

7 March 2012

Ms Susan Pascoe AM
Interim Commissioner
ACNC Implementation Taskforce
The Treasury
Langton Crescent
PARKES ACT 2600

By email: acnct.consultation@treasury.gov.au

Dear Ms Pascoe,

Australian Charities and Not-for-profits Commission: Implementation design

PilchConnect appreciates the opportunity to comment on the Australian Charities and Not-for-profits Commission: Implementation design discussion paper (the **Discussion Paper**). PilchConnect is a specialist legal service for not-for-profit (**NFP**) organisations. Further information on PilchConnect and the services we provide to NFP organisations is contained in Appendix A.

We welcome the Government's commitment to establish the Australian Charities and Not-for-profit Commission (**ACNC**). PilchConnect has consistently advocated for the establishment of an independent, one-stop-shop, specialist regulator and its successful implementation remains a priority in our '[Smarter Regulation for Community Organisations](#)' campaign. With a proportionate and constructive regulatory approach we believe this regulator will provide critical underpinning to support the vital contribution the NFP sector makes to Australian civil society. This underpinning supports public (and government) trust and confidence in the sector which, in turn, helps charities and other NFPs achieve their mission.

The following key points, addressed in further detail throughout our submission, are made in light of our broad support of the ACNC:

- ▶ We recommend the draft Annual Information Statements be amended to ensure complete alignment between the ACNC reporting requirements and the national Standard Chart of Accounts, which have been developed specifically to cover the needs of the NFP sector.
- ▶ The current lack of clear transitional arrangements has the potential to create considerable anxiety throughout the sector. Steps should be taken wherever possible to avoid imposing unnecessary reporting requirements on existing charities. We recommend that the ACNC implement transitional arrangements that enable charities to lodge financial reports in accordance with their existing requirements for at least the first reporting period (ie, 1 July 2012 to 1 July 2013).
- ▶ It needs to be clear to charities what their information is being collected for, how it will be used, and most importantly what will information provided to the ACNC on the Annual Information Statements be available on the public information portal.
- ▶ We refer to PilchConnect's stimulus paper to the ACNC Taskforce Roundtable (Education & Advice) (Appendix B) for a full discussion on the scope of the ACNC's educative role.

Question one:

Do you think that the introduction of the Charity Passport would reduce reporting obligations to government? What are the obstacles to achieving one stop shop reporting on the basis of the data being collected by the ACNC?

PilchConnect welcomes the Government's commitment to the implementation of a reporting framework that reduces regulatory duplication and other red tape for charities. The introduction of the Charity Passport is a good initiative and we believe it has great potential.

There are two main barriers to whether or not the Charity Passport achieves its potential (and would justify its associated cost):

- ▶ The 'baseline information' contained in the passport must be recognised across:
 - all Australian governments (federal, state, territory and local), and
 - all government departments and agencies within each level of government.
- ▶ The data needs to be more than just the most basic information – the Discussion Paper does not give much detail on this point and only refers to it including the charity's name, ABN, address and office holders. If it is limited to this very basic information (which would take no more than a few minutes to provide anyway) it will not make any meaningful reduction in duplication.

A coordinated approach to the implementation of one-stop-shop reporting is required so a national regulator intended to decrease the compliance burden for charities does not instead compound it by simply adding another layer.

Duplication in the initial stages of the ACNC's operation should not be accepted as inevitable; steps should be taken wherever possible to avoid imposing additional (and unnecessary) reporting requirements on registered charities.

In light of this, we recommend the ACNC implement transitional arrangements that enable charities to lodge financial reports in accordance with their existing (corporate) requirements (as outlined in Attachment E to the Discussion Paper) for at least the first reporting period (ie, 1 July 2012 to 1 July 2013). For small, unincorporated charities, the tiers under the relevant *Corporations Act 2001* should be adopted. With the statutory definition of charity, improvements to the company limited by guarantee provisions and nationally consistent fundraising legislation set to be finalised during the first year of the ACNC's operation, such an approach would allow for a cohesive package of interrelated changes to be implemented at the one time.

Question two:

Will the information collected by the Annual Information Statement be adequate for the purpose of achieving transparency and accountability?

We note:

- ▶ current issues with the accounting standards for financial reporting by charities (and other NFPs) need to be addressed
- ▶ financial and descriptive reporting need to appear together, and

- ▶ highly aggregated financial data for tier 2 and 3 organisations may be of limited use and has the potential to misrepresent an organisation's complex financial situation. The aims of transparency, accountability and provision of useful information to the public may be better served by disclosure of larger organisations' consistently-audited/reviewed accounts rather than by publication of high level summary data.

Currently there is no centralised information about charities. Even if full financial information is available on the charity's own website, the lack of a specialist NFP accounting standard means that comparison of financial results between organisations are often positively misleading.

The ACNC's charities register will increase free, public access to financial and descriptive information about charities. This can improve accountability and transparency, which in turn supports public trust and confidence in the sector, which in turn supports charities to achieve their mission.¹ If, however, public access to this information is not underpinned by consistency about how expenses and income are reported, it will allow 'apples' to be compared with 'pears', undermining these policy goals. In short, the ACNC's information portal has the potential improve or exacerbate the current problem.

In terms of the draft Annual Information Statements (Appendices B - D of the Discussion Paper), we recommend these be amended to ensure complete alignment between the ACNC reporting requirements and the National Standard Chart of Accounts (**SCOA**). The SCOA has been developed specifically to cover the needs of the NFP sector (eg, grant funding, public donations) whereas the Standard Business Reporting (**SBR**) framework is, as its name suggests, designed to meet the needs of 'business'. Where the policy aim is to trying to improve NFP reporting, the data dictionary that best addresses NFP issues should be used.

