



Anglican Church Diocese of Sydney

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Submission to Treasury's Review of Australian Charities and Not-for-profits Commission (ACNC) legislation

Thank you for the opportunity to contribute to Treasury's review of the Australian Charities and Not-for-profits Commission legislation.

This submission is made by the Standing Committee of the Synod of the Anglican Diocese of Sydney. The Standing Committee is the executive of the Synod, which is in turn the principal governing body of the Diocese constituted under the Anglican Church of Australia Constitutions Act 1902 (NSW).

The Diocese is an unincorporated voluntary association comprising various bodies constituted or incorporated under the *Anglican Church of Australia Trust Property Act 1917* (NSW) and the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW). These bodies, together with the diocesan network of 271 parishes, are accountable to the members of the Church through the Synod of the Diocese.

The Diocese, through its various component bodies and through its congregational life, is a provider of a wide range of programs including in social welfare, education, health and aged care, youth work and for the homeless. In addition to the congregational life of the Diocese, the bodies which provide services to the community across the Diocese include large social welfare institutions such as Anglicare Sydney, as well as other charitable institutions including Anglican Youthworks, and 40 Diocesan schools.

The Diocese is comprised of hundreds of ACNC registered entities. The corporate trustee, the Anglican Church Property Trust Diocese of Sydney, is the trustee of 359 registered entities. Every one of the 271 parishes has at least one registered entity, and quite often more than one. Organisations and schools of the Diocese have approximately 88 further registrations.

Our experience of the ACNC as a regulator has generally been very positive. The ACNC understands charities and appears to have developed an appropriate culture for the sector. It maintains an appropriate degree of independence from the revenue collection functions of the executive arm of government. In our experience the ACNC officers are professional and timely in their response to enquiries.

We welcome the opportunity to make this submission to the Review Panel.

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This submission has been circulated to the 23 dioceses of the Anglican Church of Australia. A letter from the General Secretary of the General Synod of the Anglican Church of Australia is included with this submission and expresses support for our recommendations to the Review Panel.

Executive Summary

The ACNC Register records the purposes of registered charities as an entity sub-type. Many charities have not registered 'advancing religion' as an entity sub-type, notwithstanding that their governing rules contain very clear statements of religious purpose. According to the ACNC's 2016 Annual Report, approximately 32% of registered entities have the sub-type 'advancing religion'. We estimate that the proportion of entities eligible to be registered with the sub-type 'advancing religion' is closer to 50%. This is based on Annual Information Statement data and the governing rules of a sample of entities.

In this submission, we address this issue in relation to two types of institution: public benevolent institutions and institutions providing primary or secondary education (schools). However the issue also arises in relation to the health services and aged care sectors, as well as other sectors.

The ACNC Commissioner's Interpretive Statement on Public Benevolent Institutions creates an artificial distinction between the motives and purposes of a charity, and fails to accommodate charities that have other purposes (particularly religious purposes) that are concurrent, co-ordinate and concomitant to their benevolent purposes. It should be recognised that a faith-based PBI can fulfil its benevolent purposes concurrently with its religious purposes, and that this does not derogate from the requirement that the charity have the dominant purpose of welfare relief. This issue is crucial to PBIs maintaining their identity, and a strong connection with their supporting communities.

In the order of 85% of charities registered with the ACNC with the main activity of Primary and Secondary Education are faith-based, but only a much smaller portion (23% of the total) are registered with the charitable purpose of "advancing religion". The ACNC legislation

allows charities to register multiple entity sub-types, but the registration process does not encourage faith-based schools to register as having purposes for both the advancement of education and the advancement of religion. The registration guidelines should give examples of charities that are registering with both education and religious purposes. Not doing so inadvertently discourages such registrations.

