



Submission to The Treasury

**Australian Charities and Not-for-profits Commission
Amendment (2021 Measures No. 3) Regulations 2021**

Thresholds and related party transactions

October 2021

Introduction

This brief submission outlines key areas of opportunity and concern for the Community Council for Australia (CCA) in relation to the proposed new thresholds for charities and proposed related party transaction requirements.

CCA welcomes the opportunity to engage with The Treasury on this important issue.

CCA has also consulted with our members (see listing in Appendix 1) in framing this submission, however, it is important to note that this submission does not override the policy positions outlined in any individual submissions from CCA members.

In general terms, CCA is supportive of the proposed changes, but with the proviso that unintended consequences, including more onerous reporting and potentially restricting in-kind and at cost support to charities, are factored into the implementation of the proposed measures.

The content of this submission includes a brief background to CCA and the current context for the broader charities and not-for-profit (NFP) sector. Following this context setting, this submission outlines some of the key issues relating to the proposed new thresholds, the related party transaction requirements, and a conclusion.

CCA welcomes this opportunity to provide input into this Treasury consultation and look forward to ongoing discussions about how these measures can be introduced without negatively impacting the charities sector.

The Community Council for Australia

The Community Council for Australia is an independent non-political member-based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and NFP organisations relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

Background: Current state of the charities and not-for-profit sector

COVID-19 highlighted the critical role played by charities and Not-for-profits (NFPs) in Australia. The government acknowledged this role in extending a modified form of JobKeeper payments to charities as well as supporting increased giving during the pandemic. These measures have been important to many charities, but 2021 continues to be challenging for the charities and NFP sector.

While the history of the NFP sector is framed by growth and reform, the current situation is that many charities are struggling to survive. Research conducted by the Centre for Social Impact (CSI) and Social Ventures Australia suggests around 30% of all charities are now facing serious questions about ongoing viability. CSI's latest survey of the for-purpose sector ([Pulse of the For-Purpose Sector | CSI](#)) found that while 8 in 10 organisations had increased demand, 77% of organisations agreed or strongly agreed that the recent events have put considerable strain on their organisation's finances, 85% reported a reduction in revenue even with JobKeeper, and 52% were worried about their ability to continue to provide services in the current environment.

Some charities have had to hibernate programs and services in the hope of being able to re-establish their income streams in the coming years. For many charities, COVID-19 has meant increased costs, a decline in revenue, reduced access to volunteers, and increased demand for community-based services. While generalisations across all charities are very difficult within the COVID-19 context, the one certainty is that COVID-19 will have a negative impact on thousands of charities and thousands of workers within the charities sector.

The charities and NFP sector encompass over 600,000 organisations - from large to very small. Australia's 55,000+ charities employ over 1.38 million staff (around 11% of all employees in Australia), collectively turn over more than \$166 billion each year and hold around \$350 billion in assets.

These facts tell only a small part of the story. The real value of the charities sector is often in the unmeasured contribution to Australian quality of life. Charities are at the heart of our communities, building connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians. Collectively, they make us a more resilient society.

In Australia there have been various initiatives seeking to: promote social enterprise; reduce compliance costs for NFPs; encourage a diversification of financing options to build a more sustainable funding base; streamline and refine the regulation of NFPs and charities; establish less bureaucratic reporting requirements while building community transparency; increase philanthropy; promote impact investing; and increase sector performance measurement. CCA supports all these activities.

The establishment of the ACNC has proved to be a positive step towards red tape reductions, increased transparency, and trust in the community by prospective volunteers and donors. But there is still a lot of work to do in streamlining and improving the regulation of charities in Australia.

CCA believe the measures proposed provide an opportunity to enhance current regulations, but there are concerns that inappropriate implementation may lead to increased red tape and a reduction in support for charities.

CCA response to the proposed new regulations outlined in *Exposure Draft: Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021*

Introduction

CCA in general support the measures outlined in the proposed new regulations, but with some concerns about unintended negative consequences that may create multiple reporting requirements and reduce the level of support available to charities.