Accordingly we urge the ACNC to actively pursue:

- ▶ the retention of special purpose financial reporting
- ▶ the establishment of a NFP-specific accounting standard, and
- ▶ the alignment of the SBR framework with the SCOA. If there are any inconsistencies between the SBR and the SCOA that cannot be easily resolved, the latter should have precedence.

The information collected and made available to the public by the ACNC must provide a full and accurate reflection of both the activities and the financial position of the charity. This reflects the core difference between charities (and NFPs) and business; the former are mission-driven so information about how mission is being achieved is as important as information about the cost of undertaking its activities. Figures alone have the potential to be misleading and confusing. Similarly, descriptive information limited to the activities and achievements are only part of the story (eg, there is a need to know if the income of the charity will support these activities). For this reason we suggest the financial information provided in the Annual Information Statement should be clearly linked and appear beside (ie, on the same web page) as the narrative.

¹ We have previously submitted that the ultimate goal of the ACNC should be to facilitate the sector to fulfill their diverse goals (which creates a better civil society and more connected communities), supported by second and third tier goals (which support public trust and confidence in the sector through having better run NFPs and reducing the compliance burden). Further information can be found in PilchConnect's submission to *Exposure Draft, Australian Charities and Not-for-profit Commissions Bill 2012*, available at <http://www.pilch.org.au/submissions/#1>.

Question three:

Is there any additional information that should be collected and provided to the public?

We suggest that charities be given the option of providing information about any accreditation or quality assurance schemes that they meet and possibly information on which government departments they have received funding from. This would also help the ACNC to identify commonly occurring overlapping obligations.

We note that but for the most basic information (entity name, ABN – indicated by a [P]) the Annual Information Statements fail to clearly identify what information from the form will appear on the public view of the register. It needs to be very clear to the person lodging the charity's application for registration or updating its information, what information will appear on the publically accessible part of the ACNC register before they submit the relevant form. This can be done quite easily for online lodgement by providing a screen preview of the 'public page' before it is possible to submit the application or form. All the forms (online and hard copies) should also have a symbol or notation next to each field to indicate those which will be public.

Further, it appears that some information on the draft application form is necessary only for organisations that are applying for tax concessions (in which case, the information provided will be shared with the ATO). We agree with the submission of the University of Melbourne Law School's Not-for-Profit Project² that it should be clearly indicated on the form if a particular question(s) need only to be filled out in order to apply for tax concessions. This will avoid confusion among charities as to the reasons for those questions. We also note that if the ACNC is to be a 'one stop shop' regulator which liaises with the ATO in relation to an organisation's eligibility for tax concessions, then the draft forms at Attachments B-D will need to include any information required by the ATO in relation to a charity's continued eligibility for tax concessions. This should also be made clear on the forms.

We also note the submission of FamilyCare in relation to the additional information that could be collected and provided to the public and agree that:

the basic information requested under the activity statement could be usefully supplemented by links to other documents. For example, Annual Reports, Strategic Plans, Mission, Vision or Values statements could provide useful detail for people who want to know more, based on core material in the information statement.

Question four:

Should the Annual Information Statement give charities the option of providing narrative descriptions of the outcomes achieved?

We have consistently supported the requirement for the financial information to be accompanied by a statement of activities undertaken and how the organisation has worked to achieve its mission during the last reporting period.³ For very small charities this could be optional. However, we suggest that a requirement to include a brief statement of this type would not be onerous and we would prefer it to be compulsory for all registered charities as is envisaged by the sample Annual Information Statements (Attachments B – D).

² Melbourne University Law School Not-for-Profit Project, Submission to the Australian Charities and Not-for-profit Commission, *Discussion Paper: Implementation Design*, page 3.

³ See, for example, PilchConnect's submission to the *Corporations Amendment (Corporate Reporting Reform) Bill 2010* – Exposure draft Companies limited by guarantee provisions, at <http://www.pilch.org.au/submissions/#12>.

Subject to our comments below, we do not think the clients we assist would oppose this obligation. In fact a large scale survey of companies limited by guarantee conducted by Woodward & Marshall (2004) suggests that this opportunity is likely to be welcomed by the sector. They found that 89% of respondents were in favour of disclosing 'descriptive activities', reflecting 'the fact that NFP organisations are largely object driven, and are of the view that a report of the activities carried out ...would be the fullest representation of the achievements of the organisation'.⁴

We urge the ACNC to be mindful of the language used in the Annual Information Statement to ensure it is designed with charities in mind. The current wording in the *Corporations Act 2001* is not ideal. Section 300B, for example, requires that the directors' report for a financial year for a company limited by guarantee must:

- a) contain a description of the short and long term objectives of the entity reported on; and
- b) set out the entity's strategy for achieving those objectives; and
- c) state the entity's principal activities during the year; and
- d) state how those activities assisted in achieving the entity's objectives; and
- e) state how the entity measures its performance, including any key performance indicators used by the entity.

The references to 'short and long term objectives' is confusing in the context of charitable companies limited by guarantee which are required to have 'objects' in their constitution. The reference to 'key performance indicators', while commonly used business terminology, does not sit easily with organisations that are working on issues such as reducing poverty or homelessness.

We note the sample Annual Information Statement for (small) tier 1 entities (Attachment B) refers to 'how did you entity achieve your charitable objects in the last 12 months?' and 'who were the main beneficiaries from your charity's activities in the last 12 months?' We make the following comments on this wording:

- ▶ the references to 'beneficiaries' (in this and the other sample Annual Information Statements) should be altered. The term 'beneficiary' has a technical legal meaning. It is not plain language. The wording could be changed to 'what benefits flow from the work of your charity' – this would cover charities that benefit people and charities that benefit animals, the environment or the arts;
- ▶ the reference to 'achieving charitable objects' should be amended to include more straightforward wording of what activities the organisation has undertaken and how it has worked to achieve its mission during the last reporting period. This wording can be understood by the public and would still allow larger - more sophisticated organisations to report on outputs, outcomes and impact.

