

15 October 2024

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

Dear Committee Secretary

Not-for-profit entities—Tax assessments

Thank you for the opportunity to provide a submission to the Senate inquiry into Not-for-profit Entities – Tax Assessments (**Australian Taxation Office (ATO) NFP reporting requirement**).

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 53,000 reflects the diversity of Australia's director community, comprised of directors and leaders from across the not-for-profit (**NFP**), listed, private and government sectors.

The NFP sector is a major focus of the AICD's work with a majority of our members involved in the governance or management of NFPs, many of them making contributions as directors on a voluntary basis. The AICD supports good governance in the NFP and charities sector through the AICD's [NFP Governance Principles](#), NFP governance tools, and NFP governance education, including more than [200 scholarships](#) provided to leaders of small NFPs annually, to undertake the Governance Foundations for NFP Directors course for the eighth consecutive year in 2024-25. On the ATO NFP reporting requirement, the AICD has published updates to assist members.¹

The AICD has long advocated for promoting sound NFP governance practices, reducing the regulatory burden on NFPs and charities, and incentivising sector innovation and efficiency. In our submission to the Blueprint Expert Reference Group Not-for-Profit consultation,² we reiterate our call for NFP regulation that is coordinated, proportional, and promotes financial sustainability. Uncoordinated and inefficient regulation (e.g. duplication and regulatory overlap) increases the risk that NFPs and charities have less resources to meet that increased demand for their services. We also note the ATO collects significant and insightful data on the NFP sector, including on size, level of donations, revenue and expenses, which is published in a limited and ad hoc manner.³

The NFP sector as a whole is underappreciated for its contribution to the community, including through delivering key services to all Australians. It faces significant challenges in an increasingly resource constrained environment. The AICD's [2023-24 NFP Governance and Performance Study](#) noted time

¹ AICD – Is your Not-for-Profit ready for new reporting rules? (18 June 2024) – BDO article. Available [here](#); and AICD – Is your non-charitable NFP ready for new reporting rules? (26 September 2024) – ATO article. Available [here](#).

² AICD submission - Blueprint Expert Reference Group NFP consultation (20 December 2023) – Available [here](#).

³ ATO – Charity statistics (14 June 2024). Available [here](#).

commitments for directors have increased considerably, stretching governance arrangements, amidst ever growing regulatory burden. The most recent Australian Charities and Not-for-profits Commission (ACNC) charities data also highlights that increases in expenses and liabilities have outgrown increases in revenue and assets, in percentage terms.⁴

The AICD's submission focuses on the impact arising from the ATO NFP reporting requirement, that have been brought to our attention by concerned members. The ATO has described this requirement as the biggest change to the sector since the ACNC was established.⁵ We note that there are approximately 155,000 non-charitable NFPs with an active ABN, compared to about 60,000 registered charities in Australia and we observe the low public awareness of these changes, compared to the establishment of the ACNC.

1. Key points

- We support the policy intent of increasing transparency and enhancing trust and confidence in the sector by ensuring only eligible NFPs access income tax exemptions. However, we share concerns raised by some stakeholders⁶ on the impact on NFPs, especially smaller organisations heavily reliant on volunteers. To our knowledge, neither a regulatory impact statement nor cost-benefit analysis has been published on the estimated administrative costs for NFPs in meeting the requirement. The 2021-22 Federal Budget papers also note that the *"measure is estimated to have an unquantifiable impact on the underlying cash balance over the forward estimates period."*⁷
- Based on feedback from members and other NFP sector experts, we note significant confusion on the application of the NFP reporting requirement. Our members have observed that this confusion can be attributed to incomplete and inconsistent communications and advice being provided to NFPs from the ATO and ACNC. This includes the absence of coordinated and consistent advice, noting the requirement to register as a charity with the ACNC and be endorsed by the ATO to be income tax exempt, should the NFP only have charitable purposes.
- The absence of clear, consistent and comprehensive guidance from the ATO, the ACNC and relevant state regulators has led to NFPs seeking additional legal advice and incurring extra costs (including volunteer time), that would have otherwise been directed towards the NFP's core purpose. Notwithstanding the ATO advising that the self-review return should take around 10 minutes to complete,⁸ smaller NFPs should be able to complete the self-review return without needing to draw on specialised expertise, either in accounting or tax.

