

Regulation of Charities by the Australian Charities and Not-for-profits Commission

Australian Charities and Not-for-profits Commission

Australian Taxation Office

© Commonwealth of Australia 2020

ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-76033-530-4 (Print)

ISBN 978-1-76033-531-1 (Online)

Except for the content in this document supplied by third parties, the Australian National Audit Office logo, the Commonwealth Coat of Arms, and any material protected by a trade mark, this document is licensed by the Australian National Audit Office for use under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 Australia licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

You are free to copy and communicate the document in its current form for non-commercial purposes, as long as you attribute the document to the Australian National Audit Office and abide by the other licence terms. You may not alter or adapt the work in any way.

Permission to use material for which the copyright is owned by a third party must be sought from the relevant copyright owner. As far as practicable, such material will be clearly labelled.

For terms of use of the Commonwealth Coat of Arms, visit the *It's an Honour* website at <https://www.pmc.gov.au/government/its-honour>.

Requests and inquiries concerning reproduction and rights should be addressed to:

Senior Executive Director
Corporate Management Group
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Or via email:

communication@anao.gov.au.



Canberra ACT
31 March 2020

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Australian Charities and Not-for-profits Commission and the Australian Taxation Office. The report is titled *Regulation of Charities by the Australian Charities and Not-for-profits Commission*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7300
Email: ag1@anao.gov.au

Auditor-General reports and information about the ANAO are available on our website:
<http://www.anao.gov.au>

Audit team

Amanda Reynolds
Andrew Morris

Contents

Summary and recommendations.....	7
Background	7
Conclusion	8
Supporting findings.....	8
Recommendations.....	10
Summary of entity responses.....	11
Key messages from this audit for all Australian Government entities	12
Audit findings.....	13
1. Background	14
The Australian Charities and Not-for-profits Commission	14
Registered charities.....	16
Rationale for undertaking the audit	19
Audit approach	19
2. Registering charities and maintaining the Charity Register	21
Do the ACNC's registration processes provide assurance that registered charities meet legislative requirements, including the Governance Standards?	21
Has the ACNC processed registration applications in a timely manner?.....	31
Has the ACNC been effective in maintaining the Charity Register?	33
3. Supporting ongoing compliance by charities.....	39
Has the ACNC been effective in assisting charities to understand and meet their ongoing compliance obligations?	39
Has the ACNC been effective in monitoring charities and undertaking risk-based compliance and enforcement activities?	43
Does available performance information indicate that the ACNC has been effective in maintaining, protecting and enhancing public trust and confidence in the charities sector?	55
4. Strengthening the sector and reducing the regulatory burden on charities	60
Has the ACNC actively supported and sustained a robust, vibrant, independent and innovative not-for-profit sector?	61
Has the ACNC actively promoted the reduction of unnecessary regulatory obligations on the charities sector?	64
Does available performance information indicate that the ACNC has been effective in progressing these corporate priorities?	69
Appendices	73
Appendix 1 Entity responses	74



Audit snapshot

Auditor-General Report No.29 2019–20

Regulation of Charities by the Australian Charities and Not-for-profits Commission (ACNC)



Why did we do this audit?

- ▶ To determine whether the Commonwealth's charity regulator, the ACNC, is regulating registered charities effectively.
- ▶ The public, business and governments provide significant funding and other support to charities to help them deliver their charitable purposes.



Key facts

- ▶ The ACNC has registered over 17,000 charities since it was established in December 2012.
- ▶ Registration with the ACNC is necessary to gain access to certain Commonwealth tax concessions.
- ▶ The *Charities Act 2013* sets out the legal definition of a charity.
- ▶ The online Charity Register provides details on registered charities.
- ▶ The ACNC's formal enforcement powers do not automatically apply to all registered charities.



What did we find?

- ▶ The ACNC has been largely effective in delivering its regulatory responsibilities for registered charities.
- ▶ The ACNC has focussed on providing education and guidance to support charities' ongoing compliance obligations.
- ▶ The ACNC has taken a 'light touch' approach to assessing whether charities meet required governance standards.
- ▶ The ACNC has made relatively limited use of its stronger regulatory powers to address identified non-compliance.
- ▶ The ACNC has established a number of initiatives to reduce the red tape burden on registered charities.



What did we recommend?

- ▶ We made four recommendations and suggested other areas for improvement.
- ▶ The ACNC agreed to implement all four recommendations.

57,600

charities were registered with the ACNC as of 3 February 2020.

77

charities have had their registration revoked as a result of the ACNC's compliance activities (up to 30 June 2019).

\$142.7 billion

was the total revenue reported by registered charities in 2017.

Summary and recommendations

Background

1. The Australian Charities and Not-for-profits Commission (ACNC) is the principal regulator of charities at the Commonwealth level.¹ The ACNC was established in December 2012 under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act). Its establishment followed a series of reviews and inquiries into the not-for-profit (NFP) sector since the mid-1990s.
2. The benefits expected from establishing a national regulator and reforming the regulatory framework for the NFP sector are reflected in the three objects of the ACNC Act, which are to:
 - maintain, protect and enhance public trust and confidence in the Australian NFP sector;
 - support and sustain a robust, vibrant, independent and innovative Australian NFP sector; and
 - promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.
3. The ACNC Act provides for the ACNC to regulate registered charities only (some 57,600 as of 3 February 2020), not the wider NFP sector.
4. The ACNC's regulatory activities include: registering charities; maintaining a public register of charities; providing advice and assistance to charities; undertaking monitoring, compliance and enforcement activities; and working with Commonwealth entities and other jurisdictions to reduce the regulatory burden on charities.
5. The ACNC Commissioner is responsible for administering the ACNC Act, and is supported by staff made available by the Commissioner of Taxation (who is the accountable authority of the ACNC). The ACNC is funded from the ATO's departmental appropriations, and had a budget of \$16.2 million in 2018–19. As at 30 June 2019, the ACNC had 95 full-time equivalent staff.

Rationale for undertaking the audit

6. In Australia, governments, business and the public provide significant funding and other support to charities to help them deliver their charitable purposes. This audit was undertaken to provide assurance on whether the ACNC is regulating registered charities effectively, including for the benefit of recipients, donors and the wider community.

Audit objective and criteria

7. The audit objective was to assess the effectiveness of the ACNC's regulation of charities. The three high-level criteria were:
 - Has the ACNC been effective in registering charities and maintaining the Charity Register?
 - Has the ACNC been effective in supporting charities to meet their ongoing compliance obligations?

1 The Australian Taxation Office (ATO) and other entities also have a role in regulating aspects of the not-for-profit sector. Charities are also regulated at the state and territory level.

- Has the ACNC been effective in strengthening the sector and reducing the regulatory burden on charities?

Conclusion

8. The ACNC has been largely effective in delivering its regulatory responsibilities for registered charities.

9. The ACNC has been largely effective in registering charities and partially effective in maintaining the Charity Register. The ACNC has processed applications in a timely manner, but should better document assessment processes under its 'light touch' approach to registration. The ACNC has commenced a project to improve the usefulness of the information on the Charity Register, and should conduct additional checks on the integrity of that information.

10. The ACNC has been largely effective in supporting charities to meet their ongoing compliance obligations, particularly by providing guidance and monitoring charities' compliance. It has been less effective in addressing non-compliance. Improvements to the ACNC's compliance processes and measurement of outcomes would better support the objective of maintaining, protecting and enhancing public trust and confidence in the charities sector.

11. Within its remit and authority, the ACNC has been largely effective in promoting the reduction of unnecessary regulatory obligations on registered charities, but was less able to demonstrate its effectiveness in supporting and sustaining a robust, vibrant, independent and innovative not-for-profit sector.

Supporting findings

Registering charities and maintaining the Charity Register

12. The ACNC's registration processes have been designed on the basis of largely negative assurance — that is, to rely on information and assertions provided by an applicant of compliance with registration requirements, including the five Governance Standards, unless there is evidence to the contrary. The ACNC supports this approach by making a range of guidance material available to potential applicants. Some of the procedural checks that the ACNC requires on applicants' information and assertions were not well-documented. The ACNC should verify whether its 'light touch' approach to registration is appropriate.

13. The ACNC processed the vast majority of registration applications received in 2017–18 and 2018–19 well within its published service standard of 15 business days. Applications that took longer than 15 business days were not characterised by any particular complexity.

14. The ACNC has been partially effective in maintaining the Charity Register. While business-as-usual processes are in place to maintain important aspects of the Register, the ACNC has identified a number of outstanding data integrity and quality assurance issues that impact on the reliability and completeness of some information. A project to make the Register a more valuable resource for users is also underway — known as the 'Charity Marketplace'.

Supporting ongoing compliance by charities

15. Consistent with the main focus of its Regulatory Approach Statement, the ACNC has been largely effective in assisting charities to understand and meet their ongoing compliance

obligations. The ACNC has well-established arrangements for providing guidance and support to charities. It also has regular processes for prompting and encouraging charity compliance, although in 2018–19 the number of registered charities that lodged their Annual Information Statement on time (70 per cent) fell short of the ACNC’s performance target (75 per cent).

16. The ACNC has been largely effective in monitoring charities’ compliance in accordance with its stated regulatory approach, but less effective in undertaking risk-based compliance and enforcement activities. The ACNC relies mainly on external parties to identify compliance concerns, and is improving its arrangements for allocating available resources to identified compliance priorities. Complexity in determining whether charities are ‘federally regulated entities’ has limited the ACNC’s use of enforcement powers and reporting of enforcement results for deterrence purposes.

17. Current performance information does not provide a clear indication on whether the ACNC has been effective in maintaining, protecting and enhancing public trust and confidence in the charities sector. The ACNC has discontinued its most direct means of measuring public trust and confidence — a biennial survey.

Strengthening the sector and reducing the regulatory burden on charities

18. In late 2018, the ACNC initiated a project to interpret the intent of the second object of the ACNC Act. The ACNC has undertaken a number of activities focussed on promoting good governance practices and providing data to the sector, which may have assisted in supporting and sustaining a robust, vibrant, independent and innovative sector.

19. The ACNC has been active in promoting the reduction of unnecessary regulatory obligations on the charities sector. A number of specific initiatives have been introduced, especially to harmonise or streamline charities’ reporting arrangements — including through a data exchange tool called the ‘Charity Passport’. Further and ongoing benefits to charities requires the participation of other Commonwealth entities and jurisdictions.

20. The ACNC has not produced complete and relevant performance information to indicate the extent to which it has been effective in supporting and sustaining a robust, vibrant, independent and innovative not-for-profit sector. Performance information on the objective of promoting the reduction of unnecessary regulatory obligations on charities is more relevant and complete — and is largely positive.

Recommendations

Recommendation no.1

Paragraph 2.30

The Australian Charities and Not-for-profits Commission strengthens its processes for assessing applications for charity registration by:

- (a) Ensuring that the application form seeks appropriate information on which to assess compliance with legislative requirements.
- (b) Revising its risk management framework for registration applications to identify whether additional documentation or evidence should be sought from applicants on a risk basis.
- (c) Ensuring that all required procedural checks are clearly documented and able to be evidenced in its case management system or records.
- (d) Amending its main decision-making form to make explicit reference to whether all legislative requirements for registration have been met.
- (e) Verifying whether its 'light touch' approach to registration is appropriate.

Australian Charities and Not-for-profits Commission response: *Agreed.*

Australian Taxation Office response: *Noted.*

Recommendation no.2

Paragraph 2.58

The Australian Charities and Not-for-profits Commission investigates feasible and cost-effective approaches to improving the integrity of the information on the Charity Register, including, as appropriate, automating as many of the outstanding data integrity tasks as possible through its existing processes and systems.

Australian Charities and Not-for-profits Commission response: *Agreed.*

Australian Taxation Office response: *Noted.*

**Recommendation
no.3****Paragraph 3.56**

To better support the objective of maintaining public trust and confidence in the charities sector, the Australian Charities and Not-for-profits Commission enhances its compliance framework and operational practices by:

- (a) Using its processes for monitoring the annual information provided by charities to support its assessment that charities are complying with the Governance Standards.
- (b) Adopting a more proactive approach to identifying charity compliance risk, including drawing more extensively on data collected annually from charities.
- (c) Better aligning available resources to identified risks, such that higher risk cases are investigated or otherwise resolved in a timely way.
- (d) Ensuring that available regulatory powers are used to address identified non-compliance, including by determining more consistently whether the enforcement powers apply in relevant cases.

Australian Charities and Not-for-profits Commission response: *Agreed.*

Australian Taxation Office response: *Noted.*

**Recommendation
no.4****Paragraph 3.75**

The Australian Charities and Not-for-profits Commission amends its current set of performance indicators relating to the first object of the ACNC Act, with a focus on more directly measuring the impact of its regulatory activities on levels of public trust and confidence in the charities sector.

Australian Charities and Not-for-profits Commission response: *Agreed.*

Australian Taxation Office response: *Noted.*

Summary of entity responses

21. The ACNC's and ATO's summary responses are provided below, while their full responses are reproduced at Appendix 1.

Australian Charities and Not-for-profits Commission

The ACNC welcomes the audit report, which identifies that the ACNC is largely effective in delivering its regulatory responsibilities for registered charities. To a significant extent, this reflects our own assessment of areas that require improvement and, in many instances, are already underway.

It is timely that seven years after the establishment of the ACNC, we review our approach to regulation to verify whether it remains fit-for-purpose. The audit recommendations will assist the ACNC to focus this work and ensure our settings with regards to risk, entitlement to ongoing charity registration, data management, and unnecessary regulatory burden are appropriate. They will also assist us in ensuring that resources are allocated to their best effect to deliver effective

and efficient regulation that demonstrably supports public trust and confidence in the charities sector.

The ACNC agrees with the four recommendations contained in the report. We will undertake to complete a review and address the recommendations during 2020–2021 with a view to complete implementation of the recommendations in 2021–22.

Australian Taxation Office

The ATO welcomes this review and considers the report supportive of our overall approach to providing the government and the community with assurance that charities are operating for purpose and correctly accessing Commonwealth tax concessions.

The review recognises the important role the ACNC has in registering and regulating charities. The report makes recommendations for a robust registration process and an enhanced compliance framework that monitors adherence to governance standards and identifies risk. In addition, the report recommends investigating approaches to improving the integrity of data on the charity register. These processes provide the ATO with greater assurance that charities are correctly accessing concessions and operating for purpose.

The ATO notes the four recommendations contained in the report.

Key messages from this audit for all Australian Government entities

22. Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

Governance and risk management

- The publication of guidance and educative material provides an effective means to support ongoing compliance by regulated entities, especially where that material is tailored for particular groups.
- Regulators should make appropriate use of their regulatory powers, including stronger sanctions, to support the objects of their legislative framework.
- Regulators should identify opportunities to reduce the regulatory burden on entities, including through appropriate information-sharing arrangements with other regulators and government entities.

Performance and impact measurement

- Regulators should seek to clarify or interpret any aspects of their regulatory responsibilities that are not otherwise elaborated on in legislation or supporting materials — as the ACNC has started doing for the second object of the ACNC Act.

Audit findings

1. Background

The Australian Charities and Not-for-profits Commission

1.1 The Australian Charities and Not-for-profits Commission (ACNC) is the principal regulator of charities at the Commonwealth level.

1.2 The ACNC was established in December 2012 under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act). Its establishment followed a series of reviews and inquiries into the not-for-profit (NFP) sector since the mid-1990s.² The explanatory material for the proposed legislation stated that:

A consistent theme that emerged from these reviews is that the regulation of the NFP sector would be significantly improved by establishing a national regulator and harmonising and simplifying regulatory and taxation arrangements.³

1.3 The benefits expected from establishing a national regulator and reforming the regulatory framework for the NFP sector are reflected in the three objects of the ACNC Act (Box 1). These objects also represent the ACNC's corporate priorities.

Box 1: Objects of the ACNC Act

- To maintain, protect and enhance public trust and confidence in the Australian NFP sector.
- To support and sustain a robust, vibrant, independent and innovative Australian NFP sector.
- To promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.

Source: ANAO, based on subsection 15-5(1) of the ACNC Act.

1.4 The ACNC Act provides for the ACNC to regulate registered charities only, not the wider NFP sector.

1.5 Prior to the ACNC being established, the Australian Taxation Office (ATO) was the de facto regulator of charities in the Commonwealth and continues to retain some regulatory responsibilities.⁴

ACNC's governance arrangements

1.6 The ACNC Commissioner is an independent statutory office holder appointed to administer the ACNC Act. The staff assisting the ACNC Commissioner are made available by the Commissioner

2 A summary of these reviews and inquiries is provided at paragraphs 1.33 to 1.38 of the Revised Explanatory Memorandum for the ACNC Bill and the ACNC (Consequential and Transitional) Bill 2012.

3 See paragraph 1.32 of the Revised Explanatory Memorandum for the ACNC Bill and the ACNC (Consequential and Transitional) Bill 2012.

4 The ATO remains responsible for determining access to Commonwealth tax concessions for registered charities and other eligible entities in the NFP sector.

of Taxation. For the purposes of the *Public Governance, Performance and Accountability Act 2013* and related instruments, the Commissioner of Taxation is the accountable authority of the ACNC.⁵

1.7 The function of the ACNC Advisory Board⁶ is, at the request of the ACNC Commissioner, to provide advice and make recommendations in relation to the Commissioner's functions. Advisory Board members are appointed by the responsible minister — currently the Assistant Minister for Finance, Charities and Electoral Matters.

Regulatory activities

1.8 Regulatory activities undertaken by the ACNC include:

- registering new charities and revoking a charity's registration, either as a result of ACNC compliance and enforcement action or in response to a charity's request;
- maintaining a public register of charities⁷, which includes financial and other information collected from charities;
- providing advice and assistance to charities and the general public, including through guidance material on its website, a contact centre and other channels such as social media;
- monitoring charities for compliance with their obligations under the ACNC Act and undertaking compliance and enforcement activities; and
- working with Commonwealth entities and other jurisdictions to reduce unnecessary regulatory burdens on charities.

1.9 The ACNC has set out its intended regulatory approach in a published Regulatory Approach Statement.⁸

Resourcing

1.10 As of 30 June 2019, the ACNC had 95 full-time equivalent staff, the largest number being in its Registration team (22 staff), followed by the Compliance team (16 staff) and the Advice Services team (14 staff). The remaining staff work in: Information Technology (11 staff); Reporting and Red Tape Reduction (six staff); the Executive (six staff); Education and Public Affairs (six staff); Deductible Gift Recipient Reform (five staff); Corporate Services (five staff); and Legal and Policy (four staff).

1.11 The ACNC is funded from the ATO's departmental appropriations. In 2018–19 the ACNC's budget was \$16.2 million. Funding received by the ACNC is administered in a Special Account.⁹

5 The ACNC is part of a 'listed entity' called the Australian Taxation Office. See paragraph 7(c) of Schedule 1 of the *Public Governance, Performance and Accountability Rule 2014* available at: <https://www.legislation.gov.au/Details/F2019C00926> [accessed 6 February 2020].

6 The Advisory Board is established under Division 135 of the ACNC Act.

7 Known as the 'Charity Register' — available at: <https://www.acnc.gov.au/charity> [accessed 28 June 2019].

8 The Regulatory Approach Statement is available at: <https://www.acnc.gov.au/raise-concern/regulating-charities/regulatory-approach-statement> [accessed 22 October 2019].