To ensure that the ACNC has useful information that the public can search, we also suggest a brief question on *where* the activities took place.

⁴ 'A Better Framework; reforming not-for-profit regulation' Woodward & Marshall, 2004 Centre for Corporate Law and Securities Regulation, University of Melbourne, pp 212-213.

Question five:

Is the SBR taxonomy an appropriate basis for the reporting of financial items to the ACNC?

We support technological measures that have the practical effect of reducing reporting compliance costs for charities. However, as noted in the PilchConnect submission to the Scoping Study for the National Regulator, technologies such as SBR need to be developed and rolled out in ways that are appropriately tailored to the NFP sector. At a minimum, for example, the SBR must be fully aligned with the SCOA.⁵

To our knowledge, there has not been significant uptake of SBR technology by the sector. Our discussions with accountants who regularly assist small groups confirm this.⁶ While SBR may streamline reporting from the government's perspective, it requires hardware, software, know-how and resources which many charities do not have easy access to. The introduction of SBR technology for the sector would need to be accompanied by a comprehensive information campaign and free or affordable training in how to use it. Alternatives will need to be continued as it would be improper to deny charities access to Commonwealth taxation concessions simply because they cannot use SBR technology to register with the ACNC.

Question six:

Is the proposal for information collected through the Annual Information Statement and financial report appropriate for each tier?

PilchConnect has consistently supported the implementation of a minimum disclosure requirement for all charities that includes a summary or concise financial statement, a description of activities carried out and how the organisation has worked to achieve its mission. We are pleased that this approach has been adopted by the ACNC.

As previously submitted,⁷ we recommend that the tiers for reporting should not be based on a charity's endorsement as a deductible gift recipient (**DGR**). Endorsement as a DGR is not a clear indicator of whether an organisation is engaged in public fundraising.

We agree with the observation made in the 2008 Senate Inquiry:

...it is not in the best interests of the sector to create additional complexity by requiring those tiers to be based on charitable status or tax concessions / exemptions... Any of these options has the potential to create additional confusion, not just for not-for-profit organisations, but also for members of the public who are seeking comparability between organisations... The general public may find it difficult to understand how two similar organisations with similar revenue, for example, could be on two different tiers depending on the organisations' charitable status. A straightforward method of assigning tiers is on total revenue.⁸

Keeping the reporting tiers linked solely to size will also bring reporting to the ACNC more in line with State and Territory incorporated associations' legislation.

⁵ For further discussion, see PilchConnect's Submission to Treasury's consultation paper as part of the scoping study for a national not-for-profit regulator, available at <http://www.pilch.org.au/submissions/#7>.

⁶ Eg, meeting with Mr Noel Harding February 2012.

⁷ See PilchConnect's submission to the *Corporations Amendment (Corporate Reporting Reform) Bill 2010* – Exposure draft Companies limited by guarantee provisions, at <http://www.pilch.org.au/submissions/#12>.

⁸ 2008 Senate Inquiry Report into the Disclosure regimes for charities and not-for-profit organisations, paragraph 10.22, page 104-10.

Question seven:

The ACNC Commissioner has the discretion to vary an accounting period. Under what circumstances should the Commissioner allow for an alternate accounting period?

The provision regarding the variation of accounting years is too inflexible. Entities should be allowed to nominate their own financial year when they register. Allowing an entity to nominate their accounting period – such as calendar or financial year – when registering with the ACNC, rather than ‘applying to the Commissioner in the approved form’ will prevent unnecessary work for charities and the ACNC. Also, any subsequent variation to a charity’s accounting period should not have to be approved by the Commissioner if it is changing from a financial year to calendar year or vice versa.

Question eight:

Do the ATO practice guides provide an appropriate guide?

As mentioned above, entities should be allowed to nominate their own financial year when they register with the ACNC. This approach would conflict with the overall tenor of the ATO guide:

‘...income tax, an annual tax, would be very difficult to administer if every taxpayer was able to nominate his or her own accounting period, with the result that no one period was normal or standard. Regard must be had to this legislative purpose.’⁹

The ATO statement does highlight that:

‘A decision to grant or withhold leave to adopt a substituted accounting period therefore involves a balancing of convenience to the taxpayer with the general public interest in efficient administration of the Act. It is thus not possible to set out all the circumstances in which leave may or may not be exercised. Cases that appear similar in nature may have different outcomes based upon their particular facts. Each case has to be considered on its own merits and on the basis of all the relevant facts.’¹⁰

We recommend that the ACNC seek to adopt a similar approach when considering variations that are not to a financial or calendar year – ie, each case for such a variation should be considered by the Commissioner on its own merits on the basis of all the relevant facts (eg, a desire to align the charity’s proposed new accounting period with the reporting requirements of its major funder could be a relevant and sufficient fact).

Question nine:

Are the transitional arrangements clear for new and existing charities?

While the Discussion Paper confirms that charities currently endorsed with the ATO for tax concessions will be automatically transitioned and registered with the ACNC from 1 July 2012, the transitional arrangements in the legislation establishing the ACNC have not yet been publically released. The short answer, therefore, is ‘no’ the transitional arrangements are not clear for new and existing charities.

⁹ Australian Tax Office Practice Statement PS/LA 2007/21, <http://law.ato.gov.au/atolaw/view.htm?Docid=PSR/PS200721/NAT/ATO/00001> paragraph 9.

¹⁰ Australian Tax Office Practice Statement PS/LA 2007/21, <http://law.ato.gov.au/atolaw/view.htm?Docid=PSR/PS200721/NAT/ATO/00001> paragraph 9.