CCA is a supporter of increasing reporting thresholds for charities as outlined in the proposed regulations.

Type of registered entity	Old threshold limit in the Act	New threshold in the Regulations
Small registered entity	less than \$250,000	Less than \$500,000
Medium registered entity	\$250,000 to less than \$1m	\$500,000 to less than \$3m
Large registered entity	\$1m or more	\$3m or more

CCA believe the above new thresholds will reduce reporting requirements for many charities and better reflect the actual nature of charities across Australia. This is especially true when applied to the levels of disclosure and financial reporting required by the Australian Charities and Not-for-profits Commission (ACNC).

Concerns with increased thresholds

CCA is concerned that the proposed new thresholds might create additional reporting requirements if they are adopted by the ACNC, but not adopted by State and Territory regulators, government departments, and other regulators – some of whom may still apply the previous ACNC definition of small, medium and large charities.

Having separate definitions of small, medium and large charities across multiple authorities and regulators makes the task of complying with regulations more difficult. A charity that might be classified as small by the ACNC under the proposed new thresholds might be classified as medium by other authorities triggering higher levels of reporting and accountability.

CCA supports reducing the reporting requirements, especially for small charities, but would strongly encourage the ACNC to work pro-actively with all jurisdictions, major government departments, and other regulatory bodies to ensure the classifications they apply to charities are also applied by other regulators.

CCA response to the proposed regulations relating to Recommendation 14 requiring: *all registered charities to disclose related party transactions, with small registered charities to make a simplified disclosure involving a brief description of related party transactions.*

It is important to note that: *Medium and large entities preparing general purpose annual financial reports are already making the necessary disclosures of related party transactions.* and *The Commissioner of the Australian Charities and Not-for-profits Commission is separately proposing that small registered entities disclose a number of related party transactions as part of their annual information statements.*

CCA is supportive of this recommendation, but with the proviso that a level of materiality be established to trigger such disclosure.

Accounting for charitable expenditure should always be transparent. Members of the charity and the communities served should know how the resources of the charity are being applied. It is clearly in the interests of all involved that where a significant related party transaction occurs within a charity, the transaction should be transparent and accountable.

It would be difficult to argue that a charity making some form of significant payment to a related party – board member, family member of an executive, company of an executive – should be able to do so without any public disclosure of both the payment and the relationship.

In the vast majority of cases, a related party transaction within a charity is likely to be a legitimate expenditure for services provided, often below market rates, by someone who is supportive of the charity. This might be someone who offers their skills at a lower than commercial rate to fix a computer system, repair a building, provide catering, or service a car. These typical ‘at cost’ type arrangements that involve a level of ‘in-kind’ donation are to be encouraged. They can be critical to charities in managing tight budgets.

Generally, even smaller charities declare their related party transactions as part of their financial reporting, but it is right that there may be concerns when payments to related parties are made above market rates, or are made for services that are not specified.

CCA concerns – the question of materiality

If a small sporting charity has their lawns and playing fields mowed by a local farmer who is the spouse of a volunteer Board Director and who uses his own equipment but charges the charity the equivalent of petrol money, should the charity have to declare a related party transaction?

CCA is concerned that if small charities are to be required to declare related party transactions, the trigger for such reporting needs to be set at a level that does not discourage ‘in-kind’ and ‘at cost’ type contributions to the work of smaller charities.

To this end, CCA would propose that the ACNC Commissioner introduce a threshold for related party transactions that is above \$10,000 total payments or their equivalent in benefit to a related party in a given financial year. Below this threshold, smaller charities should not have to separately report these transactions to the ACNC.

CCA response to the reporting of senior management remuneration: *the Regulations also provide an exemption for some charities from the requirement to disclose, as part of their related party transactions, aggregate remuneration paid to responsible persons and senior executives. This exemption will apply to medium registered charities, and large charities with only one remunerated key management person. (Senior executives and responsible persons are referred to as key management personnel in accounting terms.) This requirement balances increased transparency with the privacy of individuals.*

CCA supports the proposed changes to the exemptions for charities relating to disclosure of remuneration and the proposed amendment for charities with only one senior management employee to be able to not identify their annual remuneration.