9 The purposes of the Special Account are specified in Division 125 of the ACNC Act.

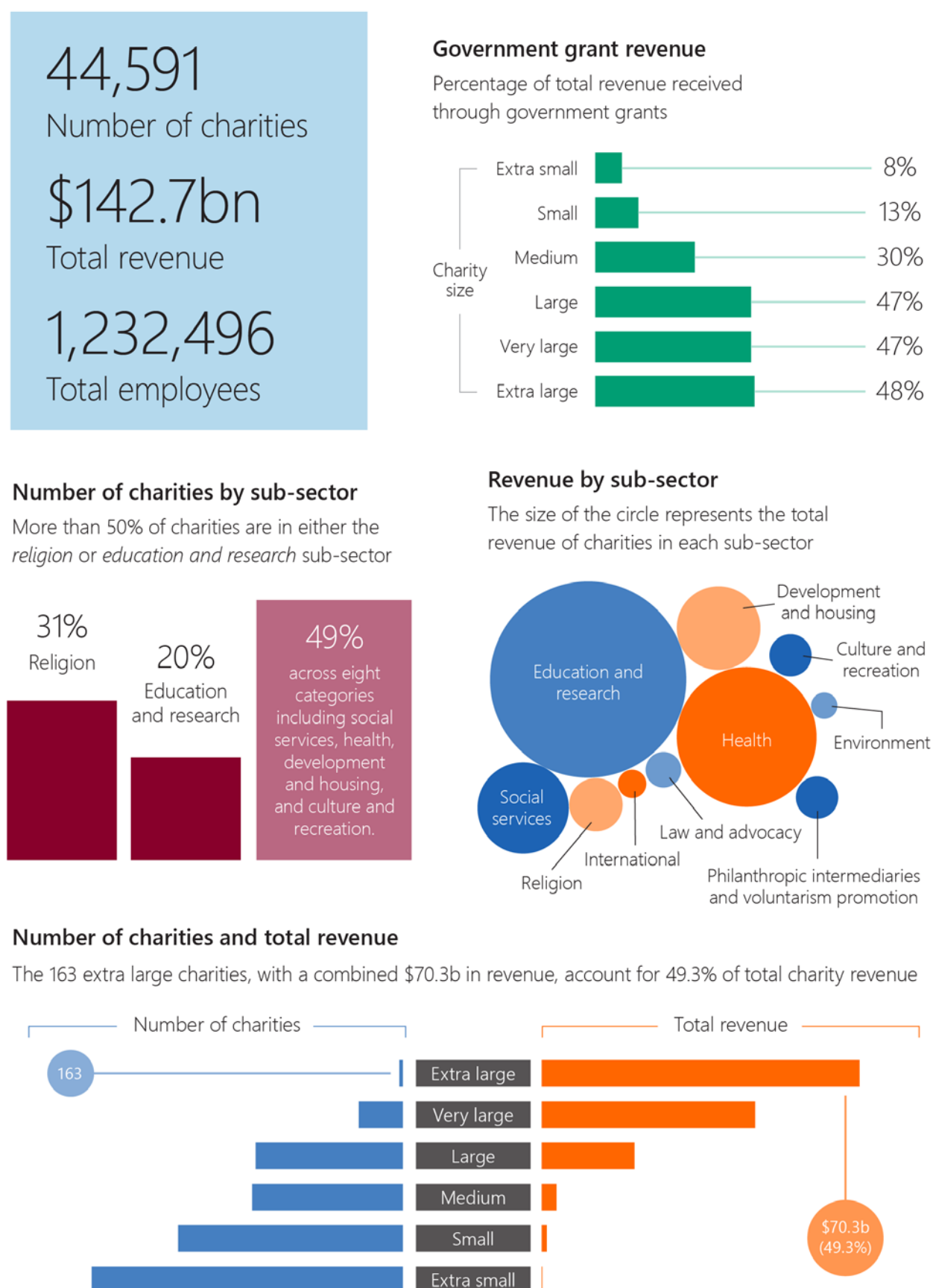
Registered charities

1.12 As of 3 February 2020, there were 57,600 registered charities. All registered charities are required to be NFP entities, but the vast majority of NFP entities — estimated to be some 600,000 organisations — are not registered charities.¹⁰

1.13 Each year the ACNC publishes an Australian Charities Report, providing information on the activities and attributes of registered charities.¹¹ Selected facts and figures from the most recent report (2017) are provided in Figure 1.1.

10 The vast majority of NFP entities are small unincorporated associations such as neighbourhood clubs.

11 The latest report (2017) is available at: <https://www.acnc.gov.au/tools/reports/australian-charities-report-2017> [accessed 30 July 2019].

Figure 1.1: Facts and figures on registered charities (2017)

Notes: The ACNC's 2017 Annual Charities Report, and associated data cube, is based on data reported by registered charities that submitted a 2017 Annual Information Statement.

The ACNC categorises charity size on the basis of total annual revenue. Extra small is revenue under \$50,000; Small is revenue of \$50,000 or more but less than \$250,000; Medium is revenue of \$250,000 or more but under \$1 million; Large is revenue of \$1 million or more but less than \$10 million; Very large is revenue of \$10 million or more but less than \$100 million; and Extra large is revenue of \$100 million or more.

Source: ANAO, based on the Australian Charities Report 2017 data cube, available at: <https://www.acnc.gov.au/charitydata> [accessed 15 August 2019].

1.14 The charities registered with the ACNC include long-established and well-known organisations as well as many small organisations with limited profiles.

1.15 The legal definition of 'charity' and 'charitable purpose' is set out in the *Charities Act 2013* (Charities Act) for the purposes of all Commonwealth legislation (Box 2). Prior to the introduction of the Charities Act on 1 January 2014, the legal meaning of a charity was based largely on over 400 years of common law.

Box 2: Legal definition of 'charity' and 'charitable purpose'

Charity means an entity:

- (a) that is a not-for-profit entity; and
- (b) all of the purposes of which are:
 - (i) charitable purposes that are for the public benefit; or
 - (ii) purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and
- (c) none of the purposes of which are disqualifying purposes^a; and
- (d) that is not an individual, a political party or a government entity.

Charitable purpose means any of the following:

- (a) the purpose of advancing health;
- (b) the purpose of advancing education;
- (c) the purpose of advancing social or public welfare;
- (d) the purpose of advancing religion;
- (e) the purpose of advancing culture;
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- (g) the purpose of promoting or protecting human rights;
- (h) the purpose of advancing the security or safety of Australia or the Australian public;
- (i) the purpose of preventing or relieving the suffering of animals;
- (j) the purpose of advancing the natural environment;
- (k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes listed in paragraphs (a) to (j); and

(l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country if:

(i) in the case of promoting a change — the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or

(ii) in the case of opposing a change — the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

Note a: Disqualifying purposes refers to the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or the purpose of promoting or opposing a political party or a candidate for political office.

Source: ANAO, based on sections 5 and 12 of the Charities Act.

1.16 In addition to the 12 charitable purposes listed in the Charities Act, the ACNC Act includes two other charity categories¹² — a ‘Health Promotion Charity’ and a ‘Public Benevolent Institution’.

Rationale for undertaking the audit

1.17 In Australia, governments, business and the public provide significant funding and other support to charities to help them deliver their charitable purposes. This audit was undertaken to provide assurance on whether the ACNC is regulating registered charities effectively, including for the benefit of recipients, donors and the wider community.

Audit approach

Audit objective, criteria and scope

1.18 The audit objective was to assess the effectiveness of the ACNC’s regulation of charities.

1.19 In assessing this objective, the following three high-level criteria were adopted:

- Has the ACNC been effective in registering charities and maintaining the Charity Register?
- Has the ACNC been effective in supporting charities to meet their ongoing compliance obligations?
- Has the ACNC been effective in strengthening the sector and reducing the regulatory burden on charities?

1.20 The scope of the audit was limited to the regulatory activities of the ACNC in respect to registered charities. The audit did not include an examination of the ATO’s processes for determining and granting Commonwealth tax concessions for registered charities.

Audit methodology

1.21 The audit included the following methods for gathering and assessing sufficient and appropriate audit evidence:

- review and analysis of documentation held by the ACNC;
- analysis of data from the ACNC’s case management system and on the Charity Register;
- interviews with ACNC staff and the ACNC Commissioner; and

¹² Referred to in the ACNC Act as a ‘subtype’ of entity.

- discussions with representatives from interested parties and with the ACNC Advisory Board.

1.22 In addition, submissions were received from members of the public via the ANAO's website.

1.23 The audit also had regard to the 2018 external review of the ACNC's legislation.¹³ A number of the findings and recommendations in the review panel's report relate to aspects of the ACNC's operations examined during this performance audit. The Government provided a response to the review on 6 March 2020.¹⁴

1.24 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$430,000.

1.25 The team members for this audit were Amanda Reynolds and Andrew Morris.

13 The final report on the review (August 2018) is available at: <https://treasury.gov.au/publication/p2018-t318031> [accessed 17 October 2019].

14 The Government's response is available at: <https://treasury.gov.au/publication/p2020-61958> [accessed 6 March 2020].

2. Registering charities and maintaining the Charity Register

Areas examined

This chapter examines the effectiveness of the Australian Charities and Not-for-profits Commission's (ACNC's) arrangements for registering charities, including timeliness, and for maintaining the Charity Register.

Conclusion

The ACNC has been largely effective in registering charities and partially effective in maintaining the Charity Register. The ACNC has processed applications in a timely manner, but should better document assessment processes under its 'light touch' approach to registration. The ACNC has commenced a project to improve the usefulness of the information on the Charity Register, and should conduct additional checks on the integrity of that information.

Areas for improvement

This chapter makes two recommendations directed at the ACNC, to strengthen its processes for assessing applications for charity registration (paragraph 2.30), and to improve the integrity of information on the Charity Register (paragraph 2.58). The chapter also suggests that the ACNC conducts an evaluation of the 'Charity Marketplace' initiative (paragraph 2.67).

2.1 Under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act), the ACNC Commissioner's responsibilities include registering charities and maintaining a public register, known as the Charity Register.

2.2 To determine whether the ACNC has been effective in meeting these responsibilities, this chapter examines whether:

- the ACNC's registration processes provide assurance that successful applicants have met specified legislative requirements;
- the ACNC has met its published service standard relating to the timeliness of processing applications for registration; and
- the ACNC has implemented arrangements to maintain the integrity of the information on the Charity Register.

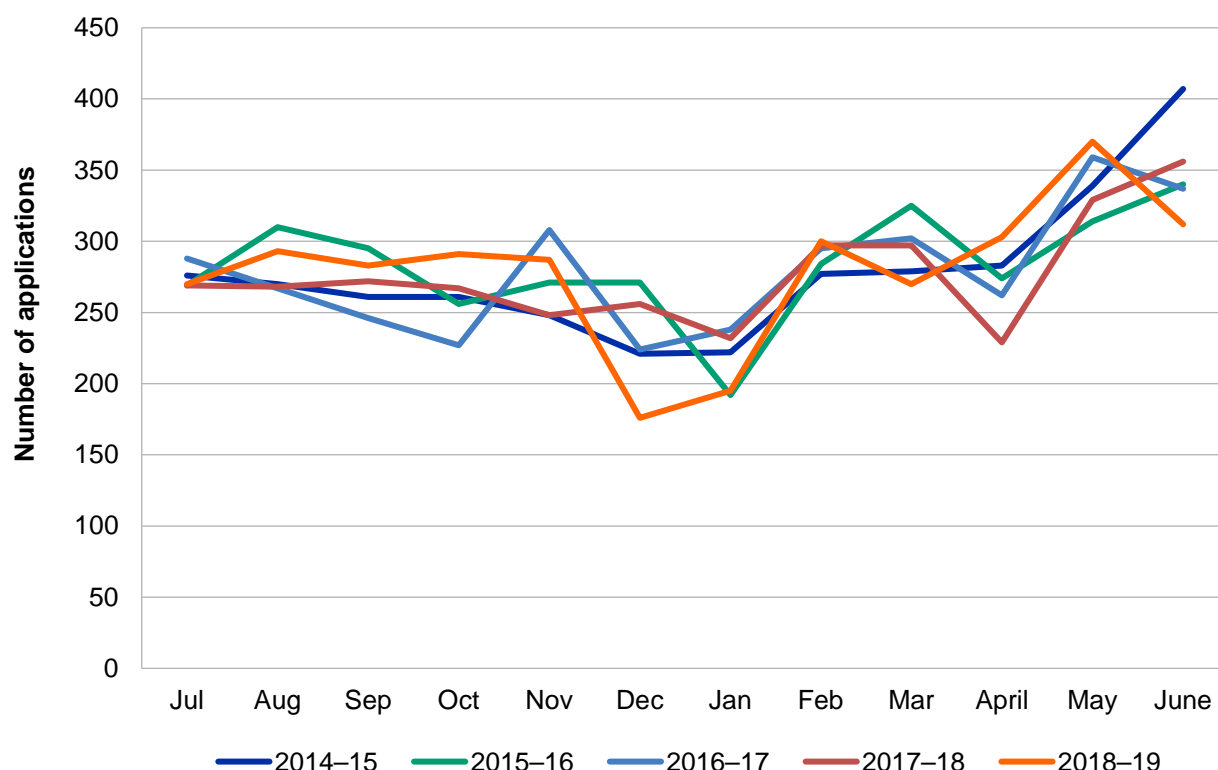
Do the ACNC's registration processes provide assurance that registered charities meet legislative requirements, including the Governance Standards?

The ACNC's registration processes have been designed on the basis of largely negative assurance — that is, to rely on information and assertions provided by an applicant of compliance with registration requirements, including the five Governance Standards, unless there is evidence to the contrary. The ACNC supports this approach by making a range of guidance material available to potential applicants. Some of the procedural checks that the ACNC requires on applicants' information and assertions were not well-documented. The ACNC should verify whether its 'light touch' approach to registration is appropriate.

2.3 Registration with the ACNC is a prerequisite for accessing certain Commonwealth tax concessions¹⁵ — eligibility for which is determined by the Australian Taxation Office (ATO) — but is otherwise voluntary.¹⁶ Registration also signals to the public that charities have been independently assessed as meeting relevant eligibility requirements and standards of governance.

2.4 In the past five years, the ACNC has typically received between 200–350 applications for charity registration per month, with a fairly consistent pattern across the years (Figure 2.1).¹⁷

Figure 2.1: Applications for charity registration, 2014–15 to 2018–19



Source: ANAO, based on the ACNC's data.

2.5 As well as registering charities, the ACNC refuses some charity registrations — for instance, 230 applications for registration were refused in 2018–19; and a sizable number of applicants also withdraw their applications — 1338 in 2018–19.

2.6 The legislative requirements for registration are set out in the ACNC Act and the *Charities Act 2013* (Charities Act). The ACNC Act includes conditions of registration that an applicant:

- is a not-for-profit entity;¹⁸

15 The ACNC Act states that the object of this part of the Act ('Registration') is to ensure that Commonwealth tax concessions are available only to entities that are governed and regulated in accordance with the ACNC Act.

16 The number of charities that choose not to register with the ACNC is not known by the ACNC.

17 The ACNC advised that, as of 30 June 2019, it had registered 17,660 charities since commencing operations in December 2012. As discussed further in paragraphs 2.54 to 2.55, the data for all other charities was provided by the ATO prior to the ACNC's establishment.

18 The requirement for an entity to be 'not-for-profit' is covered under Governance Standard 1 and section 5(a) of the Charities Act.

- is in compliance with the Governance Standards and External Conduct Standards¹⁹;
- has an Australian Business Number (ABN); and
- is not covered by a decision in writing made by an Australian government agency (including a judicial officer) under an Australian law that provides for entities to be characterised on the basis of them engaging in, or supporting, terrorist or other criminal activities.

2.7 The Charities Act specifies the elements that must be satisfied in order to meet the legal definition of a charity (Box 2 in Chapter 1).

2.8 The ACNC seeks to address these legislative requirements over the four stages of its registration process — initial review, risk assessment, analysis and decision.

Assessing compliance with the Governance Standards

2.9 The Governance Standards (Box 3)²⁰ were introduced to provide the public with confidence that registered entities: manage their affairs openly, accountably and transparently; use their resources, including contributions and donations, effectively and efficiently; minimise the risk of mismanagement and misappropriation; and pursue their purposes.

Box 3: Outline of the Governance Standards

Standard 1: Purposes and not-for-profit nature

Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purposes to the public.

Standard 2: Accountability to members

Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed.

Standard 3: Compliance with Australian laws

Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (equivalent to \$12,600 as at December 2018) or more.

Standard 4: Suitability of Responsible Persons^a

Charities must take reasonable steps to: be satisfied that its Responsible Persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the *Corporations Act 2001* or disqualified from being a Responsible Person of a registered charity by the ACNC Commissioner; and remove any Responsible Person who does not meet these requirements.

19 The External Conduct Standards commenced in July 2019, and, as such, have not been examined during this audit. The Standards apply to registered charities that operate outside of Australia. An overview of the Standards is available at: <https://www.acnc.gov.au/for-charities/manage-your-charity/charity-governance/acnc-external-conduct-standards> [accessed 10 October 2019].

20 Basic Religious Charities (of which the ACNC advised there were 8963 on the Charity Register as of 16 July 2019) are not required to comply with the Governance Standards.

Standard 5: Duties of Responsible Persons

Charities must take reasonable steps to make sure that Responsible Persons are subject to, understand, and carry out the duties set out under this Standard, which are to: act with reasonable care and diligence; act honestly in the best interests of the charity and for its purposes; not misuse the position of Responsible Person; not misuse information obtained in performing duties; disclose any actual or perceived conflict of interest; ensure that the charity's financial affairs are managed responsibly; and not allow a charity to operate while insolvent.

Note: Further details on the Governance Standards are provided in ACNC Regulation 2013, available at: <https://www.legislation.gov.au/Details/F2019C00634> [accessed 17 September 2019].

Note a: The ACNC Act and ACNC Regulation 2013 refer to 'Responsible Entities'.

Source: ANAO, based on the ACNC's webpage, available at: <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards> [accessed 17 September 2019].

2.10 The ACNC relies to a large extent on information and assertions provided by applicants to determine whether the Governance Standards are met. Its regulatory approach is set out in an internal 'work instruction' on new registrations, which states that:

When considering applications for registration and compliance with the Governance Standards, our approach mirrors our regulatory approach. This means that unless there is evidence to the contrary or information that the applicant is at greater risk of not adhering to the Governance Standards, we generally rely on the information that the applicant provides in response to governance questions in the Registration application to determine that there is no evidence that the applicant is not complying with the Governance Standards.

2.11 This approach can be characterised as a negative rather than positive form of assurance.²¹

2.12 In February 2016, the ACNC considered other options for addressing the Governance Standards, including requiring ACNC registration staff to query compliance with the applicant during the registration process. The ACNC considered that this option was not practical as it would substantially slow down the processing of applications and transfer the onus of assessing compliance from the charity to the ACNC. Further, the ACNC considered that the 'proper enquiry' of charity compliance would be extensive and the outcomes subjective, based on the type of charity. In the end, the ACNC Commissioner favoured what was described as a 'light touch' approach, which puts the responsibility on applicants to self-assess compliance and encourages applicants to seek further information from the ACNC's website.

2.13 The ACNC's website provides a range of guidance material for the benefit of potential applicants. This includes: a step-by-step guide to eligibility; a registration application checklist; and various policy statements by the ACNC Commissioner, including on how the ACNC interprets the law on eligibility for registration. As well, the website advises that: 'Charities do not need to submit anything to the ACNC to show they meet the [Governance] Standards, but must have evidence of meeting the Standards that they can provide if requested.'²²

21 In general terms, a negative form of assurance provides a lower level of comfort to external parties, compared to a positive form of assurance, that required standards have been met.

22 See <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards> [accessed 17 September 2019]. In March 2019, the ACNC published a self-evaluation tool for charities that sets out the type of arrangements that charities could implement to demonstrate compliance with the Governance Standards.