We hope that the transitional provisions will:

- ▶ ensure the existing charities are not proactively required to take any steps as at 1 July 2012 beyond confirming contact details and that they are still operating (see below); and
- ▶ give the ACNC sufficient time to ‘open its doors’, establish links and credibility with the NFP sector, the public and all Australian governments before additional roles are added (such as ensuring compliance with new governance requirements).¹¹

Once finalised the importance of effectively communicating the transitional arrangements should not be underestimated. Indeed, the success of the ACNC rests in large part on the early support from the sector – the likelihood of which can be increased by fostering relationships with existing charities via an extensive public information campaign.

We commend the ACNC Taskforce on their face-face community consultations and use of online tools to communicate with the sector in the current start-up phase. Continued use of social media, YouTube, and the ACNC website to communicate the transitional arrangements will be important as well as continued engagement with peak bodies and intermediary services.

We suggest the ACNC will need to engage in an extensive ‘myth busting’ exercise to allay the fears of existing charities. From the enquiries we receive, it is clear that charities will want easy-to-understand information about ‘what they have to do’. We also suggest the ACNC web site have a clear demarcation between information for ‘new’ and ‘existing’ charities and for those NFPs that are not sure if they are a charity. Consideration needs to be given to those charities that do not have ready access to online resources.

We assume, prior to 1 July 2012, a letter will be sent by the ACNC (or perhaps the ATO):

- ▶ outlining the transitional arrangements including:
 - explaining which body to contact for what (eg, that the new contact body for non-taxation matters is the ACNC)
 - indicating that registration is voluntary but what the consequences of not being registered are
 - explaining if they do not wish to be automatically registered, what they need to do and by when, and
 - indicating exactly what information will appear on a public register
- ▶ asking them to complete a form (hard copy or online) notifying of new contact details and/ or cessation of operation, and
- ▶ how to access further information (online or via a telephone information service).

¹¹ PilchConnect Submission to Treasury’s *Consultation Paper – Review of not-for-profit governance arrangements*, available at <http://www.pilch.org.au/submissions/#2>.

Questions ten and eleven:

What assistance could the ACNC provide to support the sector's use of online engagement?

Are there barriers to online reporting and registration? How can the ACNC ensure that it is effective?

Unless online reporting and registration is simple, user friendly, easy to navigate and supported by telephone assistance, charities will be reluctant to embrace it.

The online reporting and registration system should have 'help' or 'tip' boxes, commentary and explanations where needed. We note that various terms in the sample forms (eg, 'officer', 'entity') will require carefully worded, plain language explanations.

The ACNC Taskforce has already put online tools such as YouTube to good use. These tools will also be useful for the next phase – eg, DVDs / YouTube clips on topics like 'Who needs to register with the ACNC', 'Are we a charity?' 'How to lodge your Annual Information Statement'. Engaging peak bodies and sector support services to run group information sessions with key ACNC staff presenting (in person or via services such as Skype) will also be an important way to reach across different sub-sectors.

Particular consideration needs to be given to groups who find the concept of online reporting and engagement overwhelming, confusing or inaccessible. It is not uncommon for us to receive requests for hardcopy resources for organisations that do not have internet access. Small groups that have internet access often contact us for assistance in navigating their way through the websites of relevant regulators or government departments.

To assist these organisations, the ACNC may find it useful to engage the support of local community services and develop partnerships wherever possible. For example, local libraries could be provided with an information pack and local neighbourhood houses and learning centres could be supported to provide help to the groups that use their facilities.

Question twelve:

Are there barriers to the AUSkey as the online authentication tool?

We understand that the AUSkey tool provides a secure way of transacting with various Commonwealth agencies and could potentially be expanded to use by state and territory revenue offices. While adoption of this tool is a goal to work towards, we do not believe the ACNC should make it a mandatory. The following case study reflects feedback we have received from clients when we have asked about the AUSkey tool.

Case study – AUSkey problems

We are a small organisation that relies on volunteers to manage our regulatory compliance obligations. We registered for GST because we wanted to claim GST credits on our projects. The volunteer who does our bookkeeping registered for the AUSkey technology, so that we could lodge our BAS online. It worked okay for a while, but our volunteer upgraded her computer and then the AUSkey started having 'process errors'.

We called the ATO NFP helpline, who transferred us to the Business Portal section, who transferred us to the Technical Helpdesk. Over several calls, the ATO instructed our volunteer to download and reinstall the AUSkey technology (twice), alter the system settings, use different internet browsers, and attempt to modify 'cookies' and/or uninstall Skype. We carried out all these instructions, but still we had no success. It seemed no one could tell us if we should talk to the Business Portal or Technical Helpdesk (we were frequently transferred back and forth). Several times, the Technical Helpdesk gave us instructions that were for a PC, but which did not work on our volunteer's Apple Macintosh computer.

The volunteer contacted the ATO on average at least every other week for several months, trying to get help with the AUSkey. She was often 'on hold' for long periods; and at times the ATO simply stated that the helpdesk was receiving too many calls and please call back at another time. This was problematic, as our volunteer works full-time and does the books for our organisation in her spare time. When she requested the ATO to call her at a specific time/day (eg, her lunch hour at work), the best they could do was call her 'within a range of business hours' on a particular day. Even then, often they did not call back when they said they would.

By this stage, our BAS statement was well overdue. We received a letter from the ATO saying that we needed to lodge our BAS immediately and setting out penalties for failing to lodge on time (up to \$550 and increasing depending on how long the document is overdue). The volunteer was concerned that she was exposing the organisation to a large fine - or that she might have to pay the fine personally, as she had the responsibility for lodging the BAS on behalf of the organisation, and had not done it.

