Law Council
OF AUSTRALIA

Legal Practice Section

2 October 2026

Treasury
1 Langton Crescent
Parkes ACT 2600

By email: charitiesconsultation@treasury.gov.au

Dear Sir / Madam

Charity Secrecy Reform - Deregistration and Finalised Investigations

1. This submission has been prepared by the Charities and Not-for-profits Committee of the Law Council of Australia's Legal Practice Section. The Committee welcomes the opportunity to make a submission to the Treasury in relation to:

   (a) Exposure Draft: Australian Charities and Not for profits Commission Amendment (Disclosure of Revocation Summaries and Recognised Assessment Activity Summaries) Regulations 2026 (**ACNC Disclosure Regulations**); and

   (b) Explanatory Statement: ACNC Disclosure Regulations.

2. At the outset, the Committee considers that facilitating public disclosure on the revocation of registration and on investigations of registered entities is generally a positive step, but the process for public disclosure of recognised assessment activities needs to be amended to prevent a number of unintended consequences and risks to registered entities. In this respect, the ACNC Disclosure Regulations go much further than the approach recommended by the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review* (the **2018 Review**).[1]

3. In this submission, the Committee sets out:

   (a) relevant background;

   (b) key issues with the proposed ACNC Disclosure Regulations; and

   (c) recommended amendments.

[1] *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review*, 2018 (available Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review 2018, accessed 25 September 2026).

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Background

4. Recommendation 17 of the 2018 Review was that "the Commissioner be given a discretion to disclose information about regulatory activities (including investigations) when it is necessary to protect public trust and confidence in the sector."[2]

5. In setting out the rationale for the recommendation, the 2018 Review identified the need for "discretion" and that as "a registered entity's reputation is critical to its ability to raise funds and carry on its purpose, care needs to be taken in respect of any comments that the ACNC can, or should, make in respect of potential or actual investigations".[3]

6. Further, the 2018 Review did not recommend that information about all recognised assessment activities be disclosed generally, but was largely focused on investigations and disciplinary action. Even then, the 2018 Review recommended that disclosure only occur in limited circumstances:

> *If there is a complaint which is upheld and the Commissioner has taken action, the Panel considers the ability to disclose that action should depend on the severity of the action taken by the Commissioner. It is likely that disclosure of a disciplinary action should only be required in the case of the matter being in the public interest or necessary to maintain public trust and confidence in the sector. Matters of minor significance and procedural or technical breaches will be adequately addressed through confidential actions and current processes should remain. Accordingly, where there is a low risk of repeated breaches, the Commissioner should not be disclosing the outcome of its decision.*[4]

7. In addition to the narrow circumstances where publication of information about investigations of registered entities would be warranted, the 2018 Review recommended that de-identified summaries of investigations and outcomes would be of educational value to the sector.[5]

8. The proposed amendments in the ACNC Disclosure Regulations follow amendments made to the secrecy provisions at Division 150 of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) in December 2025. These amendments permit the Commissioner to authorise the disclosure of information relating to a recognised assessment activity "being carried out, or proposed to be carried out" at section 150-52 of the ACNC Act. The amendments do not extend to the outcome of a recognised assessment activity where it does not result in enforcement action that would be published on the ACNC Register under section 40-5(1)(f) of the ACNC Act.

9. A useful point of comparison is with the Charity Commission of England and Wales. The Charity Commission's investigations are limited to formal investigations and include regulatory compliance cases (representing the vast majority of investigations); and statutory inquiries when the issues under investigation are more

[2] 2018 Review, p 77.
[3] 2018 Review, p 74.
[4] 2018 Review, p 74.
[5] 2018 Review, p 74.

serious. The Charity Commission publicises the opening and outcome of the inquiry, whereas it will only publicise a regulatory compliance case in exceptional circumstances.[6]

Key issues with the proposed ACNC Disclosure Regulations

Disclosure of information about revocation of registration

10. In general, the Committee welcomes the disclosure of information on the revocation of registration for registered entities under item 15 of the table in section 40.1 on the Register. This amendment requires the ACNC to publish information on their decision to revoke the registration of an entity and include any response received from the entity. Such information will increase transparency and accountability in the sector by facilitating public disclosure of the ACNC's reasons for revocation of registration, and in doing so, protect and enhance public trust and confidence in the sector.

11. This amendment will address a current gap in the type of compliance information that the ACNC can publish, noting that section 40-5(1)(f) of the ACNC Act requires the Commissioner to publish information on the ACNC Register about enforcement action except for the most severe enforcement action – revocation of registration.