2.14 The ACNC advised that the approach described in its internal work instruction is underpinned by three principles:

- the requirement on applicants to declare that they comply with all of the Governance Standards from either the date of requested registration or the date the Standards came into effect on 1 July 2013 (whichever is later);²³
- the requirement on applicants to declare that the information provided in the registration application form is true, correct, and complete — having been advised that giving false and misleading information is a serious offence; and
- alignment with the ACNC's Regulatory Approach Statement, and the underlying principles from the ACNC Act of: regulatory necessity; reflecting risk; and proportionate regulation.²⁴

2.15 The ACNC also advised the specific checks required to be undertaken during the registration process against each of the five Governance Standards (which are listed in Table 2.1). These checks were not set out as comprehensively in the ACNC's existing policies and procedures.²⁵

Checks undertaken by the ACNC

2.16 As outlined in Table 2.1, analysis of the ACNC's registration processes and testing on a selection of 20 successful registration applications from 2018–19 showed that the ACNC largely followed the regulatory approach described above — that is, the ACNC relied mainly on the information and assertions provided by applicants.

2.17 A key focus of the ACNC's assessment was to ensure that an applicant's 'governing document'²⁶ contained appropriate content to satisfy various requirements in the ACNC Act and Charities Act, including that the entity will operate on a 'not-for-profit' basis and will pursue charitable purposes.

2.18 Some of the checks that the ACNC advised it undertakes on new registrations were not able to be clearly evidenced in its case management system or records, especially in relation to Governance Standard 2 (Accountability to members). For instance, the ACNC recorded no evidence that an applicant's governing document included sufficient provisions to support accountability to members.

2.19 The ACNC's main decision-making document for the registration process (called the 'Reason for Decision' form) did not include any reference to whether the Governance Standards had been met. A general statement is included on the ACNC's case management system at the decision stage of the registration process that 'Governance standards appear satisfied'.

2.20 The ACNC has developed a risk assessment framework for registration applications (using a risk rating scale of 1–6), which identifies if an application requires technical sign off by a more senior

23 The declaration was introduced in February 2018 (which is after the vast majority of charities were registered). Previously, no such declaration was required.

24 See paragraph 15-10(e) of the ACNC Act.

25 The ACNC's procedures did not specifically require all of the checks described by the ACNC.

26 A governing document formally sets out how the charity is governed and operated. Depending on a charity's structure or form, a governing document may be called: a constitution; a trust deed; or otherwise set out in an entity's constituting legislation or charter.

ACNC staff member.²⁷ The risk assessment process does not explicitly require additional documentation or evidence to be obtained from those applications requiring technical sign off.

Table 2.1: ACNC’s approach to assessing compliance with the Governance Standards

Governance Standard	ACNC’s approach to assessing compliance with the Governance Standards
Standard 1: Purposes and not-for-profit nature	<ul style="list-style-type: none"> • The registration application form did not ask any specific governance questions in relation to this Standard. • Applicants were required to provide other information that assists the ACNC to assess compliance with this Standard, including a copy of their governing document. • The ACNC advised that it examines key aspects of an entity’s governing document to determine whether the entity: is not-for-profit; has charitable purposes; and its activities align with its not-for-profit nature and charitable purposes. • In all registration cases examined, the ACNC’s Reason for Decision form provided cross-references to clauses in the governing document, which the ACNC determined were sufficient. Typically, these were ‘not-for-profit’ and ‘winding up’ clauses.^a • The ACNC considers that the requirement on registered charities to make information about its purposes available to the public is satisfied by publishing its governance documents on the Charity Register, once registered. • There was limited evidence of wider checks being undertaken, including — as required in the ACNC’s internal work instruction — of internet searches being undertaken on the charities purposes and activities, where two cases examined had evidence that this check occurred. • The ACNC’s case management system recorded the general statement that ‘Governance standards appear satisfied’.
Standard 2: Accountability to members	<ul style="list-style-type: none"> • The registration application form did not ask any specific governance questions in relation to this Standard. • The ACNC advised that it assesses compliance with this Standard — where an entity has members — by checking whether the applicant’s governing document includes sufficient clauses regarding: holding meetings of members; making significant decisions via special resolution or some other process of agreement by quorum; and the process of appointing the board or committee. • Other than relying on the applicant’s signed declaration that it complies with all Governance Standards, it was not evident from the registration cases examined how the ACNC assessed compliance with this requirement. <ul style="list-style-type: none"> – The ACNC’s Reason for Decision form did not indicate how this requirement was met (as it did for parts of Governance Standard 1). – There was no evidence to demonstrate that the checks described by the ACNC were undertaken. • The ACNC’s case management system recorded the general statement that ‘Governance standards appear satisfied’.

²⁷ The ACNC’s risk assessment framework for registration applications sets out the characteristics of higher risk applications. One such characteristic is significant media interest in the application.

Governance Standard	ACNC's approach to assessing compliance with the Governance Standards
Standard 3: Compliance with Australian laws	<ul style="list-style-type: none"> • The registration application form did not ask any specific governance questions in relation to this Standard. • The ACNC advised that for registration purposes this Standard is of limited applicability.^b • The ACNC's initial review procedures includes a requirement to check a database maintained by the Department of Foreign Affairs and Trade. The database contains a consolidated list of all persons and entities who are subject to targeted financial sanctions under Australian sanctions laws. • Other than relying on the applicant's signed declaration that it complies with all Governance Standards, it was not evident from the registration cases examined how the ACNC assessed compliance with this requirement. <ul style="list-style-type: none"> – The ACNC's case management system did not include records to demonstrate that the database check was undertaken. – The ACNC's Reason for Decision form did not indicate whether this Standard had been met. • The ACNC's case management system recorded the general statement that 'Governance standards appear satisfied'.
Standard 4: Suitability of Responsible Persons	<ul style="list-style-type: none"> • The registration application form asked one question in relation to this Standard; that is: <ul style="list-style-type: none"> – 'Have you checked if your organisation's Responsible Persons have been disqualified from managing a corporation?' • Applicants are told that checking this may include searching the Australian Securities and Investments Commission's Register of Banned or Disqualified Persons or obtaining a disclosure statement from each Responsible Person. • The ACNC advised that it relies on the applicant's declaration, and that its initial review procedures requires a search of a database maintained by the Australian Securities and Investments Commission called the Mirrored Australian Securities Commission on Time (MASCOT). • Based on the registration cases examined, the ACNC relied on the responses provided by applicants (which in all required cases^c advised they had checked this requirement). Evidence that the MASCOT database was searched was not found on the ACNC's case management system or records. • The ACNC's Reason for Decision form did not indicate whether this Standard had been met. • The ACNC's case management system recorded the general statement that 'Governance standards appear satisfied'.

Governance Standard	ACNC's approach to assessing compliance with the Governance Standards
Standard 5: Duties of Responsible Persons	<ul style="list-style-type: none"> • Since February 2018, the registration application form has included two questions relating to aspects of this Standard; that is: <ul style="list-style-type: none"> – 'Do your organisation's activities relate to children or vulnerable adults?' If so, 'Describe how your organisation ensures its Responsible Persons promote and enforce safe work practices and protect children and vulnerable adults.' – 'Does your organisation have a policy for its Responsible Persons to disclose perceived or actual conflicts of interest?' If so, 'Describe how your organisation manages conflicts of interest', and 'Describe how your organisation ensures that its Responsible Persons manage the financial affairs of the organisation in a responsible manner.' • The ACNC advised that its approach is to generally accept the answers provided by applicants to the governance questions asked. Based on the registration cases examined, the ACNC relied on applicants' responses to these questions. There was no evidence of particular documentation being routinely required from applicants — including copies of their conflict of interest policies. • The ACNC's Reason for Decision form did not indicate whether this Standard had been met. • The ACNC's case management system recorded the general statement that 'Governance standards appear satisfied'.

Note a: A 'not-for-profit' clause, which restricts private profit or gain, as well as a 'dissolution' or 'winding up' clause to indicate how the assets and income of the charity will be distributed if the entity is dissolved.

Note b: The report on the 2018 external review of ACNC's legislation recommended that Governance Standard 3 be repealed. The Government did not support this recommendation.

Note c: Basic Religious Charities are not required to comply with the Governance Standards.

Source: ANAO, based on analysis of the ACNC's processes and examination of a selection of 20 successful registration applications from 2018–19.

Managing risks

2.21 Having regard to a risk managed approach, it is important for the ACNC to verify, over time, whether its 'light touch' approach to registration is appropriate. Relevant considerations include whether the ACNC:

- receives sufficient feedback from its subsequent regulatory activities to determine whether the approach taken during the registration process reduces the residual risk to an acceptable level; and
- has sufficient capacity and skills to identify and manage any risk of non-compliance that is not addressed through the registration process.

2.22 Since compliance with the five Governance Standards is a condition of registration, and registration is a prerequisite for accessing certain Commonwealth tax concessions, it is recommended that the ACNC strengthens aspects of its processes for assessing applications for charity registration (Recommendation no.1, paragraph 2.30).

2.23 The ACNC should also ensure that any improvements in its approach to assessing and evidencing compliance with the Governance Standards are reflected, as appropriate, in its approach to assessing and evidencing compliance with the External Conduct Standards.

Assessing compliance with the Charity Act requirements

2.24 As outlined in Table 2.2, the ACNC's approach to determining whether applicants meet the legal definition of a charity is similar to its approach in assessing compliance with the Governance Standards. The ACNC relies mainly on the information provided by applicants in their application form and governing document, seeking more information where required. As well, the ACNC undertakes legal analysis and uses legal precedents to assess and support compliance with elements of the Charity Act requirements.

2.25 As with the Governance Standards, some of the procedural checks that the ACNC required to be undertaken to assess whether applicants meet the legal definition of a charity were not clearly evidenced in its case management system or records.

Table 2.2: Assessing the legal definition of a charity

Charity Act requirement	ACNC's approach to assessing compliance
The entity is a not-for-profit entity	<ul style="list-style-type: none"> The ACNC relied on the checks undertaken in relation to Governance Standard 1 to identify whether the applicant is a not-for-profit entity (see Table 2.1).
All of the entity's purposes are: <ul style="list-style-type: none"> charitable purposes for the public benefit; purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes that are charitable purposes for the public benefit 	<ul style="list-style-type: none"> The ACNC advised that registration staff undergo induction and training to enable technical assessment of registration applications and charity law issues. The ACNC has access to various technical resources including legal databases and the ACNC Commissioner's Interpretation Statements. The ACNC's risk assessment framework for registration applications included a requirement for 'technical clearance' for particular cases (generally those rated as '4–6^a'). Clearance is provided by more senior ACNC staff. The ACNC's Reason for Decision form sets out the reasoning in relation to whether the public benefit requirement has been satisfied, and whether all of an applicant's purposes are charitable or ancillary to charitable purposes; this information was included in all 20 registration cases examined. In 3 of 4 cases where technical assessment was required on the registration cases examined, the ACNC's case management system recorded that such clearance was provided. It was not evident what specific checks were performed as part of this clearance process. No explanation was provided for the remaining case.
None of the entity's purposes are disqualifying purposes ^b	<ul style="list-style-type: none"> The ACNC addresses this element principally through its assessment of the applicant's stated charitable purposes and activities — including checks undertaken in relation to Governance Standard 1 (see Table 2.1). The ACNC's Reason for Decision form did not include a specific section to indicate whether this element had been satisfied.

Charity Act requirement	ACNC's approach to assessing compliance
The entity is not an individual, a political party or a government entity	<ul style="list-style-type: none"> • The ACNC addresses this element principally through other checks it undertakes on applicants, including under Governance Standard 1 (see Table 2.1) and through its processes for validating an applicant's ABN. • The ACNC indicated that while the identification of an individual and political party is relatively straightforward, the identification of a government entity can be problematic. • The ACNC Commissioner has published an Interpretation Statement on the meaning of 'Government Entity'.^c • The ACNC's Reason for Decision form did not include a specific section to indicate whether this element had been satisfied.

Note a: The ACNC uses a rating scale of 1–6. Applications rated 4–6 cover a range of risk factors including whether the charity has vulnerable beneficiaries, operates overseas, or has applied for particular charity subtypes.

Note b: Disqualifying purposes refers to the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or the purpose of promoting or opposing a political party or a candidate for political office.

Note c: The ACNC's website notes that the Interpretation Statement is highly technical, as the law is very complex in this area.

Source: ANAO, based on analysis of the ACNC's processes and examination of a selection of 20 successful registration applications from 2018–19.

Other registration requirements

2.26 The ACNC addresses the legislative condition for registered charities to have an ABN by requiring applicants to provide their ABN on the registration application form. All 20 registration cases examined included an ABN.

2.27 Based on the registration cases examined, there was limited evidence of how the ACNC addressed the legislative condition that an applicant is not covered by a decision in writing made by an Australian government agency (including a judicial officer) under an Australian law that provides for entities to be characterised on the basis of them engaging in, or supporting, terrorist or other criminal activities. The ACNC's Reason for Decision form included a 'Yes/No' statement to answer this question; in all of the 20 registration cases examined the recorded answer was 'No'. No evidence was identified on the ACNC's case management system to demonstrate what checks were undertaken to support this statement.

2.28 The ACNC advised that it assesses this legislative condition by checking various Australian Government databases, including checking the Department of Foreign Affairs and Trade's database referred to above (see Table 2.1). The ACNC further advised that if an issue is identified through these checks, or subsequently, the relevant details would be recorded on its case management system. If no issue is identified, no specific information is recorded.²⁸

2.29 From the registration cases examined, evidence was not consistently found that registration staff had complied with the procedural requirement to declare that they had no conflict of interest before taking on a registration case. The ACNC's case management system defaults the conflict of interest question to 'No'. In two cases, a note was entered on the case management system to indicate that the ACNC staff member had actively considered this question.

²⁸ A general statement may be included in the 'notes' section of the ACNC's case management system that 'no adverse findings were noted' during the initial review process.

Recommendation no.1

2.30 The Australian Charities and Not-for-profits Commission strengthens its processes for assessing applications for charity registration by:

- (a) Ensuring that the application form seeks appropriate information on which to assess compliance with legislative requirements.
- (b) Revising its risk management framework for registration applications to identify whether additional documentation or evidence should be sought from applicants on a risk basis.
- (c) Ensuring that all required procedural checks are clearly documented and able to be evidenced in its case management system or records.
- (d) Amending its main decision-making form to make explicit reference to whether all legislative requirements for registration have been met.
- (e) Verifying whether its 'light touch' approach to registration is appropriate.

Australian Charities and Not-for-profits Commission response: *Agreed.*

2.31 *The ACNC is committed to ensuring that its process for assessing applications for charity registration are appropriate and evidenced and that they balance risk, unnecessary regulatory burden and resources within the legislative framework.*

Australian Taxation Office response: *Noted.*

2.32 *A robust registration process provides the ATO with a greater level of certainty that newly registered charities are operating for purpose and meeting their obligations with respect to special conditions.*

2.33 *Charities applying for endorsement for tax concessions are required to meet special conditions for income tax exemption.*

Has the ACNC processed registration applications in a timely manner?

The ACNC processed the vast majority of registration applications received in 2017–18 and 2018–19 well within its published service standard of 15 business days. Applications that took longer than 15 business days were not characterised by any particular complexity.

2.34 The timeframe in which the ACNC seeks to process applications for registration is set out in its published service standards.²⁹

2.35 The ACNC's current service standard for registering a charity is to finalise 90 per cent of applications within 15 business days providing the ACNC has received all the necessary information to progress the application.

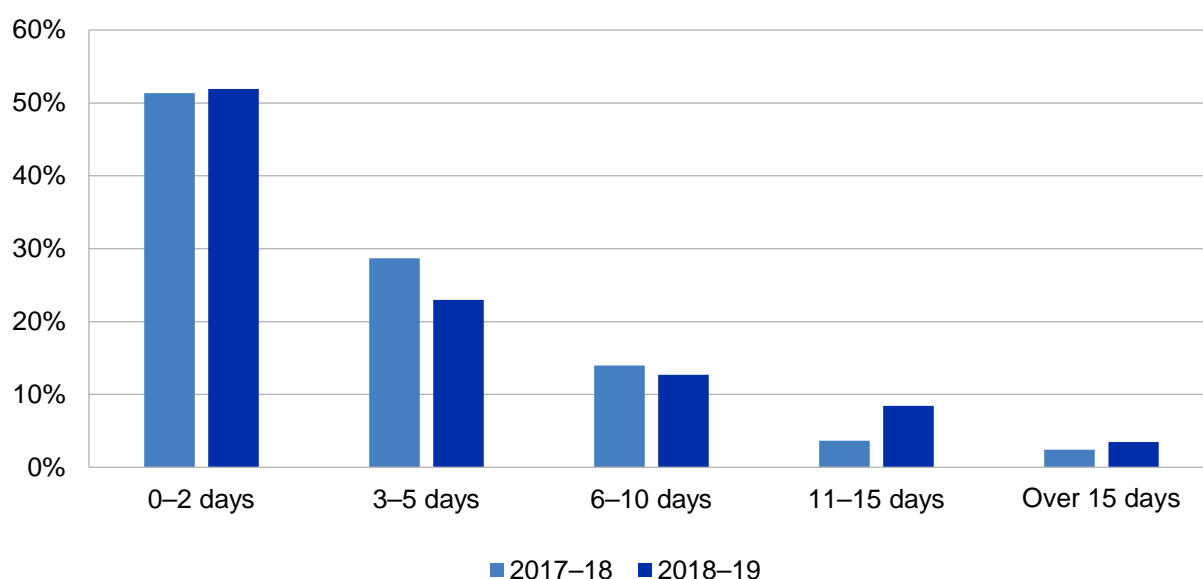
²⁹ Available on the ACNC's website at: <https://www.acnc.gov.au/about/corporate-information/service-commitment> [accessed 13 August 2019].

2.36 The 15-day timeframe has been in place since December 2012, and originated from a joint commitment between the ACNC and the ATO to determine charitable status and tax concessions within 28 days. The ACNC advised that the timeframe reflects its ‘business-as-usual workload and resourcing.’³⁰ The 15-day timeframe is not specifically linked to any external demands on applicants — noting that a charity can operate without being registered with the ACNC. Also, a charity’s effective date of registration can be (and often is) backdated, allowing successful applicants to seek available tax concessions through the ATO for this earlier period.

2.37 The ACNC’s Annual Reports for 2017–18 and 2018–19 state that the ACNC had met and exceeded its timeliness standard in both years — achieving a result of 98 per cent and 96 per cent respectively. In 2017–18 some 2627 new applications were registered and 2556 in 2018–19.

2.38 Analysis of the ACNC’s data shows that around half of all registration applications were finalised within two business days in both years once the ACNC deemed that all the relevant information had been received; and more than 90 per cent of applications across these two years were finalised within 10 business days (Figure 2.2).

Figure 2.2: Timeliness of the ACNC’s registration processes once final information had been received, 2017–18 and 2018–19



Source: ANAO, based on the ACNC’s 2017–18 and 2018–19 registration data.

2.39 Analysis of the ACNC’s registration data for 2017–18 and 2018–19 showed that a sizable majority of registrations exceeded 15 business days when measured by the date of submission of an application to the date of decision (rather than from the date that final information was received to the date of decision).³¹ The average elapsed time for the cases exceeding 15 days was 39 business days for 2017–18 and 47 business days for 2018–19, with the longest cases taking 185 days and 341 days respectively. These timeframes take into account the time taken by applicants to respond to further ACNC information requests.

30 For 2018–19, the ACNC reduced the target from 95 per cent to 90 per cent on the basis of reduced staffing in its Registration team.

31 Sixty-two per cent for 2017–18 and 70 per cent for 2018–19.

2.40 In both years, the number of applications that were not processed by the ACNC within the 15-day service standard was relatively low — 53 in 2017–18 and 95 in 2018–19. The average time to complete these cases (from the time of receiving final information) was 22 and 23 business days respectively. Most of these cases were not characterised by any particular complexity. For 2018–19 only six of the 95 cases involved a refusal of registration, which the ACNC indicated could be a reason why the timeframe was not met; and for 2017–18, the cases that took longer to process were not indicative of the ACNC’s highest risk categories for registration cases.³²

Stakeholder feedback on timeliness

2.41 The ACNC uses a registration survey to gain feedback on various aspects of its registration process, including timeliness. Eighty-two per cent of respondents (as of 20 November 2019) considered that the process was timely, with six per cent indicating that it was not timely, and the balance being neutral on this question.