Eventually we gave up on AUSkey and asked the ATO to send us a paper form so that we could lodge the BAS by mail. We had to write a letter to the ATO explaining what had happened, and even though in the end we weren't fined, the whole process was incredibly stressful and frustrating for our organisation - and a very poor use of our volunteer's limited time and energy.

Question thirteen:

Are the proposed principles guiding the ACNC's role as an educator adequate and appropriate?

Overall we approve of the proposed guiding principles of accessibility (including usefulness, relevance and readability, targeted and tailored), diversity and efficiency.

We are concerned that the ACNC's proposed emphasis will be on 'ease of access, graduated depth of analysis and breadth of regulatory topics of use to charities and the broader public.' The role of the ACNC is not to operate a comprehensive website on all operational issues for charities. We caution against the ACNC 'covering the field' and thereby duplicating the range of educational materials and services already provided by peak bodies and sector based support services. In light of this, we encourage the ACNC not to venture outside of its mandate or the scope and early priorities identified in the Discussion Paper.

We are pleased that the Taskforce has acknowledged diversity as a key principle and that 'materials will be tailored in ways that recognise the diverse nature of the NFP sector.' We understand that 'diversity' in this context refers to the varied structures, size, mission and activities of organisations. However the term could be considered from another perspective – it could also refer to culturally and linguistically diverse (CALD) community groups. We encourage the ACNC to reconsider (or clarify) this use of terminology.

We note the Discussion Paper does not specifically canvas how the ACNC intends to provide adequate and appropriate education and resources for CALD community groups (including the provision of interpreting services). There may need to be different approaches and emphases, depending on the cultural context, and we encourage the ACNC to work closely with organisations that have specific expertise in these areas – eg, ORIC and the Federation of Ethnic and Community Councils Australia.

Questions fourteen and fifteen:

What should be the scope of the ACNC's educative role?

Is it appropriate for the ACNC to endorse education and guidance material provided by other entities (e.g. peak bodies?)

We refer the Taskforce to the stimulus paper prepared by PilchConnect for the ACNC Taskforce Roundtable (Education and Advice) (**Appendix B**) and highlight the following key points:

1. Education and compliance initiatives of the ACNC should be specifically focused around the provision of accessible advice, information, guidance material and technologies to assist charities and NFPs to understand their obligations and interface with the ACNC.
2. Information resources should be written in simple, plain language, and available in a range of formats. The ACNC should not duplicate existing materials, but rather acknowledge (and partner to produce) high quality resources by the sector, for the sector.
3. Information resources should be backed up by phone and online support services.
4. The culture of the ACNC will be critical – the ACNC needs staff that are knowledgeable, friendly, facilitative and linked in with other services that might be of assistance.
5. Online communication and a social media presence will be vital in getting the ACNC's message out. But remember that not every charity has the internet or a computer (or

6. Government funding should be made available for sector-based support services to assist charities in meeting their new compliance obligations and supporting good governance practices.

ACNC endorsement of sector-produced education and guidance material would provide the dual benefit of engaging with trusted intermediaries and fostering positive relationships, while simultaneously delivering the resources needed by charities. However, endorsement of external resources would need to be approached with caution in order to protect the integrity and 'brand' of the ACNC. It would be important to establish and maintain robust quality control mechanisms to ensure that endorsed material remains current, relevant, and accurate. This would involve the ACNC establishing meaningful partnerships with sector-based services, which may involve the provision of support to revise resources and/or copyright licenses for the use of content generated by sector-based providers.

Thank you for the opportunity to submit to this discussion paper. Please contact us should you wish to discuss any aspects of this submission.

Yours sincerely,

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Appendix A - About PILCH and PilchConnect

The Public Interest Law Clearing House (Vic) Inc. (PILCH) is a leading Victorian, not-for-profit organisation. We are committed to furthering the public interest, improving access to justice and protecting human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education. In carrying out its mission, PILCH seeks to:

- ▶ address disadvantage and marginalisation in the community;
- ▶ effect structural change to address injustice; and
- ▶ foster a strong pro bono culture in Victoria; and, increase the pro bono capacity of the legal profession.

PilchConnect is PILCH's specialist service that provides NFPs with access to free or low cost, high quality, practical and plain language legal help (information, advice and training). We understand our NFP clients are time poor, often working in a volunteer, 'out of hours' capacity. We help those NFPs that cannot afford (or otherwise access) private legal advice and prioritise those in rural and regional areas.

We support small-medium NFP community organisations to be better run. We do this because well-run NFPs are more likely to achieve their mission, and because public trust and confidence in the NFP sector is likely to be improved. By supporting NFPs in this way, we aim to contribute to a better civil society and more connected communities.

Our experience has confirmed that, with support at key points during their organisation's lifecycle, those involved in running NFPs can be empowered to handle common legal and legally related issues themselves (for example, incorporation, changing their rules). Our integrated service model helps NFPs navigate the complex regulatory maze – both their general legal obligations and NFP-specific issues such as charitable fundraising.

We believe improving the legal literacy of NFPs and their advisers is the first step to improved compliance and the adoption of good governance practices. Our help supports NFPs to be run more effectively, efficiently and sustainably – we 'help the helpers' preserve their limited resources for delivering their mission, such as services or advocacy for those experiencing disadvantage. A strong, well governed NFP sector will enjoy increased public trust and confidence and, with that essential backing, the sector will be able to sustain and even grow its vital contribution to the well-being of all Australians.

We fill a niche role, sitting between regulators and the private legal profession. If those involved in running an NFP are not sure about how to comply (or realise they have not

complied), they will seek advice from us but would be concerned about approaching a regulator. As an independent, sector-based intermediary they know we will understand the practical constraints they operate under. We often help them work out if they really do have a legal problem, how serious it is and what are the possible next steps.

