner may revoke a charity's registration that the registered charity has ceased to operate.</p> <p>Recommendation 30. (page 58-59) Amend s 70-5 of the ACNC Act to enable the Commissioner to require an entity to provide information or documents necessary to determine whether a registered entity is a 'federally regulated entity'.</p>	<p>R16: Agreed. See previous comments above in 2.</p> <p>R 17: Agree</p> <p>R:18: Agree</p> <p>R:19: Agree</p> <p>R:29: Agree</p> <p>R:30: Agree</p>
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	<p>Recommendation 31 (page 59) - Amend the note to s 75-5(1) of the ACNC Act by removing the reference to s 35-10.</p> <p>Recommendation 32 (page 60). Consider amending the ACNC Act to require a show cause notice to be given to the relevant responsible person as well as to the registered charity before suspending or removing the responsible person and to give notice of the decision to suspend or remove a responsible person to the registered charity as well as to the responsible person.</p> <p>Recommendation 33 (page 61) Amend s 115-55 of the ACNC Act: (a) to enable: (i) the Commissioner to delegate any function or power to any member of the staff assisting the Commissioner; and (ii) SES employees assisting the Commissioner to sub-delegate any function or power to any other member of the staff assisting the Commissioner who has the expertise to exercise the function or power being delegated; and (b) to provide that in exercising a delegated or sub-delegated function or power, the delegate or sub-delegate must comply with any directions given by the delegator or sub-delegator.</p> <p>Recommendation 34 (page 61). Amend the ACNC Act to provide that late submission of an annual financial report or an additional report attracts an administrative penalty under s 175-35 of the Act.</p> <p>Recommendation 35 (page 62). Amend the definition of 'Australian government agency' in s 300-5 of the ACNC Act to clarify whether it includes or excludes local government authorities or amend s 205-35(5)(a) of the ACNC Act to clarify whether grants from local government authorities are to be taken into account in determining whether an entity is in receipt of government grants exceeding the threshold amount.</p> <p>Recommendation 36 (page 63). Either:</p>	<p>R:31: Agree</p> <p>R:32: Agree</p> <p>R:33: Agree</p> <p>R:34: Agree</p> <p>R:35: Agree</p> <p>R:36: Agree</p>
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	<p>(a) Amend the ACNC Act by introducing a provision of the kind referred to in s 38(1)(b)(ii) of the FOI Act; or (b) Specify Division 150 of the ACNC Act in Schedule 3 to the FOI Act.</p> <p>Recommendation 37. Amend s 45.25(3) of the ACNC Regulation to provide that if a registered entity is a trust with more than one responsible entity, then each responsible entity must disclose any conflicts of that responsible entity to all the other responsible entities.</p> <p>Recommendation 38. Amend s 45.25(2)(e) of the ACNC Regulation to add a requirement that conflicts of interest are managed appropriately.</p> <p>Recommendation 39. Amend s 45.150 of the ACNC Regulation to require the date of birth of the responsible person to be added to the Disqualified Persons Register.</p> <p>Recommendation 40. Consider whether the definition of 'government entity' in the Charities Act should be amended to increase clarity, certainty and internal consistency.</p>	<p>R:37: Agree</p> <p>R:38: Agree</p> <p>R:39: Agree</p> <p>R:40: Agree</p>
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