Has the ACNC been effective in maintaining the Charity Register?

The ACNC has been partially effective in maintaining the Charity Register. While business-as-usual processes are in place to maintain important aspects of the Register, the ACNC has identified a number of outstanding data integrity and quality assurance issues that impact on the reliability and completeness of some information. A project to make the Register a more valuable resource for users is also underway — known as the ‘Charity Marketplace’.

2.42 The Charity Register provides information on registered and formerly registered charities and is publically and freely available on the ACNC’s website.³³

2.43 As outlined in the explanatory material for the ACNC Act, the requirement to establish a public register was intended to increase transparency, enabling registered charities to demonstrate appropriate levels of accountability and governance, and to promote confidence in the sector and inform choices by donors and philanthropists.

2.44 The ACNC Act and ACNC Regulation 2013 set out requirements on the type of information to be provided on, withheld, or removed from, the Charity Register. Most of the information for each registered charity is presented under four main sections — Overview; Financials and documents; People; and History (Table 2.3).

32 Unlike the ACNC’s 2018–19 dataset, the 2017–18 dataset did not specifically identify refused applications.

33 The Charity Register is available at: <https://www.acnc.gov.au/charity> [accessed 28 June 2019].

Table 2.3: Overview of the type of information provided on the Charity Register

Overview	Financials and documents	People	History
Basic details about the charity, including contact details, who the charity helps, what it does and where it operates.	Annual Information Statements and Annual Financial Reports provided by the charity, the charity's governing document (for example, a constitution) and a graphical representation of the charity's total income and expenses.	The names of the charity's Responsible Persons (for example, the members of its board, committee or trustees) and the name of any other charities the Responsible Persons may be involved with.	A list of the charity's 'subtype' history and registration status history, as well as any enforcement action undertaken by the ACNC on the charity.

Source: ANAO, based on the content of the ACNC's Charity Register (October 2019).

2.45 The Charity Register includes a link to the Australian Business Register (maintained by the ATO), which allows users to find out if donations to the charity are tax deductible.³⁴ The Australian Business Register also lists the type and date of any tax concessions granted to the charity by the ATO.

Business-as-usual processes

2.46 The ACNC runs a number of processes that feed information onto the Charity Register and support the reliability and completeness of the published information. These include:

- adding charities to the Register through its ongoing registration processes, including the charity's effective registration date and registration history;
- removing charities from the Register through its compliance activities, 'double-defaulter' process³⁵, and voluntary requests from charities;
- recording enforcement actions applied to a charity, where the ACNC has used enforcement powers under the ACNC Act; and
- monitoring the submission of Annual Information Statements and Annual Financial Reports from charities, which supply much of the information on the Register, as well as checking and correcting aspects of the information provided.

2.47 Registered charities have an obligation to notify the ACNC of changes to their circumstances including any non-compliance with requirements of the ACNC Act, as well as simple matters such as updating their name or address.³⁶ The majority of data updates to the Charity Register are completed by charities through the Charity Portal.³⁷ For instance, charities are able to update the details of 'Responsible Persons' and to upload a (revised) governing document.

34 By the charity being granted 'Deductible Gift Recipient' status by the ATO or being listed by name in the income tax law.

35 That is, removing charities from the register who have failed to submit two Annual Information Statements to the ACNC. The ACNC advised that this process was not undertaken in 2018–19 due to the upgrade of its IT systems.

36 See subsection 65-5(1) of the ACNC Act.

37 The Charity Portal is accessible on the ACNC's website and provides an online platform through which charities can provide information to the ACNC to assist in meeting their obligations as a registered entity.

Outstanding data integrity issues and tasks

2.48 The ACNC has identified a range of issues impacting on the integrity of the Charity Register, which it has yet to address. In total, 17 ‘un-resourced’ activities were listed in an internal memorandum, examples of which are provided in Box 4.

Box 4: Examples of outstanding tasks impacting on the integrity of the Charity Register

- Identify charities with no governing documents uploaded to the Charity Register, and review all (revised) governing documents uploaded by charities to ensure that Charities Act requirements are being met.
- Identify charities who no longer have an Australian Business Number and are therefore no longer entitled to registration with the ACNC.
- Identify charities with an incorrect legal structure or who are not entitled to registration as a government entity.
- Identify charities who are no longer operating and not responding to correspondence or other attempts by the ACNC to contact them.
- Identify charities with an incorrect number of Responsible Persons for the type of entity and legal structure.
- Identify charities that incorrectly report as Basic Religious Charities (thereby removing the obligation to comply with the Governance Standards and provide an Annual Financial Report to the ACNC) for the 2018 reporting period.
- Review approximately 4097 requests for withholding information to ensure that the decision was made correctly and remains valid.^a

Note a: The ACNC advised that, due to technical limitations with its previous system (iMIS), the decision to withhold individual data elements meant that in some cases additional data associated with the charity was also withheld. The ACNC’s new system (Dynamics) has the functionality to withhold specific data elements.

Source: ANAO, based on the ACNC’s records.

2.49 The tasks were identified by the ACNC during a planning exercise in January 2019, with advice provided to the ACNC Commissioner in September 2019. The advice emphasised the likely impact on public trust and confidence if the general public and donors cannot rely on the accuracy of the Charity Register.

2.50 The ACNC’s initial response (in September 2019) was to raise the un-resourced data integrity work with the ATO, to explore the prospect of obtaining staff from the ATO. In January 2020, the ATO agreed to provide resources to the ACNC to assist with the outstanding data integrity work. The broader question included in the ACNC’s advice to the ACNC Commissioner was how these tasks could be undertaken on an ongoing basis — for example, by automating as many of the checks as possible.

2.51 This audit’s examination of the Charity Register data also identified a range of apparent anomalies, including cases where:

- the registration date is before the recorded ABN date;
- the registration date is before the organisation establishment date; and
- the ABN indicates that the charity is a government entity.

2.52 These type of anomalies reinforce the need for the additional data integrity checks identified by the ACNC.

Quality assurance

2.53 The ACNC is also aware of an ongoing task to quality assure the charity records provided by the ATO that remain on the Charity Register.

2.54 Since it commenced operations in December 2012, the ACNC has registered 17,660 charities (as of 30 June 2019). The remaining charities were not registered by the ACNC. The records for these charities were provided by the ATO. In September 2012, the ATO transferred around 57,000 records to the initial version of the Charity Register. The dataset comprised the ATO's records where the entity had both an active ABN and active charity tax concession status.

2.55 The ACNC advised that much of the data provided by the ATO was out-of-date and incomplete.³⁸ In the first few years of operation especially, the ACNC undertook a number of processes to 'clean up' the original Charity Register data, and has progressively implemented other measures to support the integrity of the Register. These have included the requirement for all registered charities to provide an Annual Information Statement, and through the introduction of the ACNC's 'double defaulter' process in January 2015, which helps remove inactive charities from the Charity Register.³⁹ All registered charities have a 'duty to notify' the ACNC of various matters including their contact details.

2.56 While over 15,000 charities have been removed from the Charity Register since the ACNC was established⁴⁰, including charities that were originally provided by the ATO, the ACNC has not fully addressed the risks that remain with the ATO data. The ACNC advised that it was not resourced to provide assurance that all of the charities registered on the basis of the ATO's data remain entitled to registration. This cohort of charities has not been subject to any specific registration review by the ACNC or been specifically targeted through the ACNC's compliance activities.

2.57 As part of the Australian Government's Deductible Gift Recipient reforms⁴¹ (where all non-government entities with Deductible Gift Recipient status will be automatically registered as charities with the ACNC) additional funding of \$2.7 million is being provided to the ACNC and the ATO from 1 July 2020 to review Deductible Gift Recipient eligibility and entities' ongoing entitlement to Commonwealth tax concessions. This process provides an opportunity for the ACNC to progressively review some of the data provided by the ATO. In January 2020, the ACNC advised that it expects to review two per cent of charities a year from 1 July 2020 (equating to approximately 500 charities a year).

38 The ACNC also noted in its 2014–15 Annual Report that the charity records provided by the ATO were largely paper-based and out-of-date, as the ATO was not required or expected to keep a register of charities.

39 Charities that fail to provide their Annual Information Statement for two years have their registration revoked and are removed from the Charity Register.

40 Mainly by request (voluntary revocation) and also through the ACNC's 'double-defaulter' process.

41 See pages 110–111 of the 2017–18 Mid-Year Economic and Fiscal Outlook, December 2017, available at: https://archive.budget.gov.au/2017-18/myefo/MYEFO_2017-18.pdf [accessed 20 September 2019].

Recommendation no.2

2.58 The Australian Charities and Not-for-profits Commission investigates feasible and cost-effective approaches to improving the integrity of the information on the Charity Register, including, as appropriate, automating as many of the outstanding data integrity tasks as possible through its existing processes and systems.

Australian Charities and Not-for-profits Commission response: *Agreed.*

2.59 *The ACNC takes a continuous improvement approach to managing data integrity, which includes looking for opportunities to introduce automation wherever possible.*

Australian Taxation Office response: *Noted.*

2.60 *The ATO relies on the ACNC providing an assurance that charities on the ACNC register remain entitled to registration. The integrity of the register is essential to the ATO's Not-for-profit Centre's ability to provide assurance that registered charities are correctly accessing tax concessions.*

Project to improve the value of the Charity Register

2.61 The ACNC's current focus is on redesigning aspects of the Charity Register to better present data to inform donor decision-making. This initiative is known as the 'Charity Marketplace'.

2.62 From 1 July 2020, the ACNC will start collecting information from registered charities at a 'program' level rather than the current general description of their activities. Specifically, charities will be required in their Annual Information Statement to:

- provide the name of at least one program (and up to 10 programs);
- classify the type of program (using a taxonomy designed to classify charity sector initiatives and organisations by subject and population); and
- state the location of the program(s).⁴²

2.63 The ACNC's goal is to provide a 'common language' that can be used by charities and donors. The collection of this information will replace questions in the Annual Information Statement about activities, beneficiaries and operating location.

2.64 According to the ACNC, the expected benefit of the Charity Marketplace is to allow users to more easily find charities that deliver the kinds of programs that they are interested in supporting, enabling more informed giving; and to encourage more people to use the Charity Register. The ACNC Commissioner's assessment is that some of the information currently collected from charities and reported on the Charity Register is not particularly useful to users, especially donors.

2.65 Under the ACNC Act, the ACNC is only permitted to mandatorily collect information from charities that relates to a 'recognised assessment activity', which involves assessment of a registered charity's: entitlement to registration; compliance with the ACNC Act and regulations; and compliance with any taxation law. The ACNC can request that charities provide information that is not covered by these activities, but cannot mandate the provision of that information.

⁴² Charities can also choose to provide a web link to any program information.

2.66 The ACNC Commissioner foreshadowed the development of the Charity Marketplace initiative in Corporate Plans and discussed it with stakeholders including at public fora. As well, a limited number of stakeholders were consulted during the design process for the initiative.

2.67 The ACNC intends to assess the success of the Charity Marketplace principally through the number of 'hits' on the ACNC's webpages, which would indicate use of the program data and related search functions. It is suggested that a wider evaluation of the initiative within two years of its launch would also be beneficial, including to inform any further decisions on how to maximise the usefulness of the Charity Register to external users.

3. Supporting ongoing compliance by charities

Areas examined

This chapter examines the effectiveness of the Australian Charities and Not-for-profits Commission's (ACNC's) arrangements for supporting charities to meet their ongoing compliance obligations.

Conclusion

The ACNC has been largely effective in supporting charities to meet their ongoing compliance obligations, particularly by providing guidance and monitoring charities' compliance. It has been less effective in addressing non-compliance. Improvements to the ACNC's compliance processes and measurement of outcomes would better support the objective of maintaining, protecting and enhancing public trust and confidence in the charities sector.

Areas for improvement

This chapter makes two recommendations — one aimed at improving the ACNC's compliance arrangements (paragraph 3.56); the other at better measuring public trust and confidence in the charities sector (paragraph 3.75).

3.1 Once registered, charities have a range of ongoing obligations, including to: be in compliance with the Governance Standards and (where required) the External Conduct Standards; report information annually; notify the ACNC of certain changes (such as to their governing document or Responsible Persons); and keep appropriate records.

3.2 In determining whether the ACNC has been effective in supporting ongoing compliance by charities, this chapter examines whether the ACNC's regulatory arrangements for assisting charities, and for monitoring compliance and undertaking risk-based compliance and enforcement activities, are well-aligned to the ACNC's stated regulatory approach — as principally articulated in its published Regulatory Approach Statement.⁴³

3.3 This chapter also examines whether the ACNC has established suitable arrangements to measure and report on its effectiveness in meeting the first of its three corporate objectives: to maintain, protect and enhance public trust and confidence in the not-for-profit sector.

Has the ACNC been effective in assisting charities to understand and meet their ongoing compliance obligations?

Consistent with the main focus of its Regulatory Approach Statement, the ACNC has been largely effective in assisting charities to understand and meet their ongoing compliance obligations. The ACNC has well-established arrangements for providing guidance and support to charities. It also has regular processes for prompting and encouraging charity compliance, although in 2018–19 the number of registered charities that lodged their Annual Information Statement on time (70 per cent) fell short of the ACNC's performance target (75 per cent).

43 The ACNC's Regulatory Approach Statement is available on its website at: <https://www.acnc.gov.au/raise-concern/regulating-charities/regulatory-approach-statement> [accessed 22 October 2019].

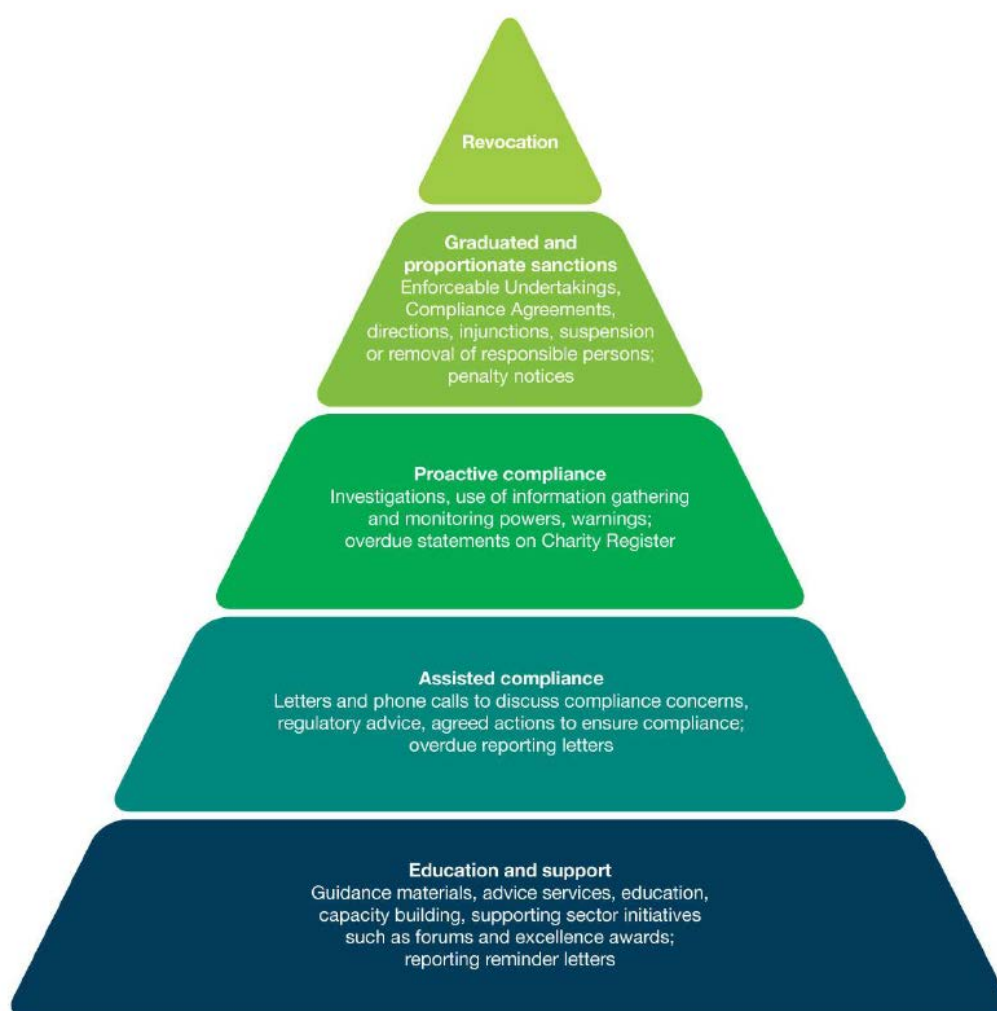
3.4 The ACNC Act provides a clear role for the ACNC Commissioner, in furthering the objects of the Act, to assist charities in complying with and understanding the Act by providing them with guidance and education.⁴⁴

3.5 The importance of this approach is reflected in the ACNC's Regulatory Approach Statement, which states that:

- much of the ACNC's work involves preventing problems by providing information, support and guidance to help charities stay on track; and
- where possible, the ACNC will work collaboratively with charities to address concerns.

3.6 The provision of 'Education and support' comprises the bottom layer of the ACNC's regulatory pyramid of support and compliance (Figure 3.1) — that is, the main actions the ACNC seeks to take, at least initially, to support and promote charity compliance.

Figure 3.1: The ACNC's regulatory pyramid of support and compliance



Source: Reproduced from the ACNC's Regulatory Approach Statement (December 2018), available at: <https://www.acnc.gov.au/raise-concern/regulating-charities/regulatory-approach-statement> [accessed 22 October 2019].

44 See, for instance, subparagraph 15-5(2)(b)(iii) and subsection 110-10(1) of the ACNC Act.

Providing education and support

3.7 Various parts of the ACNC assist in providing education and support to registered charities and to broader stakeholders — in particular, the Advice Services team and the Education and Public Affairs team.

3.8 Key means through which the ACNC provides support include:

- a dedicated contact centre, which operates from 9:00am to 5:00pm, Monday to Friday, and is the first point of contact for many charities and members of the public;
- a public website, which provides information, guidance and other material to users, including on the Governance Standards and the External Conduct Standards; and
- engagement with the charities sector through a variety of channels including: podcasts; webinars; newsletters; social media accounts; and presentation or attendance at sector meetings and fora.

3.9 The ACNC's website includes a section on 'Guidance and Tools', under which a substantial number of documents are available including factsheets, guides, Commissioner's Interpretation Statements, templates for charities, and reports released by the ACNC (including the annual Australian Charities Report).

3.10 The large volume of material on the ACNC's website can make it difficult to locate relevant documents. A recent initiative by the ACNC to improve accessibility was to establish a 'Governance Hub' within the website, which brings together a range of guidance and material on governance matters. This includes: specific material for small charities; a guide for charity board members; and a self-evaluation tool to assist charities to assess whether they are meeting their obligations as a registered charity. There would be benefit in extending this approach to other parts of the website, to help make other material easier to locate and use.

3.11 The ACNC's 2018–19 Annual Report noted that the ACNC did not meet its service standards relating to general telephone enquiries, general correspondence or responding on time when charities lodge a form to update their details. In particular, the average response time for telephone calls to its contact centre was reported to be seven minutes, which was above the target response time of four minutes. The ACNC stated that the standard was not met due to the transition to a new IT system, which initially caused a significant increase in demand to assist customers to access the new Charity Portal.

Feedback mechanisms

3.12 The ACNC's practice is to consult with stakeholders when developing significant new pieces of guidance. This includes members of its two main consultative groups: the Professional User Group (PUG)⁴⁵ and the Sector User Group (SUG)⁴⁶ and with relevant regulators and other entities. Members of the PUG and SUG have typically met with the ACNC three times per year (sometimes in combined meetings), but the ACNC does not keep formal records of these meetings.