Conclusion

CCA has always supported the ACNC and its role in promoting transparency and accountability for Australian charities.

There is no doubt, as the ACNC review panel found in 2018, the current thresholds for classification of charities need to be increased and the requirements of disclosure for related party transactions needs to be clearer than relying on accountancy standards and governance principles.

CCA has been supportive of the ACNC review panel recommendations 12, 14 and 15, but always with a view to streamline and clarify reporting requirements rather than make them more onerous and difficult to comply with.

CCA is therefore generally supportive of the proposed regulatory changes to thresholds, but would like to see clear statements from the ACNC and governments advocating for the new charity classification thresholds to be applied across all regulators including jurisdictional governments and major government departments.

CCA is also supportive of the various disclosure changes to reporting of related party transactions, but would like to see a clear definition of materiality to avoid smaller charities feeling as though they need to closely monitor and report all 'in-kind' or 'at cost' donations involving any level of payment or benefit provided from the charity to a related party. CCA has proposed the test for materiality be set at a minimum of \$10,000 in any financial year.

The goal of streamlining charitable reporting while increasing transparency is to be commended and CCA looks forward to further engagement in this area. Charities are still having to deal with many areas of duplicated reporting and onerous requirements created by a lack of consistency across regulatory bodies and the misguided notion that increasing reporting requirements for charities is an acceptable or cost-free way to lower the levels of risk.

CCA hopes the measures outlined in the proposed new regulations are just the start of a long overdue compliance reform process.

Current Membership – Community Council for Australia *Appendix 1*

Adult Learning Australia

Alannah and Madeline Foundation

Arab Council Australia

Australian Conservation Foundation

Australian Council for International Development, Marc Purcell, CEO (CCA Board Director)

Australian Environmental Grantmakers Network

Australian Scholarships Foundation

Australians Investing in Women

Barnardos Australia

Beacon Foundation

Brotherhood of St Laurence

Camp Quality

Carers Australia

Centre for Social Impact, Prof Kristy Muir, CEO (CCA Board Director)

Chain Reaction Foundation

Christians Against Poverty

Churches of Christ Community Care Vic/Tas

Community Bridging Services (CBS)

Community Broadcasting Association of Australia

Community Colleges Australia

Connecting Up

Drug Arm Australia, Jody Wright, CEO (CCA Board Director)

Endeavour Foundation

Ethical Jobs

Everyman

Exodus Foundation

Feanix Foundation

Fitted for Work

Foundation for Alcohol Research and Education

Foundation for Young Australians

Fragile X Association of Australia

Good Samaritan Foundation

Good2Give

Hammondcare

Hillsong Church, George Aghajanian, CEO (CCA Board Director)

InfoXchange

Justice Connect

Kilfinan Australia

Learning Links

Life Without Barriers, Claire Robbs, CEO (CCA Board Director)

Lock the Gate

McGrath Foundation

Menslink

Mission Australia

Missions Interlink

Non Profit Alliance

Our Community

OzHarvest

Painaustralia

Philanthropy Australia

Pro Bono Australia

Queensland Water & Land Carers

Relationships Australia NSW

Ronald McDonald House Charities

RSPCA Australia, Richard Mussell, CEO (CCA Board Director)

Saba Rose Button Foundation

SANE

SARRAH

Save the Children, Paul Ronalds, CEO (CCA Board Director)

Settlement Services International

Smith Family

Social Ventures Australia, Suzie Riddell, CEO (CCA Board Director)

St John Ambulance

Social Leadership Foundation

Starlight Foundation, Louise Baxter, CEO (CCA Board Director)

Sydney Children's Hospital Foundation

Ted Noffs Foundation

The Centre for Volunteering

The Shepherd Centre

Volunteering Australia, Mark Pearce, CEO (CCA Board Director)

Wesley Mission

Workplace Giving Australia

World Vision Australia

World Wide Fund for Nature Australia

YMCA Australia