In this submission we note the importance of the Basic Religious Charity (“BRC”) exemption in providing regulatory relief to eligible religious charities. The BRC category strikes the correct balance by providing a high degree of transparency about the activities, personnel, size, governance and responsible persons of Basic Religious Charities, while recognising the unique nature of these charities by not imposing an unnecessary compliance burden. At present an incorporated entity is ineligible to be a BRC. We recommend that religious purpose charities should not be disqualified from being a BRC by reason only that they are incorporated.

The total revenue thresholds for classification as a small, medium or large charity were set prior to the introduction of the ACNC when there was a lack of financial data about the number of entities in each category. We submit that the categories be adjusted to better reflect the diversity of the sector. The thresholds should allow materially similar resourced charities to be grouped together and made subject to appropriate and proportionate regulation for their respective sizes. We propose particular changes in this submission based on an analysis of the data in the ACNC’s 2016 Annual Report.

We make brief comments about two aspects of the ACNC’s own submission to the Review Panel. We do not support inserting a further object into the ACNC Act concerning the effectiveness of charities (ACNC Recommendation 2(a)). We do support the ACNC’s proposal that a charity’s size in any given reporting period is the lower of its current and immediately previous reporting period revenues (ACNC Recommendation 22).

Finally we draw attention to the value of the bulk reporting and lodgement features of the ACNC legislation and point out how they have reduced the regulatory burden on entities that report on behalf of multiple entities (particularly trusts).

Our Recommendations

Our recommendations to the Review Panel are as follows:

Recommendation 1: That the ACNC amend its Commissioner’s Interpretive Statement on PBIs to clarify that an entity can be registered with multiple charitable purposes, and that concurrent registration as a PBI and with the sub-type ‘advancing religion’ is appropriate where the “religious purpose” is ancillary to the benevolent purpose. This will be the case where the religious purpose leads to activities which are concurrent, co-ordinate and concomitant with the benevolent purpose.

Recommendation 2: That the ACNC issue a Commissioner’s Interpretive Statement to clarify that it is appropriate for a school to be registered as having the sub-type “advancing religion” if it has objects to the effect that education will be provided in a manner consistent with the beliefs, tenets, values or ethos of a particular religion, and that such registration does not mean that the Main Activity of the school is advancement of religion.

Recommendation 3: Remove the disqualifying criterion in section 205.35(2) of the ACNC Act which requires that a charity not be registered under the *Corporations Act 2001* or incorporated under State or Territory incorporated associations' legislation to be a Basic Religious Charity.

Recommendation 4: That the total revenue thresholds for charity classification by size be readjusted as follows:

	<u>Total Revenue</u>
<u>Extra Small</u>	Less than \$50k
<u>Small</u>	More than \$50k but less than \$500K
<u>Medium</u>	More than \$500K but less than \$2.5M
<u>Large:</u>	Over \$2.5M

Recommendation 5: That the ACNC Act not be amended in the manner recommended by the ACNC in recommendation 2(c) of its submission by including an “effective use of resources” object.

Recommendation 6: That the Panel adopt recommendation 22 in the ACNC's submission, so that a charity's size in any given reporting period is the lower of its current and immediately previous reporting period revenues.