45 Comprised of professional advisors, legal and financial officers of charities, ACNC representatives, and invited representatives of government agencies that interact with the charity sector. As noted in paragraph 3.15, this consultative group is now called the Advisor Forum.

46 Comprised of representatives from peak bodies in the charity sector, ACNC representatives, and invited representatives of government agencies that interact with the charity sector. As noted in paragraph 3.15, this consultative group is now called the Sector Forum.

3.13 Examples of consultation include: the recently-released External Conduct Standards; refinements to the 2017 Annual Information Statement form; and guidance on the website such as on ‘Gifts and Honorariums’ and registration requirements (the Step-by-Step guide).

3.14 Other mechanisms used by the ACNC to assess the value of its guidance material include:

- analysis of enquiry data to the contact centre (Advice Services), which has resulted in the preparation of new guidance material for charities; and
- an online survey made available to applicants for registration, which includes a question on whether applicants made use of the guidance material on the ACNC’s website.⁴⁷

3.15 Following a review of its consultation mechanisms in 2019, the ACNC Commissioner decided to make a series of changes from 2020. This includes: changing the name of the two main consultative groups to the Advisor Forum (previously PUG) and the Sector Forum (previously SUG); reducing the number of consultation meetings to two per year; producing high-level minutes of the meetings, which will be sent to participants and published on the ACNC’s website; trialling facilitated small group sessions; and surveying small charities to better understand their consultation needs.

Supporting charities to meet their annual reporting obligations

3.16 The annual reporting obligations on registered charities is a key mechanism to support public trust and confidence in the sector.⁴⁸ The ACNC uses various means to promote and support charities’ timely compliance with the requirement to provide Annual Information Statements and (as applicable) Annual Financial Reports.

3.17 For 2017–18, the ACNC’s performance target was that 80 per cent of registered charities lodge their Annual Information Statement on time — typically within six months after the end of the charity’s applicable reporting period.⁴⁹ From 2018–19 to 2022–23 the ‘on time’ target has been reduced to 75 per cent of registered charities. The ACNC advised that the target was reduced in anticipation of a lower on time response rate until charities became familiar with the new Charity Portal (through which Annual Information Statements are generally prepared and sent). The ACNC’s intention is to leave the target at 75 per cent until it can realistically achieve a higher rate.

3.18 The ACNC’s website includes a range of material to assist charities to meet their annual reporting obligations. This includes an ‘Annual Information Statement hub’ with links to a guide and checklist, and a means to navigate the new 2018 Annual Information Statement form. As well, the ACNC’s standard practice is to send two reminder letters to charities before their Annual Information Statement is due and a ‘late filer’ notice if the charity fails to submit on time. The ACNC has also issued penalty notices to selected charities (typically large charities) that have failed to lodge an Annual Information Statement (although no penalties were issued in 2018–19).⁵⁰ The ACNC advised that continued non-compliance by a charity following receipt of a

47 As of 4 December 2019, a significant majority of the 3110 respondents advised that they used some of the ACNC’s guidance material to help complete their registration application, including factsheets.

48 The reporting obligations on registered charities are set out under Division 60 of the ACNC Act.

49 The default reporting period is 1 July to 30 June. Charities are able to request a different reporting period, for example 1 January to 31 December. The ACNC Commissioner can extend the due date for a report.

50 The ATO is responsible for the collection of penalties issued under the ACNC’s penalty notice process.

penalty notice and failure to submit the subsequent Annual Information Statement would result in the charity's registration being revoked (through the ACNC's double-defaulter process).

3.19 For 2017–18, the ACNC reported that 72 per cent of registered charities had lodged their Annual Information Statement on time. For 2018–19, 70 per cent of charities lodged on time, below the ACNC's 75 per cent target. For charities that are more than six months overdue⁵¹, the ACNC activates a 'red flag' on the charity's entry in the Charity Register to signal that charity reporting is not up to date.⁵²

Has the ACNC been effective in monitoring charities and undertaking risk-based compliance and enforcement activities?

The ACNC has been largely effective in monitoring charities' compliance in accordance with its stated regulatory approach, but less effective in undertaking risk-based compliance and enforcement activities. The ACNC relies mainly on external parties to identify compliance concerns, and is improving its arrangements for allocating available resources to identified compliance priorities. Complexity in determining whether charities are 'federally regulated entities' has limited the ACNC's use of enforcement powers and reporting of enforcement results for deterrence purposes.

3.20 The ACNC's Regulatory Approach Statement articulates the ACNC's intended approach to identifying and managing compliance risks for registered charities. This includes statements that the ACNC:

- monitors compliance by: assessing information provided by charities in their Annual Information Statements and Annual Financial Reports⁵³; assessing concerns received from the community and other government entities; and undertaking data-matching and intelligence projects;
- uses a risk-based approach to allocate its compliance resources when addressing concerns about charities and is not resourced to investigate every regulatory concern brought to its attention; and
- will take action proportionate to the problem it is seeking to address, and will not hesitate to use its powers when charities do not act lawfully and reasonably — noting that revocation of registration may be appropriate in certain circumstances.⁵⁴

51 See section 40.1 (Item 11 in the table) in ACNC Regulation 2013, available at: <https://www.legislation.gov.au/Details/F2019C00634> [accessed 17 September 2019].

52 Once the overdue report has been provided, the red flag is able to be removed.

53 Under the ACNC Act, all registered charities must provide an Annual Information Statement, but only registered charities that are categorised as 'large' (annual revenue of \$1 million or more) and 'medium' (annual revenue less than \$1 million but over \$250,000) must provide an Annual Financial Report.

54 Including if the charity is not entitled to registration, for example has been set up merely to launder money or act as a front for serious criminal activities; or if the charity has significantly and persistently failed to comply with the Governance Standards, External Conduct Standards or annual reporting obligations.

Monitoring registered charities

3.21 The ACNC has undertaken the three main forms of monitoring referred to in its Regulatory Approach Statement.

3.22 The ACNC's main focus in assessing the annual information provided by charities is to improve the accuracy of the information on the Charity Register. The Annual Information Statements and Annual Financial Reports required to be provided by (relevant⁵⁵) charities are automatically uploaded to the Charity Register when submitted through the online Charity Portal. The ACNC does not seek to examine all of these reports or all of the information in these reports. Its practice has been to examine selected information in selected reports, focussing on the quality and completeness of the financial information and on specific matters such as whether the charity has correctly identified itself as a Basic Religious Charity (Box 5).⁵⁶

Box 5: Data integrity checks undertaken by the ACNC on charities' 2017 Annual Information Statements

The ACNC's data integrity strategy for the 2017 Annual Information Statements outlined three levels of checking, which correspond to performance criteria in the ACNC's 2017–18 Corporate Plan.

- Level 1^a — examining financial information in Annual Information Statements for 'material' errors, which comprised five core items:
 - incorrect classification as a Basic Religious Charity;
 - material financial error, such as a large increase or decrease in reported revenue, assets, expenses or liabilities compared to previous years;
 - incorrect size classification (as per the revenue requirements in the ACNC Act);
 - reported engaging in activities but failed to provide any financial information; and
 - errors in providing details on the number of full-time equivalent staff.
- Level 2 — conducting additional checks on charities that hold 80 per cent of the sector's charitable assets and/or 80 per cent of the sector's revenue, including confirming that the charity's Annual Financial Report includes relevant components and approvals^b; and determining if the charity has made a material error when populating the financial information in the Annual Information Statement compared to the Annual Financial Report.
- Level 3 — reviewing a further 150 Annual Financial Reports, from large and medium-sized charities to ensure they comply with ACNC financial reporting requirements. In addition to undertaking the Level 1 and Level 2 checks, the ACNC confirms that the charity has:

55 Charities that are categorised as 'Small' (with annual revenue less than \$250,000) are not required to provide Annual Financial Reports to the ACNC, alongside their Annual Information Statements.

56 Basic Religious Charities do not have to comply with the Governance Standards or provide financial information to the ACNC.

- reported the correct type of financial report in the Annual Information Statement (for example, general or special purpose report);
- complied with minimum accounting standards required under ACNC Regulation 2013; and
- complied with related-party disclosures required for general purpose financial statements.

Note a: The Level 1 checks are system-generated checks based on the Annual Information Statements submitted by charities.

Note b: Such as: an income statement; a balance sheet; a signed audit or review report; and a Responsible Person's declaration and signature.

Source: ANAO, based on the ACNC's internal data integrity strategy for the 2017 Annual Information Statement.

3.23 The ACNC reported that as a result of its data integrity checks on charities' 2017 Annual Information Statements, it contacted 747 charities that made errors; and in turn corrected significant aggregate errors on the Charity Register to charities' reported revenue, assets and number of full-time employees.

3.24 To help promote and assist compliance, the ACNC prepares a data integrity strategy for monitoring the quality of charities' reporting and publishes a report on the type of errors found during the annual reporting cycle.

3.25 In reviewing charities' information, many of the errors identified by the ACNC (through its desk-based reviews) relate to inconsistencies between the financial information provided by charities in their Annual Information Statements and in their Annual Financial Reports.⁵⁷ The ACNC sends a letter asking the charity to correct the information and to re-submit the relevant report(s).

3.26 Charities are not required in their Annual Information Statements to declare (re-confirm) that they remain in compliance with the Governance Standards; nor are charities required, as a matter of course, to provide documentation to evidence their compliance with the Standards. Charities are required to answer some questions that relate to aspects of the Governance Standards, including whether the charity had any 'related party transactions'⁵⁸ and whether the charity has documented policies or processes about related party transactions. These particular questions are aimed at identifying any private benefits, and potential breaches of Governance Standard 1 (Purposes and not-for-profit nature) and Governance Standard 5 (Duties of Responsible Persons).

3.27 The Annual Information Statement is a key means to provide transparency on the activities of registered charities; and the ACNC is able to collect information via these Statements that support its assessment of an entity's ongoing compliance obligations. In this context, the ACNC should make greater use of this annual reporting process to monitor whether charities are complying with the Governance Standards. This approach could be informed by a structured assessment such as a cost-benefit analysis, to balance the expected compliance benefits against any increase in regulatory burden on charities.

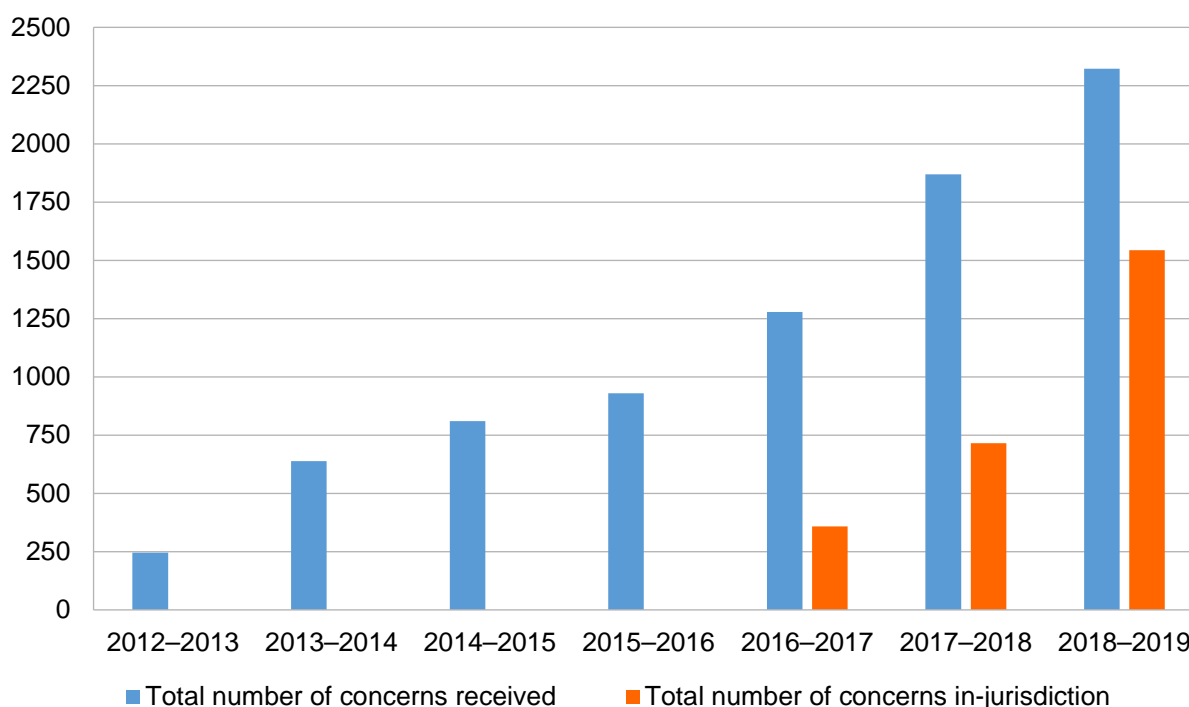
⁵⁷ Large and medium size charities are required to have their financial accounts audited or reviewed.

⁵⁸ A related party transaction is a transfer of resources, services or obligations between a charity and a related party regardless of whether a price is charged.

Concerns received about charities

3.28 In 2018–19, the ACNC received⁵⁹ the highest ever number of concerns about charities — with 1544⁶⁰ of those concerns assessed to be ‘in-jurisdiction’⁶¹ (Figure 3.2) relating to 659 charities. More than 500 of the concerns received in 2018–19 related to two charities.

Figure 3.2: Number of charity concerns received by the ACNC



Source: ANAO, based on the ACNC’s published data.

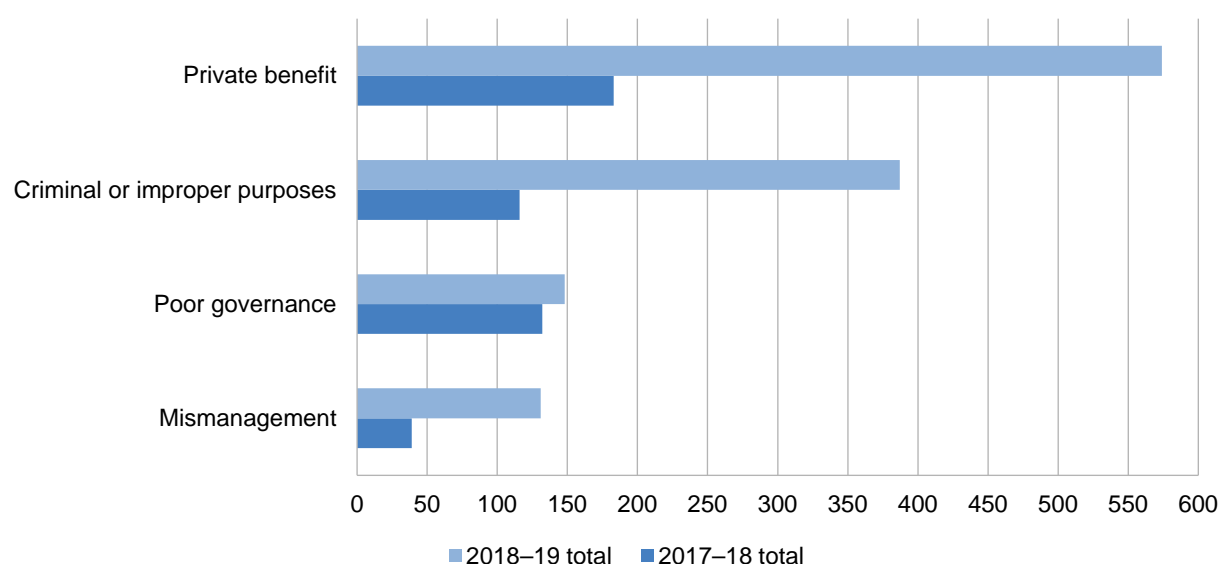
3.29 Of the 1544 concerns, 667 were provided by members of the public, with other major sources including: other government entities; media reports; and past and present charity employees. The ACNC’s categorisation of the concerns received shows that private benefit and criminal or improper purposes feature the most often (Figure 3.3).⁶²

59 This includes some concerns identified in media reports about charities.

60 In relation to the ACNC’s advice referred to at paragraph 3.38, the ACNC revised this figure to 1536.

61 This means that the concern raised fell within the ACNC’s regulatory responsibilities.

62 Other categories used by the ACNC include: conflict of interest; disqualifying political purposes; and terrorism.

Figure 3.3: ACNC's categorisation of the main risk concerns received about charities

Note: This figure shows the top four categories only, which equated to 1240 concerns. The remaining 10 categories comprised 304 concerns.

Source: ANAO, based on the ACNC's data.

Data-matching and intelligence projects

3.30 In recent years, the ACNC has undertaken five main initiatives in relation to its stated approach of undertaking data-matching and intelligence projects to identify areas of risk. The projects are summarised in Table 3.1.

Table 3.1: Data-matching and intelligence projects undertaken by the ACNC

Initiative	Description
Closely-held charities (2017)	Investigate charities that sent or received money from tax havens. This project was part of a joint risk assessment ^a between the ACNC and the Australian Transaction Reports and Analysis Centre (AUSTRAC) in 2017 on money laundering and terrorism financing in Australia's NFP organisation sector.
Terrorism financing (2017)	Investigate charities with potential terrorism financing risks or organised crime links. This project arose out of the joint risk assessment between the ACNC and AUSTRAC.
Disqualifying purpose (2018)	Use publicly available data to identify charities that made donations to political parties in New South Wales and Queensland (for which public data was readily available).
Private Ancillary Funds (2018)	Identify whether Private Ancillary Funds that transferred funds overseas complied with Guidelines overseen by the ATO.
Private benefit (2018)	Examine 25 charities identified through various risk indicators as presenting a higher risk of operating for private benefit.

Note a: The report on the risk assessment is available at: <https://www.acnc.gov.au/tools/reports/national-risk-assessment-not-profit-sector> [accessed 11 November 2019].

Source: ANAO, based on the ACNC's records.

3.31 The ACNC's records indicate that 83 matters were identified as requiring investigation as a result of its proactive compliance projects — 53 from the Terrorism financing project, 19 from the Disqualifying purpose project, 10 from the Private benefit project, and one from the Private Ancillary Funds project.

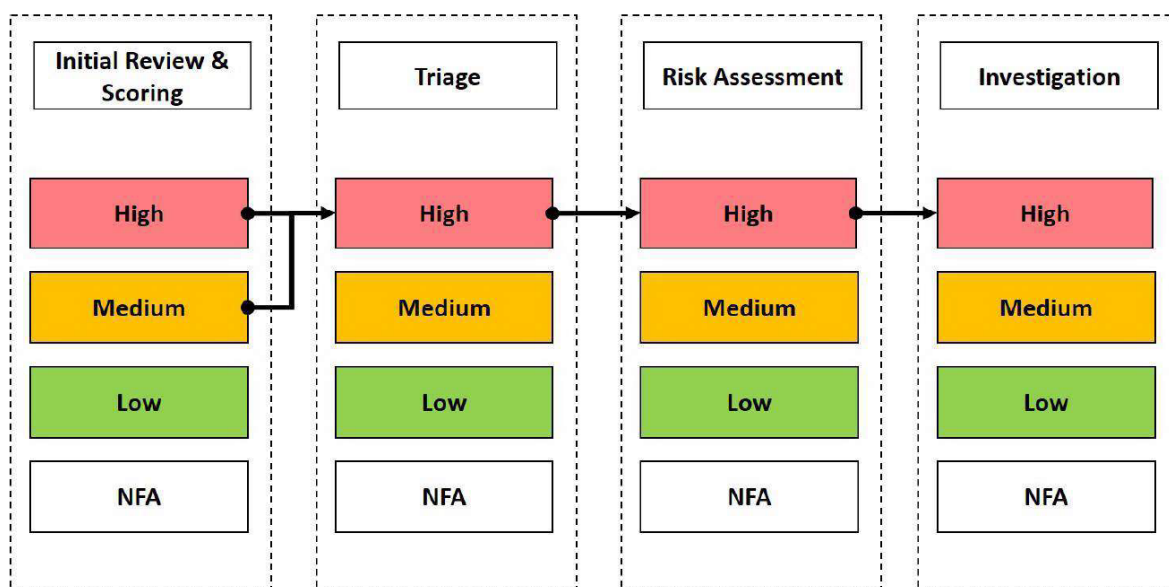
3.32 As of 24 January 2020, the ACNC's records indicate that 34 of the 53 Terrorism financing investigations have been completed, with the remaining 19 cases in progress. Seven charities had their registration revoked as a result of this project. In addition, four of the 10 cases for the Private benefit project have been finalised, with six cases remaining under investigation. A further 17 of the 83 matters identified as requiring investigation had yet to be commenced.