12. However, the Committee has concerns about the measure requiring the Commissioner to publish on the Register the summary of a decision to revoke the registration of an entity as currently worded given that there is no opportunity for the ACNC to decide not to disclose the reasons for revocation on the same basis as for recognised assessment activities.[7] It is essential to provide this discretion to the Commissioner to avoid damage to any of the sector, an individual or the charity revoked, bearing in mind that often charities from part of a group or affiliation and it may cause reputational damage across the group by association if the reasons affecting one member of the group only are made public.

13. Further, there seems no utility in adding a summary of any response from the revoked entity. They will have had an opportunity already to respond to the Commissioner and once they are not on the register there seems no reason for this to be publicly available on the register. It will unnecessarily add to the workload of the ACNC.

14. The language requiring publication of a summary of 'any response from the entity' is also very broad and has the potential for the requirement to cause frivolous and defamatory responses to be published. For example, where an entity's registration is revoked for a double default in filing their Annual Information Statement, the entity may seek to put information on the Register with reasons that are irrelevant or disparaging in relation to the ACNC.

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[6] See Charity Commission for England and Wales, 'Statutory inquiries into charities: guidance for charities (7 March 2024) < https://www.gov.uk/government/publications/statutory-inquiries-into-charities-guidance-for-charities-cc46/statutory-inquiries-into-charities-guidance-for-charities>; Lucy Rhodes et al, 'Charity Commission investigations: an overview' (28 October 29025) < https://bateswells.co.uk/updates/charity-commission-investigations-an-overview/>.

[7] See para 19 below.

15. The Commissioner should be given discretion not to publish reasons for a revocation and the requirement for publication of a summary of 'any response from the entity' should be deleted.

Disclosure of information about recognised assessment activities

16. There are more serious issues with the proposed measures in relation to the disclosure of recognised assessment activities under item 16 of the table in section 40.1 on the Register.

17. The definition of 'recognised assessment activity' in section 55-10 of the ACNC Act is extremely broad and includes any inquiry by the ACNC into compliance with the ACNC Act, this would include desktop reviews and consideration of complaints received.

18. However, the intent appears to be more limited, as the Explanatory Statement states that the purpose of the ACNC Disclosure Regulations is 'facilitating public disclosure of *certain regulatory activities*, including investigations undertaken by the Commissioner *when disclosure is necessary to protect public trust and confidence in the sector*'.[8]

19. The adoption of this measure will result in a significant shift in the disclosure of compliance activity by the ACNC, as it requires the Commissioner to disclose information about registered entities in respect of *any* of the compliance activities that the Commissioner undertakes, including why the activity was undertaken, the outcome, the resolution of any matters relating to the activity and any response received from the entity.

20. When viewed alongside the amendments to the secrecy provisions in Division 150 of the ACNC Act giving the Commissioner *discretion* to authorise disclosure of information relating to the conduct of an investigation, this measure lacks consistency with the exercise of that discretion and will *require* the Commissioner to publish significant information on the Register *without the same protections*.

21. The ACNC Disclosure Regulations reverse the statement of intent in the Explanatory Statement of 'facilitating public disclosure of certain regulatory activities, including investigations undertaken by the Commissioner *when disclosure is necessary to protect public trust and confidence in the sector*'.[9] Whereas, in fact, as stated in the Explanatory Statement, 'The Regulations *require the Commissioner to publish*, on the Register, summaries about certain recognised assessment activities into an entity undertaken by the Commissioner...'[10] and provide that 'The table in section 40.1 sets out what further information that *the Commissioner must include* on the Register.'[11]

22. The proposed requirement to publish and for the ACNC to go through the process of considering the criteria in the ACNC Disclosure Regulations for each review or small compliance activity will be very administratively (and unnecessarily) burdensome; is

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[8] p 1, emphasis added.
[9] p 1, emphasis added.
[10] p 1, emphasis added.
[11] p 3, emphasis added.

inconsistent with the approach in section 150; and inconsistent with the recommendation and intent of the amendments.

23. The requirement to publish is subject to section 40.11(1) of the ACNC Disclosure Regulations which provides that the Commissioner must not include information about recognised assessment activities under item 16 of the table in section 40.1 unless the Commissioner decides its inclusion would protect or enhance public trust and confidence in the sector; and not be likely to cause significant harm to public trust and confidence in the sector (or to an individual connected with the registered entity), or cause disproportionate damage or detriment to the registered entity (or to an individual). However, these qualifications necessarily mean that the Commissioner will need to make a determination as to when disclosure serves to protect and enhance public trust and confidence in the sector as against the potential for such disclosure to significantly harm public trust and confidence in the sector (or an individual) or disproportionately damage or detriment the registered entity (or an individual). Yet the ACNC Disclosure Regulations do not specify what considerations the Commissioner must take into account in making such a determination, in contrast to the mandated considerations that apply in relation to decisions to revoke the registration of an entity under section 35-10(2) of the ACNC Act.