To address systemic issues, we undertake campaign work. This is directed to achieving a smarter legal framework for NFPs, and reducing red tape. Our client work provides a rich evidence base to explain the practical implications of existing laws (and the often unintended consequences of proposed laws) on small, volunteer-run NFPs. To influence a shift in norms and, in turn, bring about policy and law reform in the areas that will achieve the greatest benefit for small-medium NFPs, we recognise the importance of having strong organisational capacity, alliances and support base.

Appendix B - PilchConnect stimulus paper

ACNC Taskforce Roundtable (Education & Advice) 8 November 2011

PilchConnect aims to 'help the helpers'. By assisting not-for-profit organisations to understand and comply with their legal and regulatory requirements, we help ensure their precious time and resources are freed up to further their objectives, whether they be providing services to disadvantaged people, promoting cultural diversity, or advocating for a better world.

PilchConnect's experience on this issue

PilchConnect is Australia's only specialist community legal service for not-for-profit organisations (**NFPs**). Since our establishment in November 2008 we have received **2,000+** **enquiries** via our legal enquiry line (1800 number). From these inquiries, we have:

- ▶ provided telephone advice and pro bono referrals to over 900+ Victorian NFPs and helped many others access government, sector and private services (eg, Victorian government's free dispute resolution service, Consumer Affairs Victoria and Law Institute of Victoria referral service)
- ▶ delivered legal education to over 2,500 people (including in regional areas)
- ▶ received more than 1/4 million hits to our webportal.

More than 75% of our clients are based in outer-metro and regional areas. We prioritise small volunteer run groups, especially those delivering services to vulnerable people and those from rural and regional areas. Our client experience provides an evidence base for our policy work – we advocate for smarter regulation of NFPs at both state and federal levels.

PilchConnect is a service of the Public Interest Law Clearing House (Vic) Inc (**PILCH**). In 2011 PilchConnect was independently evaluated by Deloitte Access Economics.ⁱ Currently we focus our efforts on assisting Victorian organisations although many of our services are used by and benefit the broader Australian NFP sector.

Five key issues to consider today

The information and advice functions of the ACNC will be critical to its effectiveness as a regulator. We offer the following reflections/provocations for discussion at the Taskforce Roundtable:

1. Small, volunteer-run charities (and later NFPs) should be the primary audience of the ACNC's information and advisory services. They are most in need of support and the least able to access information from other (eg, private) providers.
2. Information resources should be written in simple, plain language, and available in a range of formats. The ACNC should not duplicate existing materials, but rather acknowledge (and partner to produce) high quality resources by the sector, for the sector.
3. Information resources should be backed up by phone and online support services.
4. The culture of the ACNC will be critical – the ACNC needs staff that are knowledgeable, friendly, facilitative and linked in with other services that might be of assistance.
5. Online communication and a social media presence will be vital in getting the ACNC's message out. But remember that not every NFP has internet or computer (or phone) access – a multi-platform approach will be necessary to reach the diversity of Australian NFPs across all parts of Australia. Consider service agreements with Australia Post or local councils.

Before discussing these issues in more detail, we make comments about the scope of the ACNC's role on education and advice.

PilchConnect recognises the important role the ACNC will play in facilitating access to information and advice about regulatory requirements for NFPs. We recommend that the ACNC's educational and advisory functions be focused on the provision of accessible information, guidance material and technologies to assist NFPs to understand their obligations and interface with the new regulator and regulatory system. In tandem with this, appropriate funding should be made available by the government for sector-based support services to assist NFPs in meeting their legal obligations and achieving good governance.

The ACNC should not be seen as a 'replacement' for the capacity-building and educational services currently provided by sector-based 'intermediaries'. There are a number of reasons why the ACNC is not best placed to provide community education and tailored advice to NFPs, including the below:

- ▶ As a regulator, the ACNC can only provide information and advice of a general nature. Our experience (which is supported by the Productivity Commission's findings)ⁱⁱ is that NFPs, especially those starting up, benefit from more tailored forms of assistance.
- ▶ NFPs are unlikely to have a sufficient degree of trust to discuss their compliance queries with a national regulator which also has enforcement powers. Our experience shows that, by contrast, they do have confidence discussing compliance issues with peak bodies and sector-based services such as PilchConnect. Their preference is to learn from a source they feel they can trust, and this has also been acknowledged by the Productivity Commission.
- ▶ Peak bodies and sector-based service providers are also often more in touch with the challenges faced by NFPs such as limited resources and reliance upon volunteers. Sector-based intermediaries have greater insight into the practical realities faced by NFPs and, with proper funding, could work to complement the educational initiatives of the regulator.

1. Who needs information and advice most?

All NFPs will need a basic level of information about the ACNC and the new regulatory environment, as well as opportunities to receive reliable and timely assistance with more specific technical queries. But it will be small community organisations that will need most in terms of education and advice from the new ACNC. Grassroots, local, volunteer-reliant NFPs have very limited access, if any, to professional services (such as lawyers and accountants) who can advise them on compliance and regulatory issues. As a consequence they rely almost exclusively on information and advice available from public sources – they will be attracted to information with the 'official' branding of the ACNC. It will be crucial that ACNC information is presented in a tone, style and pitch that is appropriate to this audience.

As has often been noted, there is a high level of voluntary compliance with regulatory obligations by the NFP sectorⁱⁱⁱ – non-compliance is mostly due to a lack of understanding on the part of those running the organisation (typically volunteers). We suggest the ACNC should adopt an approach which assumes that (on the whole) NFPs want to comply, but need practical down-to-earth help to work out how to do so. Of course, serious offences (eg fraud) should be dealt with swiftly and harshly.