1. Religious-purpose charities

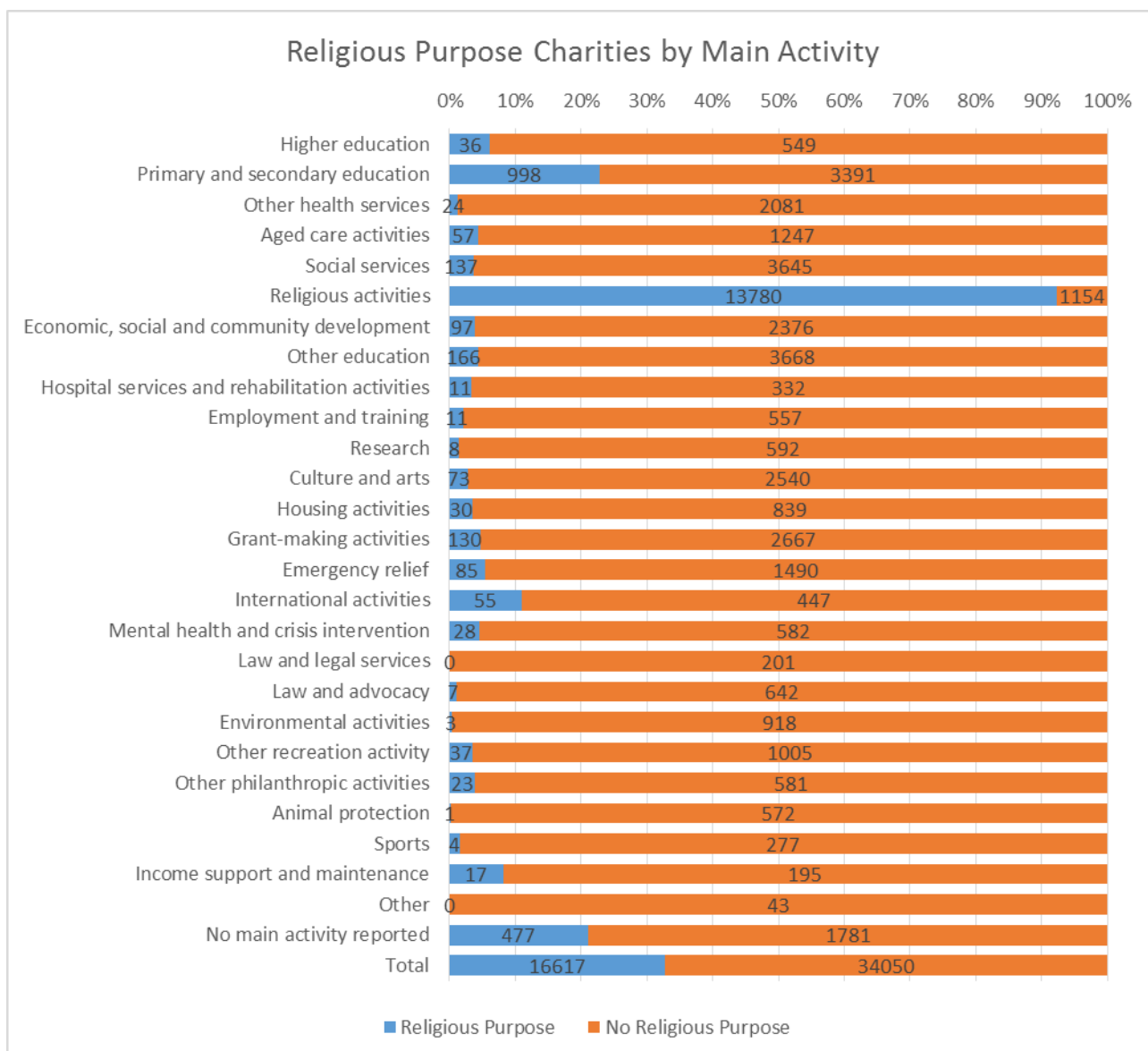
a. There are many religious institutions which are NOT registered with the ACNC as a “religious purpose” charity.

A very large number of charities have not registered ‘advancing religion’ as a sub-type notwithstanding that their governing rules contain very clear statements of religious purpose.

Section 25-5(4) of the ACNC Act provides for entities to be registered with multiple entity subtypes. However it is evident that thousands of self-evidently faith-based institutions have not registered ‘advancing religion’ as one of their subtypes.

According to the ACNC's Annual Report for 2016, 32.0% of all charities have the charitable purpose of ‘advancing religion’ (“**Religious Purpose Charities**”), and 30.8% of charities specify “religious activities” as their “Main Activity” for the purposes of the ACNC Register (“**Religious Activity Charities**”).

The following table shows the percentage (and number) of Religious Purpose Charities for each of the “Main Activity” categories on the ACNC Register.