3.33 The Terrorism financing project is the only data-matching initiative that involved extensive sharing of charity data with another government entity (AUSTRAC). The ACNC advised that the secrecy provisions in the ACNC Act prescribe strict conditions on the disclosure of 'protected ACNC information' to facilitate data-matching with other government entities.

Risk-based compliance prioritisation processes

3.34 The ACNC's current practice is to use a four-step prioritisation process to determine which concerns received about charities warrant further examination and investigation (Figure 3.4).⁶³

Figure 3.4: ACNC's processes for prioritising concerns received about charities



Source: ANAO, based on the ACNC's records.

3.35 The aim of the first step (Initial Review and Scoring) is to identify higher risk matters by using a scoring system to rank different types of risks and the source of the concern. For instance, a concern that is raised by a particular government entity and which relates to a particular type of risk, such as terrorism or criminal activity, is scored more highly than a concern that is received anonymously and which relates to a relatively minor compliance matter. Other factors, such as

⁶³ This process was introduced in August 2017.

whether previous complaints have been made or previous compliance activity undertaken, increase the overall score.

3.36 Concerns that are initially rated as ‘high’ or ‘medium’ are subject to a further ‘triage’ process to determine if the matter warrants investigation and an accompanying risk assessment. The triage assessment is undertaken by an experienced member of the ACNC’s compliance team and can involve a range of checks including: reviewing the charity’s website and any information supplied on the Charity Register; identifying the nature and content of previous complaints; and cross-checking with other entities (especially the ATO).

3.37 The ACNC’s intention is that all concerns that are rated as ‘low’ priority during the Initial Review and Scoring step will be finalised by means of a self-evaluation form being sent to the charity.⁶⁴ Concerns that are judged to be ‘medium’ or ‘low’ risk during the subsequent triage are to be addressed through a self-evaluation form, regulatory advice, referral to another government entity or other appropriate measure. The ACNC advised that there is a backlog in addressing these lower risk matters, and this was evident in the data examined during the audit (where 153 concerns had no compliance action taken on them as of 8 November 2019).

3.38 For 2018–19, the ACNC advised in February 2020 of the following details about the number and treatment of concerns, including having received 1536 concerns relating to 609 charities. The first stage of the ACNC’s triage process determined that 466 concerns were of low risk, and were ‘closed’ with no further action taken. The ACNC’s second stage triage process assessed 968 of the remaining 1070 concerns, and determined that the following action was warranted:

- Concern closed (but no specific reason recorded) — 449;
- No further action — 269;
- Issue self-evaluation form for voluntary completion by the charities — 82;
- Other actions (which were not specified) — 79;
- Progress to risk assessment and investigation — 75;
- Provide regulatory advice — 10; and
- Watching brief (to determine if future action is needed) — 4.

The ACNC had 102 further concerns, relating to 94 charities, which had not been triaged at the end of 2018–19.

3.39 A risk assessment is required to be completed for all matters that proceed to investigation. In October 2019, the ACNC introduced a new risk assessment template that focusses on the potential ‘harms’ that may be caused, rather than (technical) ‘breaches’ of the ACNC legislation, as was the case on the previous template. These harms are aligned to the four forms of conduct that the ACNC has publically identified as its compliance priorities (Box 6).

64 The self-evaluation form was published on the ACNC’s website in March 2019. It sets out charities’ ongoing obligations and includes questions and prompts on the steps a charity can take to meet those obligations.

Box 6: ACNC's publicly identified compliance priorities

- Fraud and financial mismanagement — including money laundering, tax avoidance and private benefit.
- Terrorism — misuse of a charity for terrorist purposes or to foster extremism.
- Failure to safeguard people — particularly children and vulnerable adults.
- Political or unlawful activities — where the charity may be at risk of having a disqualifying purpose.

Source: The ACNC's Charity Compliance Report 2018, available at: <https://www.acnc.gov.au/tools/reports/compliance-report> [accessed 11 November 2019].

3.40 The ACNC's data indicates that 73 cases that were rated as 'high' risk (from May 2018 onwards) have not, as of November 2019, progressed to investigation — as would normally be expected under the ACNC's compliance approach. The ACNC advised that it has not commenced these cases due to resource constraints and prioritisation of other cases.

Compliance activities undertaken

3.41 Table 3.2 summarises the ACNC's investigation, compliance and enforcement activity since it was established.

Table 3.2: Compliance activity undertaken by the ACNC

Activity	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19	Total 2012–19
Investigations finalised	0	51	26	26	66	108	100	377
Notices served	0	24	45	40	57	62	35	263
Penalties	N/A	N/A	N/A	N/A	92	78	0	170
Regulatory advice	0	0	14	17	40	28	52	151
Revocation of registration	0	1	10	10	22	22	12	77
Self-evaluation forms	N/A	N/A	N/A	N/A	N/A	N/A	51	51
Compliance agreements	N/A	N/A	N/A	4	5	16	25	50
Enforceable undertakings	0	0	1	0	1	3	1	6
Directions	0	1	0	0	0	2	2	5
Warnings	0	1	0	1	0	0	0	2

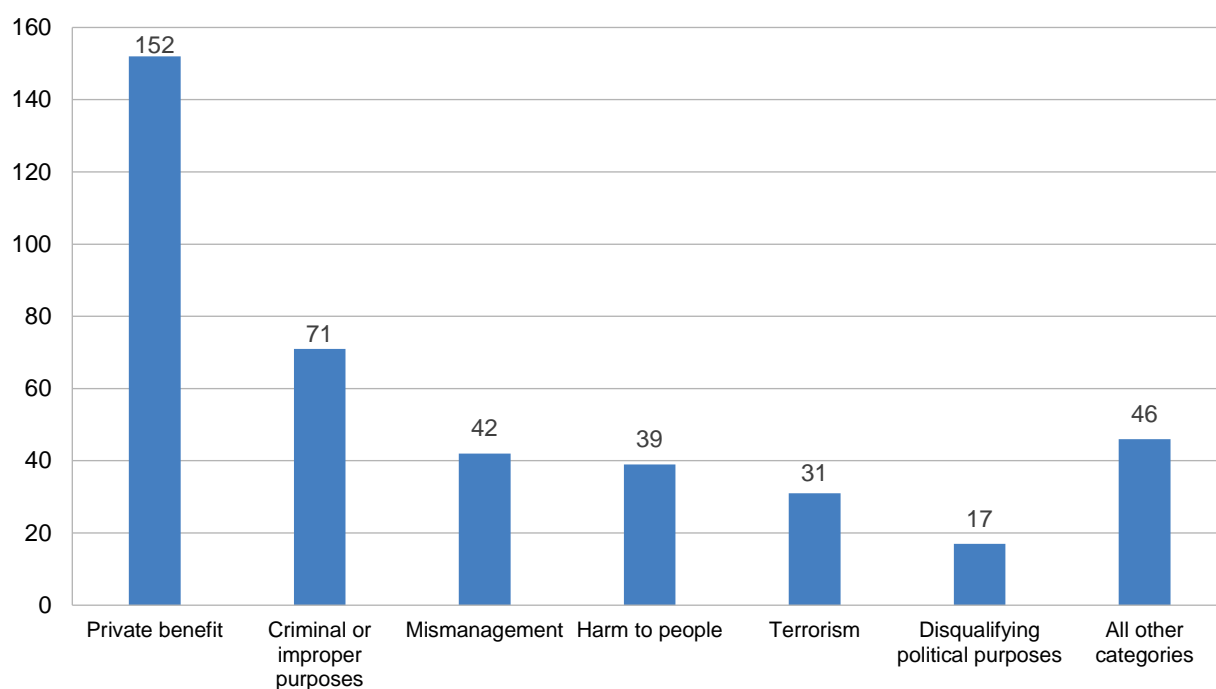
Source: ANAO, based on Table 4.6 in the ACNC's 2018–19 Annual Report.

Investigations

3.42 As illustrated in Figure 3.5, the types of matters investigated by the ACNC reflect its identified priorities areas. The ACNC categorises investigations on the basis of the 'primary concern'

being investigated. Private benefit concerns make up the largest category, followed by criminal or improper purposes.

Figure 3.5: The ACNC's categorisation of all charity investigations undertaken



Source: ANAO, based on the ACNC's data (as of 6 November 2019).

3.43 As illustrated in Table 3.3, the ACNC has not met its target timeframes for finalising investigations in the last three years or in 2014–15.

Table 3.3: ACNC's reported performance against its investigation timeframes

Year	Description	Target	Published result
2018–19	Investigations finalised within six calendar months	60%	55%
	Investigations finalised within 12 calendar months	90%	82%
2017–18	Investigations finalised within six calendar months	80%	50%
2016–17	Investigations finalised within six calendar months	80%	65%
2015–16	Investigations finalised within 180 business days	90%	97%
	Investigations finalised within 270 business days	95%	100%
2014–15	Investigations finalised within 180 business days	90%	64%
	Investigations finalised within 270 business days	95%	88%
2013–14	Investigations finalised within six months	No target	61%
2012–13	Investigations finalised within six months	No target	100%

Source: ANAO, based on the ACNC's data.

3.44 An internal brief provided to the ACNC Commissioner in May 2018 suggested a number of reasons why the ACNC was not meeting its investigation timeframes for 2017–18, including:

- improved triage and risk assessment processes resulting in more complex cases proceeding to investigation;
- a focus on finalising older (aged) cases, impacting on current performance; and
- various staffing and administrative issues, including the lack of a formal case management system and the need for two investigators to allocate their time to one high-profile case.

3.45 The different investigation targets that were set for 2018–19 were intended to provide greater flexibility to cater for more complex cases, and to be more realistic based on available resources.

Use of powers

3.46 As listed in Table 3.2 above, the ACNC has used some of its formal enforcement powers⁶⁵ on 13 occasions since it was established — namely: six ‘enforceable undertakings’; two ‘warnings’; and five ‘directions’.⁶⁶ The enforcement powers are intended to provide a proportionate enforcement response⁶⁷, but can only be used on registered charities that meet the definition of a ‘federally regulated entity’ (Box 7).

Box 7: Definition of a ‘federally regulated entity’

A ***federally regulated entity*** is:

- (a) a constitutional corporation^a; or
- (b) a trust, all of the trustees of which are constitutional corporations; or
- (c) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or
- (d) a trust, if the proper law of the trust and the law of the trust’s administration are the law of a Territory; or
- (e) an entity, the core or routine activities of which are carried out in or in connection with a Territory.

Note a: The ACNC Act defines a ‘constitutional corporation’ as a corporation to which paragraph 51(xx) of the Constitution applies, or a body corporate that is incorporated in a Territory.

Source: Section 205-15 of the ACNC Act.

3.47 The ACNC does not routinely and formally assess whether registered charities are a federally regulated entity through its registration processes or otherwise. The ACNC was unable to provide an estimate on the number of registered charities that would likely meet this definition. The ACNC advised that there is a time and cost impact to determining whether a charity is a federally regulated entity and that a determination typically requires internal legal advice and in more complex cases

⁶⁵ The enforcement powers are set out in Part 4-2 of the ACNC Act.

⁶⁶ The other two formal enforcement powers have not yet been used, namely to: apply for injunctions; or to suspend or remove responsible entities.

⁶⁷ The ACNC Act requires the ACNC Commissioner to take account of a range of matters listed in subsection 35-10(2) of the Act in deciding whether to use particular enforcement powers. These matters include: the nature, significance and persistence of any contravention of the ACNC Act by a registered charity; and the extent (if any) to which the registered charity is conducting its affairs in a way that may cause harm to, or jeopardise, public trust and confidence in the not-for-profit sector.

external legal advice (through the Attorney-General's Department).⁶⁸ In this context, the ACNC advised that determinations are sought on a case-by-case basis.

3.48 The ACNC has recognised that it needs better methods for identifying whether registered charities are federally regulated entities. In its submission to the 2018 external review of ACNC legislation, the ACNC recommended that the Act be amended to enable the ACNC Commissioner to require a registered charity to provide information or documents necessary to determine whether it is a federally regulated entity. This recommendation was not included in the external reviewer's report to government.

Other regulatory options

3.49 The power to revoke the registration of a charity applies to all registered charities, regardless of whether they are a federally regulated entity. Revocation of registration is the ultimate sanction in the ACNC's regulatory pyramid (Figure 3.1) and is the main regulatory action that would remove a charity's entitlement to certain Commonwealth tax concessions (subject to subsequent actions taken by the ATO).⁶⁹

3.50 Since the ACNC was established, 77 charities have had their registration revoked as a result of compliance action by the ACNC (as of 30 June 2019).

3.51 The ACNC's use of the revocation power is subject to a number of legislative requirements⁷⁰ as well as broader considerations including that the ACNC loses jurisdiction over an entity once registration is revoked. In the absence of action by another regulator, revoked charities can continue to operate. They can also reapply for registration.

3.52 In cases where the enforcement powers in the ACNC Act do not apply to a charity under investigation, the ACNC has fewer options to take a proportionate approach.

3.53 To provide an additional option for dealing with non-federally regulated entities, the ACNC has developed a compliance tool that is not specifically provided for in the ACNC Act — 'voluntary compliance agreements'. Where an entity is considered not to be a federally regulated entity, and where revocation is not deemed to be suitable (at least not initially), the ACNC considers that voluntary compliance agreements provide a means to focus a charity's attention on correcting identified contraventions of the Governance Standards or other matters.

3.54 Because compliance agreements are not formal enforcement actions under the ACNC Act, there is no explicit power for the ACNC to publish its use of these agreements on the Charity Register, as it does for other enforcement actions.⁷¹ Only one compliance agreement is listed on the ACNC's website and was done so with the express permission of the charity. Where compliance agreements are used, no compliance action is recorded on the 'History' tab of the charity's page on the Charity Register. Examination of a selection of six voluntary compliance agreements showed

68 The ACNC advised that under the Commonwealth's Legal Services Directions (2017), it is required to seek advice from the Australian Government Solicitor if a charity is considered from its own assessment to be a 'Constitutional Corporation.'

69 Registered charities could potentially lose access to certain Commonwealth tax concessions if the ACNC determines that the charity is no longer entitled to a particular subtype of registration (such as a Public Benevolent Institution).

70 See, in particular, subsection 35-10(2) of the ACNC Act.

71 See paragraph 40-5(1)(f) of the ACNC Act.

some serious allegations or a range of issues being addressed, with often lengthy investigation and implementation timeframes (Box 8).

Box 8: Examples of the types of matters being addressed through the ACNC's voluntary compliance agreements with registered charities

- **Case A:** the charity's responsible persons agreed, among other things, to: improve their knowledge, implementation and review of child safe practices; and their knowledge of governance; be made aware of the agreed process for financial and operational decision-making; and maintain meeting minutes that accurately record the charity's operations and decisions made by the board. The voluntary compliance agreement was signed in June 2019, 26 months after the ACNC notified the charity it had commenced its investigation. The investigation was following up on concerns that the charity's responsible persons were not complying with their duties, including not acting with due care and diligence in protecting beneficiaries and assets and not meeting reporting obligations.
- **Case B:** the charity agreed, among other things, to: provide governance training and awareness to its responsible persons (including the Secretary of the Board); strengthen and document internal control and financial policies, procedures and systems and its overall management of financial and compliance risks (including to review the adequacy of controls on the use of credit cards, expenditure limits and sanctions for misuse); ensure that its conflicts of interest policy covers relevant matters (including appropriate provisions where goods or services are provided to the charity by existing directors of the charity); and adopt a board composition policy and a board charter. The voluntary compliance agreement was signed in August 2019, 10 months after the ACNC notified the charity it had commenced its investigation.
- **Case C:** the charity agreed, among other things, to undertake actions to confirm its status as a Health Promotion Charity, including ensuring its health promotion activities are regularly reviewed and approved by recognised health professionals with specialist knowledge; and to meet the Governance Standards, including putting processes and procedures in place to manage third-party transactions and conflicts of interest. The voluntary compliance agreement was signed in September 2016, 20 months after the ACNC notified the charity it had commenced its investigation.

Source: ANAO, based on the ACNC's records.

3.55 The ACNC was not able to consistently demonstrate that it considered the question of whether a charity was a federally regulated entity before deciding to use a compliance agreement.⁷² In one case, the ACNC had established that the charity was a federally regulated entity but elected to pursue a voluntary compliance agreement rather than utilise the range of formal enforcement powers in the ACNC Act. The rationale for this decision was not evident from the ACNC's records.

⁷² The ACNC does not currently have a written policy on when it will use voluntary compliance agreements.

Recommendation no.3

3.56 To better support the objective of maintaining public trust and confidence in the charities sector, the Australian Charities and Not-for-profits Commission enhances its compliance framework and operational practices by:

- (a) Using its processes for monitoring the annual information provided by charities to support its assessment that charities are complying with the Governance Standards.
- (b) Adopting a more proactive approach to identifying charity compliance risk, including drawing more extensively on data collected annually from charities.
- (c) Better aligning available resources to identified risks, such that higher risk cases are investigated or otherwise resolved in a timely way.
- (d) Ensuring that available regulatory powers are used to address identified non-compliance, including by determining more consistently whether the enforcement powers apply in relevant cases.

Australian Charities and Not-for-profits Commission response: *Agreed.*

3.57 *The ACNC is currently reviewing its compliance framework and operational practices and will ensure that ANAO recommendations are considered as part of that review, balancing risk, unnecessary regulatory burden and resources within the legislative framework.*

Australian Taxation Office response: *Noted.*

3.58 *The ATO relies on the ACNC to regulate registered charities. Access to Commonwealth tax concessions for charities is dependent on registration (charities also need to meet special conditions).*

3.59 *An enhanced compliance framework that monitors adherence to governance standards and identifies risk provides the ATO with greater assurance that charities are correctly accessing concessions and operating for purpose.*

Does available performance information indicate that the ACNC has been effective in maintaining, protecting and enhancing public trust and confidence in the charities sector?

Current performance information does not provide a clear indication on whether the ACNC has been effective in maintaining, protecting and enhancing public trust and confidence in the charities sector. The ACNC has discontinued its most direct means of measuring public trust and confidence — a biennial survey.

3.60 The maintenance, protection and enhancement of public trust and confidence in the not-for-profit sector is a key outcome sought from the introduction of the ACNC and associated regulatory framework — and is the first object of the ACNC Act.

3.61 The explanatory material for the ACNC Act stated that the sector was already held in high regard by the Australian community. This material noted that while high levels of trust and

confidence encourage philanthropic giving, volunteerism and public engagement with the sector, public trust and confidence may be weakened by misconduct, opacity, misinformation and illegality.