The reliance of charities on public support (including philanthropic and government funding) means they are particularly concerned to protect their reputation and avoid consequences of non-compliance. Many people involved in small NFPs find it extremely stressful to learn

there are new (or changing) regulatory requirements, especially where they rely entirely on volunteers. Allaying fears and ‘myth busting’ about the changing regulatory environment and the role of the ACNC will be important.

2. How should information be presented?

Simple, plain language and accessible

Written materials should be drafted in plain language, with a practical focus, and assuming a low reading age to maximise accessibility.^{iv} They should instil confidence in the authority of the regulator, but adopt a facilitative and non-threatening approach.

Clear headings, case studies, examples and images that are familiar to NFPs will assist in attracting attention and orienting readers through the material.

Feedback – simple, clear explanations

“Thanks for your help. It was a vastly more succinct explanation than I would have got from most people at [state regulator].”

(PilchConnect client, March 2011)

Simple videos and podcasts are effective ways of conveying information and great opportunities for telling people’s stories. They are also an important way to increase access for particular segments of the sector (eg people with disabilities or low literacy and those living in regional/remote areas). We find that many NFPs prefer (and increasingly expect) to be able to obtain legal information via these formats. The ACNC YouTube offering has been a great start!

Given the diversity of the sector, a ‘one size fits all’ approach to information provision will not be appropriate – different levels and styles of information will be required to meet the needs of different types of charities. For example an incorporated association that is not required to have audited accounts will require different information from the ACNC (and have different questions) to a company limited by guarantee with DGR status. In our experience, it can be hazardous to attempt to address all ‘angles’ within a single publication as the end result can be overwhelming or confusing for readers. In our view short, succinct, cross-referenced materials are usually preferable.

This does not mean that the ACNC’s materials should be limited to simple facts – plain language information should be able to deal with complicated issues, discuss options and suggest actions. The key is to keep the intended audience (principally, small charities) the central focus of the writing.

NFP-focussed layout

While it is tempting to organise information according to how the law ‘works’ in a regulatory sense, the focus should be on how and when charities will need access to information.

PilchConnect’s webportal has received considerable acclaim for its arrangement of legal information according to the ‘lifecycle’ of an NFP – we chose not to structure information according to traditional legal categories (such as incorporation, employment, taxation) but rather considered at what stage an organisation would be likely to want information on those issues.

Below are some observations from our creation, maintenance and updating of our webportal which may have relevance for the ACNC:

- ▶ The colour, design and layout of resources are critical to engagement and effective signposting of information. The layout of written materials should have sufficient ‘white space’ to avoid users feeling overwhelmed.
- ▶ Generally, NFPs favour ‘task-based’ resources (eg. checklists, decision trees, ‘top tips’, sample documents) which help them apply information to their own organisations and circumstances. Many time-poor NFPs are not interested in how the law works or why it is there; they just want to know ‘what we have to do.’
- ▶ While registration and reporting will be online, it should not be assumed that all NFPs have computer / internet / phone facilities. Furthermore not all NFPs have colour printing facilities (and ink is expensive), so – particularly with online downloads – the ACNC may wish to consider producing materials in black & white (or limited colour) as well as full colour publications.
- ▶ Our experience is that many NFPs request hard copies of our guides and factsheets (even if they can access them online). Printed copies of resources should be easily available.
- ▶ To avoid duplicating existing materials, the ACNC should link to other organisations and agencies that provide relevant, high quality resources for the sector. This is the approach taken by the NZ Charity Commission’s website (referred to in ACNC Taskforce Stimulus Paper). However, while linking to sector-generated resources is good, it is important to be mindful that these resources may not be updated or new resources may not be able to be produced to fill emerging needs without ongoing funding support for these NFP intermediaries. Of course copyright also needs to be respected.

3. Telephone and email support

Information cannot exist in a vacuum – it must work in conjunction with advice and educational services.^v Our experience at PilchConnect is that despite the usefulness of our webportal information, many NFPs still need to talk to us to get help with their specific queries or legal concerns.

The popularity of our telephone advice service^{vi} (despite little publicity) is testament to the need for tailored support services for NFPs, in addition to general information resources. We often find the most effective way to resolve an issue is to have a phone conversation about the matter and then to back up that conversation with other resources (either via our webportal or elsewhere).

Feedback – online & telephone support

“I have used the [PilchConnect] site for information to assist a community organisation and found it fantastic.

[Then] the contact person [on PilchConnect’s phone enquiry line] was pleasant and helpful and the person providing the advice rang back promptly and was extremely helpful and patient ... Great service, great website.”

(PilchConnect client, September 2010)

In addition to phone support, the ACNC may wish to consider an online ‘enquiry’ function to expand the reach and timeliness of its support services. For example, the Victorian Equal Opportunity and Human Rights Commission has a ‘live chat’ function on its website which enables users to ask questions or request information from the Commission’s staff in real time.^{vii}

In summary, it **is** the ACNC’s role to support people within NFPs who are trying to comply with regulatory requirements by providing tailored assistance with compliance issues by phone or other means (so long as the information given is accurate and appropriate). In our view, it **is not** the role of the ACNC to provide detailed ‘advice’ to NFPs, and should support (not supplant) the role of sector-based intermediaries.

4. Culture and approach

The culture and approach of the ACNC will be crucial to the effectiveness and ‘take up’ of services by the sector. The ACNC will need staff who have a genuine understanding the sector, the challenges and constraints faced by NFPs, as well as technical proficiency and professionalism. This is especially so for ‘front line’ telephone and online enquiry services. Our experience is that NFPs seeking assistance from existing regulators often find that the quality of response varies considerably depending on the officer attending the enquiry.

Many NFPs report disappointment at their attempts to elicit information or to clarify issues from regulatory bodies, and often feel they are on a 'referral roundabout' being shunted between different divisions and departments, or between government and non-government agencies (including to us).