2. Recommendations

We support the policy intent of the non-charitable NFP reporting requirement as increasing transparency and trust in the NFP sector. However, we are of the view that the implementation should be risk-based, staggered, and harmonised with other thresholds and regulations to reduce the impact on NFPs. We make several recommendations to help achieve that policy intent:

⁴ ACNC – Commissioner's Column (6 June 2024). Australian Charities Report 10th edition. Available [here](#).

⁵ ATO – Straight from the Source (4 June 2023). Available [here](#).

⁶ McGregor-Lowndes, M., (2022). A Primer on Reform of Tax Exempt Nonprofit Entities, Australian Centre for Philanthropy and Nonprofit Studies (ACPNS), QUT. Available at <https://eprints.qut.edu.au/232181>. Page 4. Queensland Law Society submission – Draft instrument – Taxation Laws (Requirement to Lodge a Return for the 2024 Year) Instrument 2024 (9 April 2024). Available [here](#).

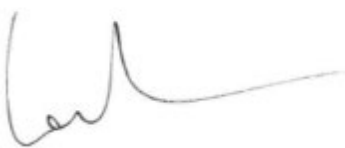
⁷ Federal Budget 2021-22 (11 May 2021). Budget Paper No. 2. Page 22. Not-for-profits — enhancing the transparency of income tax exemptions. Available [here](#).

⁸ AICD – Is your non-charitable NFP ready for new reporting rules? (26 September 2024) – ATO article. Available [here](#).

- Tiered reporting thresholds – The ATO should consider developing reporting thresholds based on a proportionate and risk-based approach to meet the policy intent of the ATO NFP reporting requirement and reduce compliance costs for smaller NFPs. For example, one model is the ACNC's tiered reporting based on annual revenue,⁹ which the ATO has previously suggested could be implemented in a staged manner.¹⁰ We have previously called for further harmonisation of thresholds and regulations for charities, incorporated associations and NFPs.¹¹
- Transition period – The ATO should extend the transitional support period beyond 31 March 2025 for self-assessing income tax exempt NFPs to meet lodgement obligations without penalties. Combined with tiered reporting thresholds, this would assist the ACNC to process the backlog of charity registration applications.¹² Regarding NFPs registering as charities with the ACNC, we have heard anecdotally that the ATO is currently taking up to 13 weeks to approve deductible gift recipient (**DGR**) status following their notification that the ACNC has approved the registration of the NFP as a charity. The ACNC notes that this charity registration could take 15 business days after receiving **all** the required information by the charity applicant.¹³
- Joint guidance – The ATO, ACNC, and relevant state regulators should develop better joint guidance and ramp up staff training on this guidance to ensure correct and consistent information to assist NFPs to confidently comply. An easily accessible single source of truth is needed to ensure advice is fit-for-purpose for the range of different NFPs. For example, given the size of the NFP reporting cohort, the ATO should consider developing a public ruling as binding guidance.¹⁴ We note that the ATO's *Advice under development* [webpage](#) says the ATO is "not currently developing any advice and guidance on not-for-profit issues."

3. Next steps

We hope our submission will be of assistance to the Committee. If you would like to discuss any aspects further, please contact Sean Dondas, Policy Adviser at sdondas@aicd.com.au or Christian Gergis, Head of Policy at cgergis@aicd.com.au.



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⁹ Ibid.

¹⁰ ATO submission – Review of the Australian Charities and Not-for-profits Commission (ACNC) legislation (30 April 2018). Extension of the regulatory framework beyond registered charities. Available [here](#).

¹¹ AICD submission – Increasing financial reporting thresholds for ACNC-registered charities (19 March 2021) – Available [here](#).

¹² Senate Estimates – Economics Legislation Committee – Hansard (25 June 2024). Page 25. Available [here](#). Note: The ACNC advised there were 1,115 charity applications in May 2024 compared to 651 in May 2023.

¹³ ACNC – Common questions about the application process. Available [here](#).

¹⁴ McGregor-Lowndes, M., (2022). A Primer on Reform of Tax Exempt Nonprofit Entities, Australian Centre for Philanthropy and Nonprofit Studies (ACPNS), QUT. Available at <https://eprints.qut.edu.au/232181>. Page 6.