ACNC's performance measures of public trust and confidence

3.62 The ACNC's most recent annual report⁷³ (2018–19) includes a range of performance information relating to the object of supporting public trust and confidence in the not-for-profit sector (Table 3.4). The ACNC reported mixed performance in meeting its performance targets that year. Of the seven performance criteria relating to four corporate goals under Priority 1, three criterion were reported as met, one substantially met and three not met.⁷⁴

Table 3.4: ACNC performance measures on Priority 1: To maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector, and results for 2018–19

Priority area	Performance criterion	Result
Corporate goal 1.1: The Charity Register contains only charities that are entitled to be registered		
New charities are registered and included on the Charity Register	Meet published service standards for processing registration applications	Met
Charities identified as being ineligible to be registered are revoked and removed from the Charity Register	Meet published service standards for finalising investigations	Not met
Charities identified as being ineligible to be registered are revoked and removed from the Charity Register	100 per cent of charities with two outstanding Annual Information Statements are removed from the Charity Register biannually	Not met
Corporate goal 1.2: Registered charities meet their obligations under the ACNC Act and the Charities Act		
The ACNC operates in accordance with a clearly articulated risk framework and risk-based approach to charity registration and compliance activities	Policies and business processes align with the ACNC's Regulatory Risk Framework and risk-based approach	Substantially met
The ACNC operates in accordance with a clearly articulated risk framework and risk-based approach to charity registration and compliance activities	75 per cent of registered charities lodge their Annual Information Statement on time	Not met
Corporate goal 1.3: The ACNC is a best practice regulator		
Decisions are evidence based, consistent and transparent	Quality assurance processes demonstrate that decisions align with the regulatory approach and are legally sound	Met

⁷³ The ACNC's Annual Report is prepared under Division 130 of the ACNC Act.

⁷⁴ This compares to 2017–18, when the ACNC reported it had met five of seven criterion, substantially met one criterion and partially met the other.

Priority area	Performance criterion	Result
Corporate goal 1.4: Information on the Charity Register is accurate and accessible, increasing transparency and informing policy		
Information provided by charities in Annual Information Statements is examined for accuracy	Develop, publish on the website and implement a data integrity strategy for each Annual Information Statement detailing the risk-based approach to confirming accuracy of reporting	Met

Source: ANAO, based on pages 22–24 of the ACNC's 2018–19 Annual Report.

3.63 All the performance measures attributed to Priority 1 relate to the ACNC's regulatory activities rather than directly seeking the public's views on trust and confidence. This is a change from the previous year, which included a criterion arising from a public trust and confidence survey. That survey directly sought public views on aspects of the charity sector and the ACNC's performance, but has been discontinued as discussed further below.

3.64 The measures selected by the ACNC provide a clear signal to stakeholders on the regulatory activities that it considers to have the greatest effect on public trust and confidence. Nevertheless, it is not clear how the performance measures used for the first object of the ACNC Act reflect or align with the public's understanding of how a regulator should seek to support public trust and confidence. Some of the findings from the public trust and confidence surveys suggest that the public may have a different conception of trust and confidence. For instance, the 2017 survey found that worthiness of the charity cause is the most influential driver of trust. Another driver of trust was found to be the proportion of funds going to those in need. The ACNC does not seek to measure these two aspects.

3.65 A further issue is that the ACNC's current set of performance measures do not include any measures that relate to the underlying policy logic of improving public trust and confidence — to encourage philanthropic giving, volunteerism and public engagement. While there are likely to be a broader range of drivers behind these behaviours, the ACNC could still provide insights on general trends — for instance, the level of donations as a percentage of Gross Domestic Product or similar indicators.

Public trust and confidence survey

3.66 This survey has been conducted three times since the ACNC was established — first in 2013, in 2015 and lastly in 2017.⁷⁵

3.67 A key finding from the 2017 survey is that there has been a steady decline in trust and confidence in Australian charities. Since 2013, levels of trust and confidence in charities have decreased 13 percentage points, from a high of 37 per cent in 2013 to 24 per cent in 2017. The 2017 survey also found that those who 'outright distrust' charities has increased to 14 per cent of respondents, up from 10 per cent in 2015.

3.68 The 2017 survey also provided a number of findings or observations about the awareness of the ACNC and its perceived importance, respondents' involvement in the charity sector, and other aspects of trust and confidence (Box 9).

⁷⁵ The three surveys are available on the ACNC's website at: <https://www.acnc.gov.au/tools/reports#P> [accessed 6 February 2020]. All three were contracted to external providers.

Box 9: Selected findings from the ACNC Public Trust and Confidence in Australian Charities survey 2017

- 41 per cent of respondents thought there was a regulatory body for the charity sector, but most (76 per cent) were not well-informed about the role and functions of the ACNC.
- 21 per cent of respondents were aware of the Charity Register and 71 per cent agreed it was very important to have a Register, but only 7 per cent had used the Register.
- 65 per cent of respondents nominated the ‘importance of the cause’ as the primary driver of their support for charities.
- 49 per cent of respondents did not feel confident donating to a charity they do not know, regardless of the cause.
- 57 per cent of respondents strongly agreed that they trust charities that are transparent about how they use their resources.

Source: ANAO, drawn from the ACNC Public Trust and Confidence in Australian Charities 2017, Market Research Report, October 2017, available at: <https://www.acnc.gov.au/tools/reports/public-trust-and-confidence-australian-charities-report-2017> [accessed 10 October 2019].

3.69 In February 2019, the ACNC Commissioner publicly announced that the ACNC would not continue the biennial survey (the next of which was due to be undertaken in 2019). The reasoning was that other research is being conducted across Australia and the world to examine trust in charities and other institutions. The Commissioner considered that the ACNC should direct its resources towards improving the Charity Register for charities and other users.

3.70 The Commissioner advised that the ACNC does not have regulatory control over the broader NFP sector — and therefore cannot be accountable for the full range of respondents’ perceptions on that sector. Nevertheless, the biennial survey provides useful reporting against a baseline and was the only performance measure the ACNC had for the first object of the ACNC Act that sought public views. Accordingly, the ACNC should implement other mechanisms for testing and examining stakeholders’ views on public trust and confidence in the sector and any objective measures of how improvements in public trust and confidence might be measured (Recommendation no.4, paragraph 3.75).

Opportunities to increase disclosures to improve public trust and confidence

3.71 In its submission to the external review of the ACNC legislation in 2018, the ACNC raised a number of concerns about the effect of the secrecy provisions on its ability to support the objects of the ACNC Act, including to maintain, protect and enhance public trust and confidence in the sector.

3.72 The ACNC noted that it is unclear to what extent it is permitted to publish information on investigations and regulatory outcomes, particularly where compliance actions are taken against charities that are not federally regulated entities.⁷⁶ The submission noted that the absence of any comment from the ACNC may lead the public to conclude that the ACNC is not taking appropriate action — which may have an adverse effect on public trust and confidence.

⁷⁶ The ACNC Act requires the ACNC to publish details on the Charity Register about the exercise of the enforcement powers in the Act, but these powers apply only to federally regulated entities.

3.73 The ACNC recommended that the secrecy provisions be relaxed to allow the ACNC to make public disclosures on its regulatory activities when it is in the public interest to do so — for instance, to confirm that an investigation has taken place or a compliance agreement has been entered into.

3.74 The external review panel agreed that the secrecy provisions in the ACNC Act are overly restrictive and recommended that the ACNC 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. In its reasoning, the panel noted that the inability of the ACNC to make comment on whether it is undertaking an investigation is harmful to the perception of the ACNC as an effective regulator. The Government supported this recommendation, stating that it would consult on the detail of the change including the triggers for and bounds of the Commissioner's discretion.

Recommendation no.4

3.75 The Australian Charities and Not-for-profits Commission amends its current set of performance indicators relating to the first object of the ACNC Act, with a focus on more directly measuring the impact of its regulatory activities on levels of public trust and confidence in the charities sector.

Australian Charities and Not-for-profits Commission response: *Agreed.*

3.76 *The ACNC is investigating means by which it can appropriately measure and report the regulatory impact on public trust and confidence.*

Australian Taxation Office response: *Noted.*

4. Strengthening the sector and reducing the regulatory burden on charities

Areas examined

This chapter examines the effectiveness of the Australian Charities and Not-for-profits Commission's (ACNC's) arrangements for addressing and reporting on its two other corporate priorities.

Conclusion

Within its remit and authority, the ACNC has been largely effective in promoting the reduction of unnecessary regulatory obligations on registered charities, but was less able to demonstrate its effectiveness in supporting and sustaining a robust, vibrant, independent and innovative not-for-profit sector.

Areas for improvement

The chapter suggests that the ACNC undertakes a review of its new approach to measuring and reporting against the attributes listed in the second object of the ACNC Act — a robust, vibrant, independent, and innovative sector (paragraph 4.15).

4.1 In addition to the ACNC's corporate priority of maintaining, protecting and enhancing public trust and confidence in the Australian not-for-profit (NFP) sector, the ACNC has two other corporate priorities, which correspond to the last two objects of the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act); that is, to:

- support and sustain a robust, vibrant, independent and innovative Australian NFP sector; and
- promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.

4.2 The ACNC has publicly stated that no specific powers, functions or additional resources were provided for these two objects of the ACNC Act.⁷⁷ The ACNC noted that these objects were not included in the exposure draft of the ACNC Bill, but were added in response to representations from stakeholders in the charity sector.

4.3 This chapter examines the main activities the ACNC has undertaken to progress these corporate priorities and its arrangements for measuring and reporting on its performance.

77 See paragraph 2.6 of the ACNC's submission to the Review of the operations of the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*, available at: <https://www.acnc.gov.au/about/acnc-submissions> (Submission to the review of Australian Charities and Not-for-profits Commission legislation) [accessed 23 September 2019].

Has the ACNC actively supported and sustained a robust, vibrant, independent and innovative not-for-profit sector?

In late 2018, the ACNC initiated a project to interpret the intent of the second object of the ACNC Act. The ACNC has undertaken a number of activities focussed on promoting good governance practices and providing data to the sector, which may have assisted in supporting and sustaining a robust, vibrant, independent and innovative sector.

Project to interpret the second object of the ACNC Act

4.4 The meaning of the second object of the ACNC Act is not elaborated on in the Act or supporting materials, leaving the ACNC with scope to interpret the intent of this provision and determine what regulatory approach would deliver the best outcome for the NFP sector.

4.5 Since it was established, the ACNC has undertaken and reported on a range of activities it considered addressed this objective, including:

- compiling and publishing data about charities for the benefit of the sector — including through the annual Australian Charities Report⁷⁸ and providing datasets for data.gov.au;
- publishing service standards on aspects of its performance, including its public-facing activities (such as the contact centre), and implementing quality assurance processes to determine whether the required standards are met; and
- providing targeted guidance material and advice to charities and the wider NFP sector, and having mechanisms to engage with different parts of the sector.

4.6 The ACNC advised that it had previously taken as given that the NFP sector was ‘robust, vibrant, independent and innovative’. The ACNC had seen its role as being to demonstrate how it ‘supported’ the sector — including through promoting good governance practices and providing data to the sector.

4.7 In October 2018, the ACNC commenced a project to interpret the intent of the second object and to develop and report metrics for the four attributes listed in the second object: robust, vibrant, independent and innovative.⁷⁹ The ACNC Commissioner wrote to senior staff: ‘In order to support these aspects of the sector, we have to know what they mean’. The ACNC has publicly stated that it is not seeking to define the four attributes.⁸⁰ The ACNC Commissioner’s view is that only the Australian Parliament can define the four attributes, but has chosen not to do so.

4.8 For the second object, the ACNC’s proposed approach is to report 12 measures in the annual Australian Charities Report using information already collected from charities in their Annual

78 The Australian Charities Report provides an analysis of data provided by registered charities in their Annual Information Statement. The reports are available at: <https://www.acnc.gov.au/tools/topic-guides/australian-charities-report> [accessed 21 January 2020]. The next Australian Charities Report (2018) is due to be published in the first half of 2020.

79 The ACNC advised that no specific project had been undertaken previously to examine how the ACNC could meet the four attributes listed in the second object of the ACNC Act.

80 See the ACNC’s consultation paper, available at: <https://www.acnc.gov.au/about/acnc-legislation/measures-support-not-profit-sector> [accessed 9 October 2019].

Information Statements (Table 4.1).⁸¹ The 12 measures are to be published on an aggregate basis to ensure that individual charities cannot be identified.

Table 4.1: The ACNC's proposed measures for the four attributes of the second object of the ACNC Act

No.	Summary of measure	Details of measure	Intended insights
1.	Average percentage breakdown of each relevant revenue element of the Annual Information Statement	The ACNC will publish how much each of the following elements contribute to the total revenue as a percentage: revenue from government (including grants); revenue from donations and bequests; revenue from investments; revenue from goods and services; and other revenue.	Do charities rely on specific revenue streams?
2.	Average net income ratio	The ACNC will publish the ratio of net income to total income. This information was published in the 2016 Australian Charities Report.	Do charities make a surplus or deficit?
3.	Average asset ratio	The ACNC will publish the ratio of total assets to total liabilities. This information was published in the 2016 Australian Charities Report.	Are charities' assets worth significantly more or less than their liabilities?
4.	Average asset holdings	The ACNC currently publishes the total assets for all charities. From the 2018 Australian Charities Report, this will be broken down further by charity subtype and size.	What level of assets are held in the charity sector?
5.	Change in the number of registered charities	The ACNC will track the number of newly registered charities each year against the total number of charities that have their registration revoked in the same year.	Is the number of registered charities growing?
6.	Percentage of charities that are 'highly regulated'	The ACNC will publish the percentage of charities that have significant obligations to another government regulator.	What proportion of charities have significant reporting requirements to another government regulator?
7.	Percentage of charities with an online presence	The ACNC will publish the number of charities that have provided an electronic presence (for example, a website, Facebook page or other online presence) as at 30 June each year.	Are more charities creating an online presence?
8.	Average percentage change in each revenue element of the Annual Information Statement	The ACNC will publish the changes in the following revenue elements as a percentage: revenue from government (including grants); revenue from donations and bequests; revenue from investments; revenue from goods and services; and other revenue.	Are charities changing their revenue sources?

81 In its June 2019 consultation paper, the ACNC advised that: 'All of the proposed ways of understanding the four attributes rely on information already collected by the ACNC. This will not require charities to provide additional information in the Annual Information Statement'.

No.	Summary of measure	Details of measure	Intended insights
9.	Reasons charities have their registrations revoked	The ACNC will publish the number of charity registration revocations for each financial year.	How many charity registrations are revoked each year, and what are the reasons?
10.	Average assets held at time of involuntary revocation	The ACNC will publish the average total value of assets held by charities that have their registration revoked involuntarily.	What is the average total value of assets for charities that have their registration revoked involuntarily?
11.	Newly registered charities and their charity subtypes	The ACNC will publish a breakdown of the charity subtypes for newly registered charities.	Are there any trends in new charity registrations?
12.	Average age of registered charities and charities that had their registration revoked	The ACNC will publish the average age of registered charities, and the average age of charities that had their registration revoked.	Are there any differences between the ages of registered charities and charities that had their registration revoked? Are newer charities more likely to have their registration revoked?

Source: ANAO, based on the ACNC's published consultation document (June 2019).

4.9 The ACNC intends to publish the first seven measures in the 2018 Australian Charities Report and beyond, and to add the remaining five measures in subsequent reports.

Origin of the project

4.10 The project to interpret the second object of the ACNC Act was an initiative of the ACNC Commissioner.

4.11 The project started in October 2018 with the ACNC engaging an external firm⁸² to undertake a literature review of relevant meanings of the four attributes in the second object of the ACNC Act and to provide a report on 'workable metrics' for the four attributes for the NFP sector.

4.12 The ACNC ran consultation processes in 2019 to support its consideration of how to develop and report metrics for the second object:

- following the publication of the consultant's report in December 2018⁸³, the ACNC consulted with stakeholders in February and March on proposed ways of understanding and measuring the four attributes; and

82 Tulipwood Economics.

83 Available at <https://www.acnc.gov.au/tools/reports/measures-support-not-profit-sector-object-1b> [accessed 14 October 2019].

- in June the ACNC published a consultation paper on its proposed approach to reporting the 12 measures in the annual Australian Charities Report and seeking feedback from the sector, receiving two submissions by the deadline.

4.13 Across these consultations, a number of concerns were raised about the proposed approach, including that the measures focus on economic factors rather than a multi-disciplinary approach encompassing broader considerations for civil society. One stakeholder suggested that ‘good governance’ is a key indicator of a strong sector, and that the ACNC should require charities to demonstrate their governance practices in their Annual Information Statement.

4.14 In its consultation document, the ACNC recognised some limitations with its proposed approach, including that the measures will tell only part of the story of the sector’s diversity and that there are limitations with the information the ACNC can collect through charities’ Annual Information Statements. Further, the ACNC encouraged researchers and academics to engage in additional research on the charities sector, particularly in respect to the level of innovation and collaboration within the sector.

4.15 It is suggested that the ACNC undertakes a review of its new approach to measuring and reporting on the attributes listed in the second object of the ACNC Act (robust, vibrant, independent, and innovative), following implementation. This includes considering whether an ‘operational definition’ of the attributes would better inform the ACNC’s regulatory approach and reporting and provide more clarity and transparency to stakeholders.

Has the ACNC actively promoted the reduction of unnecessary regulatory obligations on the charities sector?

The ACNC has been active in promoting the reduction of unnecessary regulatory obligations on the charities sector. A number of specific initiatives have been introduced, especially to harmonise or streamline charities’ reporting arrangements — including through a data exchange tool called the ‘Charity Passport’. Further and ongoing benefits to charities requires the participation of other Commonwealth entities and jurisdictions.

4.16 The reduction of ‘red tape’ on NFP entities was a stated driver behind the introduction of the ACNC Act and a new regulatory framework for the sector. This driver is reflected in the third object of the ACNC Act.

4.17 The ACNC’s efforts to reduce the regulatory burden on charities have focussed on harmonising or streamlining reporting by charities — both at the Commonwealth level, where charities have reporting obligations to other entities or regulators; and between jurisdictions, where charities have reporting obligations to state or territory bodies in addition to the ACNC. As well, the ACNC has developed the ‘Charity Passport’ — an initiative to share charity data with authorised government entities, aimed at reducing the recurring information provided by charities.⁸⁴

4.18 As illustrated in Table 4.2, a number of harmonised reporting arrangements have been implemented between the ACNC and other Commonwealth, state and territory bodies since the ACNC was established. These arrangements were established by way of a Memorandum of

⁸⁴ For example, when those government entities run grants activities or other programs.

Understanding (an information sharing agreement) between the ACNC and the relevant party. The majority of the arrangements were put in place between 2016 and 2018.

Table 4.2: Arrangements between the ACNC and entities or jurisdictions to reduce reporting requirements on registered charities

Reduced reporting obligations based on a charity's legal structure	Report once?	Reduced reporting obligations in relation to fundraising	Report once?
Incorporated associations in South Australia	Yes	South Australia	Yes
Incorporated associations in the Australian Capital Territory	Yes	Australian Capital Territory	Yes
Incorporated associations in Tasmania	Yes	Tasmania	Yes
Incorporated associations in Western Australia	No	Western Australia	In progress
Incorporated associations in New South Wales	Yes	New South Wales	In progress
Incorporated associations in Victoria	Yes	Victoria	In progress
Incorporated associations in Queensland	No	Queensland	No
Incorporated associations in the Northern Territory	Yes	Northern Territory	Not applicable ^a
Companies registered with the Australian Securities and Investments Commission	Yes		
Indigenous corporations regulated by the Office of the Registrar of Indigenous Corporations	Yes		
Ancillary Funds	Yes		

Note a: The ACNC advised that there is no legislation in the Northern Territory governing fundraising.

Source: ANAO, based on the ACNC's website and records.

4.19 The intent of these arrangements is to allow charities that are registered with the ACNC to report once, principally to the ACNC⁸⁵, rather than having to also report to other entities or jurisdictions. The ACNC does not maintain figures on the number of charities that benefit from all of these arrangements, but advised that over 10,000 have been affected from streamlined reporting arrangements.