Establishing clear referral pathways and protocols (including for example 'warm referrals') will assist the ACNC to maintain a clear mandate while being well linked to other agencies that can provide assistance to NFPs. The ACNC could also develop partnerships with sector-based intermediaries that deliver community education to NFPs – for example, a sector-based training provider could be funded to deliver co-branded seminars in a range of regional locations, featuring a Skype-based Q&A session with a representative from the ACNC.

The Commonwealth Ombudsman recently identified a number of common examples of poor communication by government agencies in relation to delivery of services^{viii} – these reflect many of the frustrations expressed by NFPs to us about their experiences of dealing with government agencies and regulators. The Ombudsman's list included:

- ▶ the use of computer-generated form letters, or letters that cut and paste great tracts of impenetrable legislation, or refer to websites to which their clients may not have access
- ▶ sending people too much correspondence, or too little, or none at all
- ▶ call centre staff who don't have enough information themselves, or don't have the authority to make proper decisions
- ▶ failing to provide key information, such as the right to review, and how to complain
- ▶ writing in bureaucratese rather than plain language, using jargon, acronyms and abbreviations
- ▶ failing to provide simple explanations for people with cognitive impairment
- ▶ taking an officious tone
- ▶ not providing translations or interpreters, and
- ▶ having no single point of contact, so that people have to repeat their concerns over and over again.

These are salient points for the ACNC to consider as it develops strategies for communicating with and providing information to its constituents.

5. Getting the message out

Inevitably online communication will be a vital part of the ACNC's information strategy – it is increasingly expected that government agencies (and regulators) will have a social media presence. Facebook has 10 million active users in Australia, and Twitter's users are growing in Australia by about 100,000 users per month. Wikis continued to grow as a popular form of online content – close to three quarters of Australian internet users (73%) read a wiki in the past year compared to 61 percent in 2008 and just 37 percent in 2007. Importantly, nearly two in five online Australians are now interacting with companies via social networking sites, reinforcing notions that Australians are open to engaging with brands and seeking official information from online sources.^{ix} The ACNC has already started to position itself well in the social media space by the establishment of its YouTube Channel in tandem with the launch of the ACNC Taskforce website.

Online forums should not however be seen as a panacea to all gaps in access or as a replacement for other communication tools. It is notable that many small volunteer-run organisations have very little or no information technology (IT) infrastructure.^x Thought should be given to creating a local footprint for the ACNC, where those that need help with and/or access to scanning and the internet could get assistance. Perhaps a service agreement with, for example, Australia Post or local libraries could be investigated.

Furthermore, in our experience, even NFPs that have access to IT facilities want to receive different types of information in different ways – for example, a single organisation may:

- ▶ subscribe to our monthly e-bulletin, and also follow us on Twitter feed for shorter, quicker updates as they become available
- ▶ access information on our webportal, and also want hard copies of our more comprehensive guides
- ▶ attend face-to-face training on particular legal issues, and sometimes ask whether sessions are available on DVD for those who couldn't attend
- ▶ speak on the phone to a PilchConnect lawyer about a particular legal problem, or seek referral for advice from a law firm specialising in the area.

For these reasons a multi-platform approach to producing and delivering information and advice will be critical to the ACNC's ability to reach, engage and regulate the diversity of Australian NFPs.

ⁱ For more information about PilchConnect, see www.pilchconnect.org.au. In particular, for the Deloitte Access Economics evaluation, see www.pilch.org.au/pilchconnectevaluation/

ⁱⁱ In its 2010 report on the contribution of the NFP sector, the Productivity Commission noted that 'better advice is emerging from initiatives within the sector, from NFP peak bodies and purpose specific entities. For example, PilchConnect (sub. 131) offers assistance to those involved in community organisations that want to establish a legal entity, be it an incorporated association, a company limited by guarantee, cooperative, or other form: Productivity Commission (2010) 'Contribution of the NFP Sector', Final Research Report, at p 122.

ⁱⁱⁱ The ATO has acknowledged that 'Non-profit organisations show a strong desire to get it right, but often have a low level of knowledge about how the tax and superannuation systems work. Where compliance issues arise, they are mainly due to mistakes or a lack of knowledge': see ATO 2008/2009 Compliance Program report, at p 63, available at www.ato.gov.au/content/downloads/COR_0015516_CP0809.pdf.

^{iv} A 2006 ABS survey found that only 54% of Australian aged 15 to 74 years were assessed as having the prose literacy skills needed to meet the complex demands of everyday life and work: see Victoria Law Foundation (2011) 'Better Information Handbook', at p 38, available at www.victorialawfoundation.org.au/images/stories/publication_better_info_handbook.pdf.

^v Victoria Law Foundation (2011) 'Better Information Handbook', at p 4, available at www.victorialawfoundation.org.au/images/stories/publication_better_info_handbook.pdf.

^{vi} In the last financial year PilchConnect's telephone advice service assisted 323 community organisations, an increase of 54% on the previous year (which was the 1st year of telephone service).

^{vii} See the 'Chat live with us now' function at www.humanrightscommission.vic.gov.au/.

^{viii} Commonwealth Ombudsman, 'Why do good policy ideas turn into porridge?', speech delivered to the MEAA and Walkley Foundation's 2011 Public Affairs Convention, 6 Sept 2011, available at www.ombudsman.gov.au/files/6_September_2011_Why_do_good_policy_ideas_turn_into_porridge.pdf

^{ix} See NeilsonWire website, 'Australia Getting More Social Online as Facebook Leads and Twitter Grows' at <http://blog.nielsen.com/nielsenwire/global/australia-getting-more-social-online-as-facebook-leads-and-twitter-grows/>

^x For an analysis of limited information technology (IT) capacity in the NFP sector, see Productivity Commission, above n 1, eg at p LVIII.