24. In addition, 'disproportionate' damage or detriment to the charity or individual is too high a threshold given that reputation is crucial to charities. The Commissioner could decide there is a benefit to the trust in the sector as a whole to publishing on the Register, which makes it worth some detriment to the charity. It is unclear whether 'disproportionate' relates to the benefit to the sector or to the recognised compliance activity.

25. There are serious and potentially harmful consequences of the proposed measures requiring the disclosure of, and a decision in relation to, certain recognised assessment activities under item 16. These include:

    (a) decreasing the ability of the ACNC to undertake compliance checks due to the extra workload in having to consider and document these issues with little to no public benefit and possible harm;

    (b) decreasing voluntary disclosures due to the risk of publication;

    (c) decreasing the ability for charities and their advisers to seek input from the ACNC in relation to particular circumstances or questions on compliance;

    (d) harm to charities and groups of charities by disclosure of this information;

    (e) significant work for both a charity and the Commissioner in preparing, reviewing and summarising responses for little to no public benefit; and

    (f) creating confusion if publication is made around changing sub-types as this is irrelevant to charity status but may not be understood by the public.

26. In particular, the ACNC will be required to publish on the Register neutral reviews which have no consequence legally, but that the ACNC believes will protect and enhance public trust and confidence in the public simply knowing these reviews are taking place. Such publication may cause harm to, or questions about, the charity,

yet is not likely to cause *significant* harm to the sector as a whole and is not likely to cause *disproportionate* damage or detriment to the charity.

27. An example from England involving Kids Company, a high-profile charity that provided support to disadvantaged and vulnerable young people and received substantial government funding, provides a cautionary tale for charity regulators. In 2015, the Charity Commission of England and Wales initiated a statutory inquiry into Kids Company under the *Charities Act 2011* concerning its administration, governance and financial management, including concerns arising from allegations made by three former employees. The charity went into liquidation that year. Findings in a report by the Charity Commission were challenged by the charity's executives. Following lengthy litigation, the High Court ultimately held that it was not irrational for the Commission to hold the view that trust and confidence in the charitable sector could be adversely affected if inaccurate or unreliable information about the quantity of services provided by a charity was put into the public domain.[12]However, in an earlier decision involving proceedings brought by the Official Receiver to disqualify the directors and CEO of the charity, the High Court dismissed the Receiver's claims and found that:

> *The Commission's observations … which give rise to the innuendo that the payments to the 'top 25' [clients] may not have been justified -- are unbalanced and one-sided. This is extremely unfair to the charity and the trustees. Although the Commission has a discretion as to what to include in the report of a statutory inquiry, that discretion must be exercised lawfully. Creating such extreme unfairness would not be lawful: in public law terms, it is irrational.*[13]

28. This case shows that caution needs to be exercised by the regulator in exercising its discretion to make disclosure determinations in order to prevent unfair consequences to the registered charity and the individuals involved.

Recommendations

29. On the disclosure of information about revocation of registration, the Committee recommends:

    (a) The ACNC Disclosure Regulations need to provide greater discretion to the Commissioner to not publish reasons for revocation;

    (b) The requirement for publishing summaries of entity responses for revocations should be removed.

30. On the disclosure of information about recognised assessment activities, the Committee recommends:

    (a) the definition of 'recognised assessment activities' should be limited to:

        (i) formal investigations by the ACNC only; or

[12] See *Kerman v Charity Commission* [2025] EWHC 1223.
[13] *The Official Receiver v Batmanghelidjh and Ors* [2021] EWHC 175 (Ch) [117].

(ii) only those matters where the Commissioner had previously authorised a disclosure under section 152 of the ACNC Act.

(b) the drafting should be amended to reflect the intention of the recommendation and the amendment by ensuring that the ACNC has *the discretion to decide* whether to publish on the basis of the criteria provided in section 150 (for consistency) and remove the proposed *requirement* to publish.

(c) If retained, clarifying that the test of 'disproportionate' damage or detriment to the registered entity or to an individual relates to the recognised compliance activity.

(d) Discretion as to publication and clarification of the process and timing for publishing a summary of 'any response by the entity'.

31. The Committee would welcome the opportunity to discuss this submission with Treasury. In the first instance, please contact the Committee Chair, Alice Macdougall [redacted].

Yours sincerely



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Chair, Legal Practice Section