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Dear Sir/Madam

Submission: Updated Australian Charities and Not-for-profits Commission Regulatory Approach Statement

Thank you for the opportunity to provide written feedback in relation to the Australian Charities and Not-for-Profits Commission's (**ACNC**) draft updated Regulatory Approach Statement (**RAS**).

1 Summary

1.1 Overview

In summary, this submission aims to emphasise the following points:

- The Regulatory Approach Statement (**RAS**) could potentially provide further clarity on its 'report once, use often' regulatory framework. It is somewhat unclear how this framework will operate in practice for charities and the exact reporting requirements that the ACNC expects of charities.
- The RAS could benefit from explicitly addressing regulatory issues surrounding fundraising laws. Specifically, the relationship between the ACNC as a central regulator and the respective state and territory agencies could be outlined in the RAS. This would help charities to confidently understand which regulator is monitoring their fundraising activities and compliance.
- The ACNC's enforcement powers against Basic Religious Charities need to be written more clearly. The current draft RAS indicates that the ACNC has no powers of enforcement against Basic Religious Charities.
- The RAS could be more precise in detailing the ACNC's efforts to engage with charities, particularly in reference to its 'stakeholder engagement strategy'. Explicit examples would reinforce the idea that the ACNC has a regular positive engagement with charities through education and consultation.

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2 Submission

For the purpose of this submission, I will address each proposed section of the draft RAS, and the issues and recommendations for each relevant paragraph in turn. The final sub-heading will address minor formatting issues.

2.1 Section One: Our role

(a) Report once, use often (paragraph 6)

This paragraph identifies the ACNC's 'report once, use often' approach to charities' reporting obligations. The paragraph also includes 'Figure 1', which aims to illustrate how a charity's reporting is used by the ACNC to develop the ACNC Charity Register.

We believe that charities reading the RAS would greatly benefit from further clarification on this 'report once, use often' approach, including examples of the types of information that the ACNC shares and/or receives from other departments. While we appreciate the RAS has been rewritten in a plain English style to improve clarity and accessibility, some brief elaboration on this approach would provide charities with a general idea of how it might work in operation. Further, the paragraph mentions the use of the Charity Passport as part of the ACNC's collection of charity information. Charity Passport is not defined in the RAS. Many charities may not be familiar with this technical term and would not understand its importance. Granted, we do acknowledge that the length of this section, and the RAS as a whole, may be subject to its own word count limitations.

We would recommend the RAS simply include a brief note outlining the meaning of the term 'report once, use often'. An example could read as follows:

'The "report once, use often" framework helps to avoid unnecessary duplication of administrative requirements. The principle is that information, such as changes to responsible persons, should be reported once by organisations to a centralised regulator (ACNC) and then shared with other government agencies to be used often to meet reporting requirements. (See Figure 1: ACNC and data flow)'

(b) Reducing unnecessary regulatory burden (paragraph 7)

This paragraph highlights how the ACNC collaborates with other government agencies to avoid unnecessary administrative overlap and references efforts with state and territory governments to align regulatory and reporting obligations.

However, the paragraph does not provide any examples of how the ACNC is reducing regulatory burden or how administrative overlap has been minimised. Specifically, it does not identify how the ACNC has limited regulatory burden in the area of fundraising regulation, which can differ significantly between each state and territory. In our view, charities would benefit from a more detailed explanation.

While we appreciate that Section One is intended to be a brief overview of the objects, scope, and functions of the ACNC, this paragraph would benefit from including some further explanation on how the ACNC reduces regulatory burden to the extent that the length of this paragraph, and the RAS, may be extended. This would provide charities with a stronger impression of the work the ACNC has done to simplify charity regulation. We would suggest that a brief bulleted list of some of the major government agencies that the ACNC is collaborating with to minimise administrative burden would be sufficient.

(c) Providing guidance, education and advice (paragraphs 8-11)

These paragraphs highlight how the ACNC is able to directly assist charities in understanding and complying with their obligations under ACNC legislation, as well as how the ACNC helps the public to better understand and identify registered charities.

Paragraph 11 highlights the use of the ACNC Tick of Charity Registration and its role in providing reassurance and transparency for the public. We would suggest that the paragraph be amended to include a note clarifying that charities receive the Tick *upon registration*. As the paragraph is currently worded, it is unclear whether charities would have to satisfy further requirements after registration to be eligible for the Tick.

2.2 Section Two: How we exercise our functions and powers

(a) When we will not act (paragraph 34)

This paragraph qualifies that there may be instances in which another regulator may be addressing an issue and, as a result, the ACNC will only assist if called upon by that regulator. The paragraph notes that an example of this may be where another agency is investigating a breach of fundraising laws.

We believe that the ACNC's role in fundraising regulation requires further elaboration here.

Ideally, the ACNC should clearly outline its regulatory policy in regards to fundraising, and indeed whether the ACNC has any role at all. If the current policy is that the ACNC will not play any role in regulating breaches of fundraising laws unless requested by a regulator, this should be made clear. Conversely, if the ACNC's approach to fundraising regulation will vary depending on the state or territory of the breach and its relationship with the respective agency, this needs to also be clearly communicated in the RAS.

(b) Enforcement powers (paragraph 51)

This paragraph outlines the range of enforcement powers available to the ACNC pursuant to Part 4-2 of the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) (**ACNC Act**). The final sentence in this paragraph reads as follows under the heading 'Suspension, removal and appointment of Responsible Persons':

'Note that that [sic] ACNC cannot use its enforcement powers to regulate Basic Religious Charities.'

This sentence reads as if the ACNC cannot use any of its enforcement powers under Part 4-2 against Basic Religious Charities. Whilst the ACNC cannot exercise its power to suspend or remove the responsible entities of a Basic Religious Charity in accordance with s 100-5(3) of the ACNC Act, the ACNC is not precluded from exercising any of the other enforcement powers against a Basic Religious Charity. This is an important distinction of which these charities must be aware.

Therefore, this sentence must be amended to make it clear that Basic Religious Charities are not immune to all of the enforcement powers in Part 4-2 of the ACNC Act.

2.3 Section Three: The foundations of our regulatory approach

Engaging with charities (paragraph 87)

This paragraph identifies the ACNC's 'stakeholder engagement strategy' and notes some of the work that the ACNC is involved in to assist charities with understanding how to comply with the ACNC Act.

Whilst we appreciate that Section Three is intended to provide a general overview of the values that underpin the ACNC's regulatory approach, we believe this paragraph is drafted too broadly. Charities would benefit from seeing evidence of the ACNC's 'stakeholder engagement strategy' to act as confirmation that the ACNC is committed to engaging with charities.

We would recommend that this paragraph be amended to include examples of the ACNC's efforts to engage with charities. This could include any of the annual consultative forums that the ACNC hosts, 'peak bodies' that have partnered with the ACNC and any other notable events that illustrate the regulator's efforts to educate charities on their compliance obligations.

2.4 Formatting Issues

In reviewing the draft RAS, we have also identified the following notable errors in formatting:

- Paragraph 23: the reference to 'Figure 2' is incorrect; this should be a reference to 'Figure 3' (The ACNC pyramid of support and compliance).
- Paragraph 25 is repeated twice – on both pages 7 and 8.

If you have any questions or require further information, please do not hesitate to contact Vera Visevic on +61 2 8289 5812 or vvisevic@millsoakley.com.au.

Yours sincerely



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