On the basis of this table, it might be inferred that the Religious Purpose Charities are largely focussed on undertaking religious activities, with a small but significant number of Religious Purpose Charities (23%) providing “primary and secondary education”, and a smattering of Religious Purpose Charities across the other activity categories.

However, this inference would be substantially incorrect. This is because there are many entities registered as charities with the ACNC that are conducted in accordance with the doctrines, tenets and beliefs of a religion (“**Faith-Based Charities**”) that are not registered as either Religious Purpose Charities or Religious Activity Charities.

For example, the following table lists the 10 largest “non-religious” charities (sorted by total revenue) with the main activity of “primary and secondary education”.

Main Activity=Primary and secondary education, Not a “religious purpose” charity	
ABN	Charity Name
67786923621	Trustees For The Wollongong Diocese Catholic School System
21528592597	The Roman Catholic Trust Corporation For The Diocese Of Rockhampton
54668475377	Lutheran Schools Association Of SA NT & WA Inc
70003420666	Mount St Benedict College
88934244646	The Roman Catholic Diocese Of Toowoomba Catholic Education
55611238530	Wesley College Melbourne Limited
43709615471	Knox Grammar School - Uniting Church Property Trust (NSW)
34004228906	Haileybury
92004971500	Geelong Grammar School
12000637267	Autism Spectrum Australia (Aspect)

Eight of the ten charities (highlighted in **bold**) in this list of “non-religious charities” are in fact Faith-Based Charities.

An analysis of the other Main Activity categories revealed that there are a number of other categories where there is a significant number of Faith Based Charities.

The following three tables show the next three largest categories of Main Activity.

Health Services

Main Activity= Other health services, Not a “religious purpose” charity	
ABN	Charity Name
75073503536	St Vincent's Health Australia Ltd
83096708922	Mater Misericordiae Limited
22052110755	St. Vincent's Hospital (Melbourne) Limited
77054038872	Sacred Heart Health Service, St Joseph's Hospital
61083645505	St Vincent's Private Hospitals Ltd
55028468715	St John Ambulance Western Australia Ltd.
77119417018	Silver Chain Group Limited
36054594375	St Vincents & Mater Health Sydney Limited
41082189035	The Holy Spirit Northside Private Hospital Limited
31001813403	House With No Steps

70% of the top-10 “non-religious” Other Health Services charities (highlighted in **bold**) are Faith-Based Charities.

Aged Care

Main Activity= Aged Care Activities, Not a “religious purpose” charity	
ABN	Charity Name
90000049525	BaptistCare NSW & ACT
69064946318	Catholic Healthcare Limited
58072422925	Ozcare (St Vincent de Paul Society Queensland)
43000048957	RSL Lifecare Limited
77191901062	Mercy Aged and Community Care Limited
52000726536	Illawarra Retirement Trust
12069130463	Baptcare Ltd
53682143626	Southern Cross Care (S.A. & N.T.) Incorporated
76131082374	Southern Cross Care (NSW & Act) Ltd
23445460050	Brightwater Care Group Limited

70% of the top-10 “non-religious” Aged Care charities (highlighted in **bold**) are Faith-Based Charities.

Social Services

Main Activity=Social Services, Not a “religious purpose” charity	
ABN	Charity Name
50169561394	Australian Red Cross Society
15101252171	Life Without Barriers
80009670704	Endeavour Foundation
15000002522	Mission Australia
42164655145	Wesley Community Services Limited
69187578153	Anglicare SA Ltd.
85097999347	Lifestyle Solutions (Aust) Ltd
14005304432	Yooralla
97468305401	Karingal St Lawrence
79902601713	Returned & Services League Of Australia (Qld Branch)