4.20 In most cases, the ACNC gives effect to these data sharing arrangements by collecting information from registered charities through their Annual Information Statements and then

⁸⁵ An exception is that registered charities that are also registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* are required to report only to the Office of the Registrar of Indigenous Corporations.

providing this information to the relevant state or territory body via the Charity Passport (a data exchange tool, discussed in the following section).

4.21 The ACNC advised that a number of factors have impacted on its efforts to harmonise reporting arrangements with other jurisdictions. Externally, this includes budgetary pressures and differing reform priorities across jurisdictions, which influence their ability or willingness to participate. Internally, this includes resourcing issues arising from the collection and provision of additional data as well as legislative considerations relating to the protection of ‘withheld data’⁸⁶ and the requirement to collect information related to ‘recognised assessment activities’⁸⁷ in Annual Information Statements. As illustrated in Box 10, these factors can have unintended consequences on the parties involved.

Box 10: An example of where intended red tape reductions may not be achieved

1. The ACNC Act requires that any information a registered charity is required to provide to the ACNC Commissioner in an Annual Information Statement must be information that relates to, or has the purpose of enabling, ‘recognised assessment activities’ to be carried out in relation to registered entities. These activities relate to an entity’s entitlement to registration or assessing their compliance with the ACNC legislation or taxation law.
2. Many questions that other jurisdictions want the ACNC to ask registered charities are not related to recognised assessment activities, and therefore can only be included in the Annual Information Statement as ‘optional’ questions for charities to answer.
3. If charities choose not to provide the requested, but optional, information in their Annual Information Statement, the ACNC is unable to provide this information to the relevant state regulator. As a consequence, the registered charity will likely receive correspondence from the relevant state regulator noting that they have not supplied the required information to that regulator.
4. Once receiving this sort of correspondence from state regulators, some charities then call the ACNC to find out what is happening, and may resubmit their Annual Information Statement with the optional information included. In these instances, the ACNC’s efforts to implement a streamlined reporting arrangement ends up drawing on the ACNC’s resources.

Source: ANAO, based on the ACNC’s advice.

4.22 While the reporting arrangements established to date have provided benefits for some registered charities, further gains in this area will require additional efforts by the ACNC as well as engagement and participation by other jurisdictions.⁸⁸

86 Under the ACNC Act and ACNC Regulation 2013, the ACNC Commissioner may withhold certain information from the Charity Register, generally in response to requests from registered charities.

87 See the definition of ‘recognised assessment activity’ in section 55-10 of the ACNC Act.

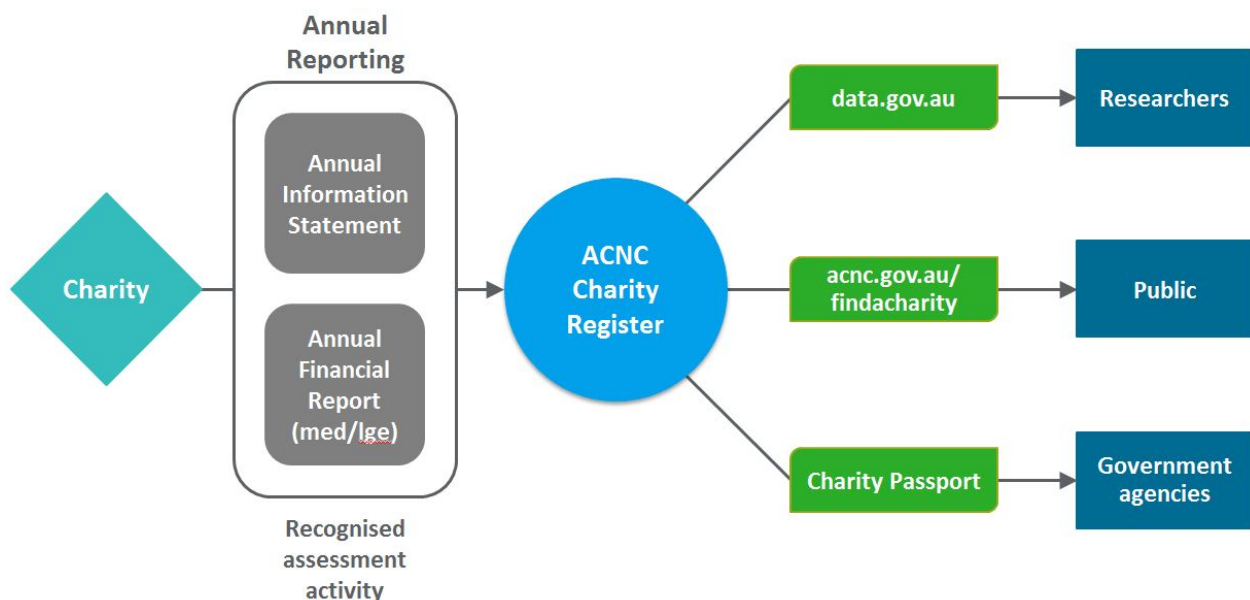
88 In its response to the 2018 ACNC legislation review, the Government stated that it will continue to work closely with the states and territories to streamline and harmonise charities regulation.

Charity Passport

4.23 The Charity Passport enables data that is collected from charities and is publicly available on the Charity Register to be transferred electronically to authorised Commonwealth, state or territory entities (Figure 4.1).

4.24 The Charity Register was designed to facilitate the ‘report once, use often’ principle. It is intended to be of particular value to government entities that regularly encounter charities in their grant-giving or other activities — noting that charity data is already publicly available on the Charity Register and on the Australian Government website for open data (data.gov.au).

Figure 4.1: Overview of how the Charity Passport works



Source: Reproduced from the ACNC's website — <https://www.acnc.gov.au/about/red-tape-reduction/charity-passport> [accessed 6 February 2020].

4.25 As of 5 December 2019, 21 government entities had created Charity Passport accounts with the ACNC, comprising a mixture of Commonwealth, state and territory entities; and the ACNC was in discussions with two more entities. The ACNC has also been part of the Department of Finance's Grants working group, where it has promoted the Charity Passport. The Charity Passport has not been formally adopted by the two Australian Government grants hubs (the Business Grants Hub within the Department of Industry, Science, Energy and Resources, and the Community Grants Hub within the Department of Social Services).⁸⁹

4.26 The ACNC does not have visibility over the extent to which the intended benefits of the Charity Passport are realised in practice; that is, the extent to which the data supports reduced reporting by charities — and hence a lower regulatory burden.

⁸⁹ The Department of Industry, Science, Energy and Resources advised that the Business Grants Hub uses data extracts from the Australian Business Register, which include the charity registration status of an entity, and also uses information available on the ACNC's Charity Register where required. The Department said that other information available through the Charity Passport is not generally required when applying for programs delivered through the Business Grants Hub.

4.27 In its submission to the external review of the ACNC legislation in 2018, the ACNC recommended that the Australian Government promote the use of the Charity Passport — noting the principle in the *Commonwealth Grants Rules and Guidelines 2017* that officials must have regard to information that is collected by Australian Government regulators and is available to them. Similarly, the panel that undertook the 2018 review of the ACNC legislation considered that the Charity Passport is under-utilised but provides an effective way to reduce red tape. The panel recommended that the Government mandate the use of the Charity Passport for Commonwealth entities. In its response to this recommendation, the Government supported the ACNC working with Commonwealth agencies to increase the take up of the Charity Passport.

4.28 The ACNC Commissioner advised that, while the principle of sharing data is sound, the uptake of the Charity Passport depends also on the extent to which the available data matches entities' needs. For instance, while some of the charity data collected by the ACNC may address part or all of entities' requirements for the application phase of a grants program, the financial information, which is provided at a 'whole-of-organisation' level, may not be directly relevant for the acquittal phase of a grants program.

4.29 As discussed in Chapter 2 of this report (paragraphs 2.48 to 2.57), there are some limitations with the integrity of the data on the Charity Register. Further efforts by the ACNC or other bodies to promote or mandate the use of the Charity Register should take account of these limitations and, as a minimum, include appropriate caveats on the quality of the information available. The ACNC's guidance already notes other limitations including that: Basic Religious Charities are not required to provide financial reports or information; and that the public Charity Register does not include information that the ACNC Commissioner is required, or has agreed, to withhold or remove from the Register.

The ACNC's processes for reducing regulatory burdens

4.30 The ACNC's role of reducing the regulatory burden on charities includes consideration of how its own processes impact on charities.⁹⁰

4.31 As part of the Government's deregulation agenda, the ACNC estimates that it has delivered net regulatory savings to external stakeholders of \$18.6 million as of 30 June 2019. These regulatory savings relate to a range of activities including:

- allowing applicants for registration to resubmit their application forms using the information already entered on the previous form, without having to start afresh;
- providing guidance material to the sector through webinars and deployment of a compliance self-evaluation checklist;
- streamlining reporting arrangements for incorporated associations in different jurisdictions;
- improving the process for the bulk lodgement of Annual Information Statements; and
- streamlining reporting for non-government schools.

90 A report produced for the ACNC in September 2014 indicated that the average annual burden imposed by the ACNC was \$150, some 0.1 per cent of the total annual burden imposed by the Commonwealth on charities. The report is available at: <https://www.acnc.gov.au/tools/reports/research-commonwealth-regulatory-and-reporting-burdens-charity-sector> [accessed 14 October 2019].

4.32 As with other regulators, the ACNC is required to annually assess, validate and report on its performance against six key performance indicators (KPIs) set out in the Regulator Performance Framework (Box 11). This framework, introduced in October 2014, is aimed at encouraging regulators to minimise their impact on those they regulate while still delivering the role they are required to perform.

Box 11: Key performance indicators for regulators

- KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities.
- KPI 2: Communication with regulated entities is clear, targeted and effective.
- KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed.
- KPI 4: Compliance and monitoring approaches are streamlined and co-ordinated.
- KPI 5: Regulators are open and transparent in their dealings with regulated entities.
- KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks.

Source: ANAO, reproduced from the Australian Government's Regulator Performance Framework (October 2014).

4.33 The ACNC has reported on its performance against the six KPIs on three occasions — first in 2015–16, again in 2016–17 and most recently in 2017–18.⁹¹ The ACNC advised that the 2018–19 Regulator Performance Framework report has been finalised and is awaiting publication.

4.34 Two areas for improvement identified by the ACNC in its 2017–18 assessment, which affect charities directly, were: the accessibility and useability of the ACNC's website, forms and the Charity Portal; and to continue improving communication with charities through refining guidance and tailoring emails. The ACNC also identified the need to make further progress in removing duplicated reporting requirements with other jurisdictions and expanding the use of the Charity Passport — both aimed at reducing the reporting burden on charities.

Does available performance information indicate that the ACNC has been effective in progressing these corporate priorities?

The ACNC has not produced complete and relevant performance information to indicate the extent to which it has been effective in supporting and sustaining a robust, vibrant, independent and innovative not-for-profit sector. Performance information on the objective of promoting the reduction of unnecessary regulatory obligations on charities is more relevant and complete — and is largely positive.

Performance information for the second object of the ACNC Act

4.35 As mentioned in paragraph 4.7, the ACNC commenced a project in late 2018 to measure the four attributes of the second object of the ACNC Act. The first reporting on these attributes is due in 2020 with the publication of the 2018 Australian Charities Report. This reporting is intended to

91 All reports are available on the ACNC's website at <https://www.acnc.gov.au/about/corporate-information/regulator-performance-framework-measures> [accessed 13 September 2019].

provide an indication on the extent to which the ACNC has been effective in supporting and sustaining a robust, vibrant, independent and innovative sector.

4.36 While the ACNC has previously reported a range of performance information for the second object of the ACNC Act (Box 12), this information is not fully complete or relevant given that the ACNC has only recently sought to interpret the intent of the second object.⁹²

Box 12: Examples of previously reported performance measures for the second object of the ACNC Act

- Quality assurance processes demonstrate decisions align with the regulatory approach and are legally sound.
- Quality assurance reviews of advice provided by staff meet a 75 per cent or higher rating.
- Provide a submission to the reviewers of the first five years of operations of the ACNC legislation.
- Enquiries are responded to according to the published service standards.
- 100 per cent of financial information in the Annual Information Statements (excluding Annual Financial Reports) is examined for material errors.
- Charities that collectively hold 80 per cent of the sector's revenue and/or assets are each manually reviewed to confirm the completeness of annual financial reporting.
- At least 150 annual financial reports are selected for detailed review to confirm compliance with ACNC financial reporting requirements.
- The ACNC analyses charity Annual Information Statement data and releases at least one report to the public.
- Open source data about registered charities is up to date and available at data.gov.au.

Source: ANAO, based on the ACNC's 2017–18 Annual Report.

4.37 As acknowledged by the ACNC Commissioner, much of the previously reported performance information for the second object could have been attributed to the first object — improving public trust and confidence in the sector. A clear exception is the provision of charity data to the sector (via the ACNC's annual Australian Charities Report and as provided at data.gov.au), which have consistently been intended to support the sector. The provision of charity data to the sector remains an ongoing focus for the ACNC.⁹³

4.38 Several years of data from the ACNC's new approach to measuring the four attributes of the second object will likely be required to discern any major patterns or trends in the profile and configuration of the sector — to the extent that such insights can be provided by the reported measures. As suggested earlier in this report (paragraph 4.15), a review of the ACNC's new approach would help to inform any refinements or broader changes to this approach. This includes reviewing

92 A key characteristic of whether performance information is relevant and complete is if it provides insights on the achievement of an entity's purposes — in the ACNC's case, the extent to which it has been effective in progressing the second object of the ACNC Act.

93 The ACNC's 2019–20 Corporate Plan includes a performance measure: 'Data about charities collected by the ACNC is made available to the public in an accessible format'.

the completeness and relevance of the performance information for the second object of the ACNC Act.

Performance information for the third object of the ACNC Act

4.39 Since the introduction of the Australian Government's Regulator Performance Framework in October 2014, the ACNC's performance information for the third object has focussed on addressing the requirements of the Framework — in particular to self-assess and validate its performance against the six Key Performance Indicators in the Framework (Box 11). The performance criteria for the last two years and for 2019–20 are:

- 'The Regulator Performance Framework demonstrates a reduction in red tape for charities' (2017–18 and 2018–19); and
- 'Reduce unnecessary regulation for charities by simplifying and streamlining reporting' (2019–20).

4.40 The ACNC reported that it 'substantially met' the performance criterion for the third object in 2017–18 and 'met' the required standard in 2018–19. In both years, the performance information was based on the ACNC's assessment of its own performance, with input by members of the ACNC's two main consultative groups — the Professional User Group (PUG) and the Sector User Group (SUG).

4.41 In both years, the ACNC invited all members of the two user groups to provide input on its self-assessment. In 2017–18, 25 (of 90) PUG and SUG members provided input (28 per cent of total members)⁹⁴, broadly endorsing the ACNC's largely positive self-assessment against the six KPIs.⁹⁵ Two trends identified by the ACNC in the feedback were:

- concerns with the speed and functionality of the ACNC's website and Charity Portal — which the ACNC indicated it was looking to address through the project to replace its existing IT system (facilitated by additional funding in the 2017 Budget); and
- a desire for greater information on compliance work undertaken by the ACNC and the outcomes achieved — which the ACNC indicated was related to the secrecy provisions in the ACNC Act, the appropriateness of which were being considered in the 2018 review of the ACNC legislation.⁹⁶

4.42 In 2018–19, only 11 members of the PUG and SUG provided input (around 13 per cent of total members), again generally endorsing the ACNC's largely positive self-assessment. In listing areas for improvement, the ACNC noted that a government response to the 2018 external review of the ACNC legislation would frame improvements for regulation of the sector.

4.43 The ACNC has recognised the need to work with the PUG and SUG in 2019–20 to improve the response rate, to gain a more representative view of the regulated sector. One approach would be for the ACNC to engage with other regulators who report against the Regulator Performance

94 By completing an online survey circulated by the ACNC.

95 For five of the six KPIs, some members of the PUG and SUG suggested that a higher rating was warranted than the ACNC's self-assessed rating.

96 As previously noted, the Government supported the review panel's recommendation that the ACNC 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.

Framework on any successful techniques for improving the response rate of stakeholders, or options for seeking stakeholder feedback through other mechanisms.

4.44 The ACNC considers that the six KPIs in the Regulator Performance Framework cover all relevant aspects of its performance in relation to the third object. The ACNC's efforts to reduce the reporting burden on charities — through the Charity Passport, by harmonising reporting obligations across jurisdictions, and by other means — is addressed under different parts of the six KPIs.

4.45 As required, the ACNC also provides performance information on its red tape reduction initiatives in its annual report, and on its website (for example, providing a table of red tape reductions based on the different legal structures of charities and on fundraising requirements).⁹⁷

4.46 The Regulator Performance Framework, together with other information published by the ACNC, provides a reasonable basis for measuring and reporting against this corporate priority.



Grant Hehir
Auditor-General

Canberra ACT
31 March 2020

⁹⁷ The tables are available at: <https://www.acnc.gov.au/about/red-tape-reduction> [accessed 19 September 2019].

Appendices

Appendix 1 Entity responses



Grant Hehir
Auditor-General for Australia
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

13 March 2020

Our reference: EXT2020/93

Dear Mr Hehir

AUSTRALIAN NATIONAL AUDIT OFFICE PERFORMANCE AUDIT ON THE REGULATION OF CHARITIES BY THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION

Thank you for your correspondence dated 14 February 2020 and for the opportunity to provide comments on the proposed report on the Regulation of Charities by the Australian Charities and Not-for-profits Commission.

The ACNC welcomes and acknowledges the findings and recommendations presented in the section 19 report. I am pleased that the ANAO found that the ACNC has been largely effective in delivering its regulatory responsibilities for registered charities, and I agree with the recommendations as presented in the section 19 report.

The report has provided important reflection on the ACNC's approach to the regulation of charities and our work to achieve the benefits expected from the establishment of the regulator in 2012. These benefits are reflected in the objects of the *Australian Charities and Not-for-profit Commission Act 2012* (Cth) (**ACNC Act**), which requires that the Commissioner has regard to the matters set out in section 15-10 of the ACNC Act when exercising powers and functions. This, importantly, informs the allocation of resources.

The ACNC is committed to continuous improvement in delivering effective and efficient national regulation of charities. The recommendations made through this audit will assist us to continue to improve our regulatory approach. Attached are the summary of ACNC's response (Annexure 1) and the ACNC response to the recommendations (Annexure 2) to be included in the report.

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working with us on this matter. I look forward to continuing the good working relationship developed in this performance audit.

Sincerely,

The Hon Dr Gary Johns
Commissioner
Australian Charities and Not-for-profits Commission



GPO Box 5108 Melbourne VIC 3001
Tel 13 ACNC Fax 1300 232 569
acnc.gov.au



Australian Government
Australian Taxation Office

Second Commissioner of Taxation

Grant Hehir
Auditor-General for Australia
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

**AUSTRALIAN NATIONAL AUDIT OFFICE PERFORMANCE AUDIT ON THE
REGULATION OF CHARITIES BY THE AUSTRALIAN CHARITIES AND NOT-FOR-
PROFITS COMMISSION**

Thank you for your letter dated 14 February 2020 and for the opportunity to provide comments on the proposed report on the Regulation of Charities by the Australian Charities and Not-for-profits Commission.

The ATO notes the four recommendations as presented in the section 19 report.

Attached is the ATO summary of our comments to be included in the report (Annexure 1) and ATO response to the four recommendations (Annexure 2).

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working on this matter. I look forward to continuing the good working relationship developed in this performance audit.

If you require further information on this matter, please contact Jennifer Moltisanti, Assistant Commissioner on (03) 9285 1711.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Hirschhorn'.

Jeremy Hirschhorn
Second Commissioner

13 March 2020

T +61 (0)2 6216 1111 PO Box 900 Civic Square ACT 2608 Australia ato.gov.au