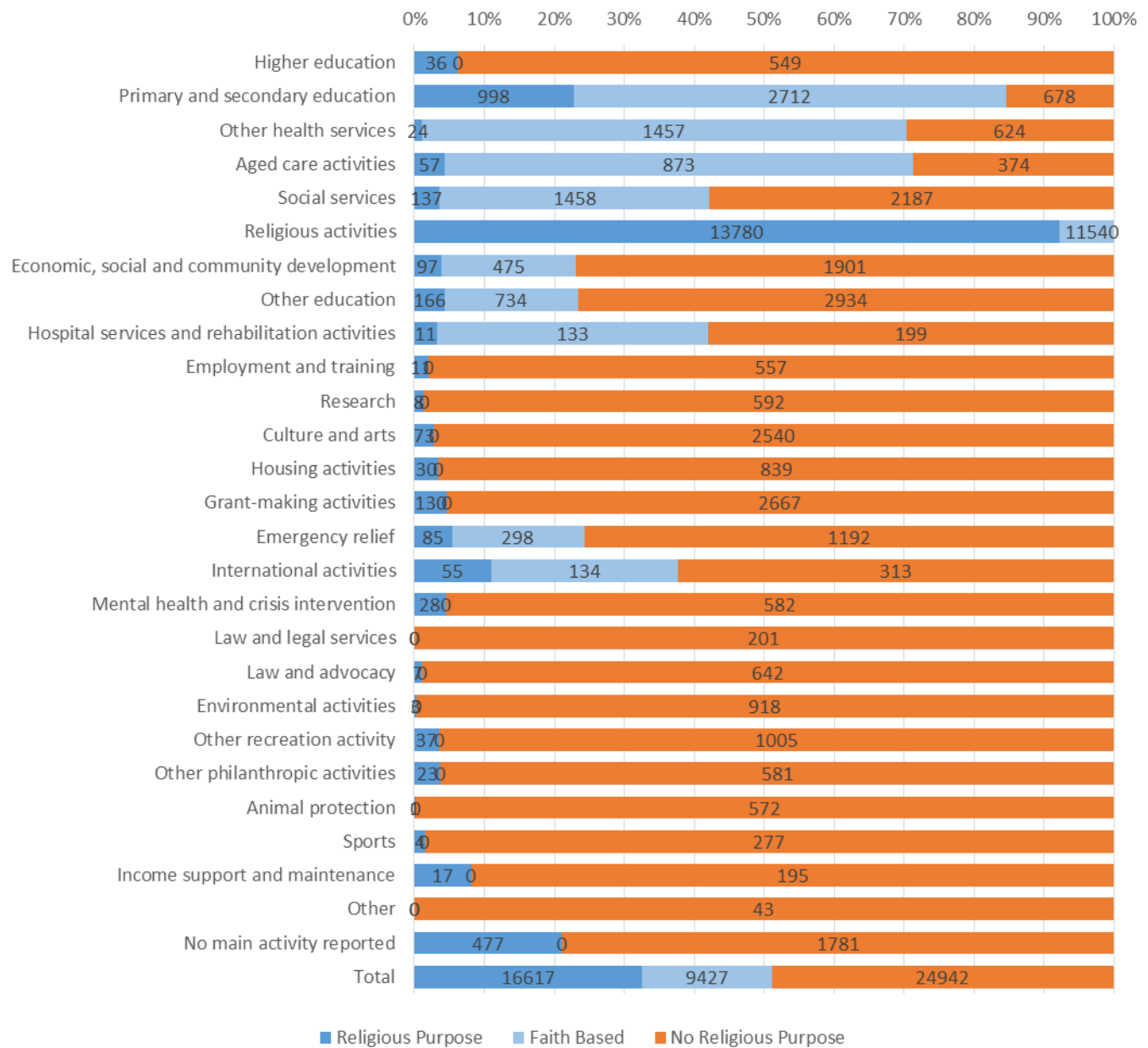
40% of the top-10 “non-religious” Social Services charities (highlighted in **bold**) are Faith-Based Charities.

Based on an assessment of the top-10 in each category, adjustments may also be warranted for:

Economic, social and community development	20%
Other education	20%
Hospital services and rehabilitation activities	40%
Emergency relief	20%
International activities	30%

The impact of these adjustments in see in the light-blue bar in the graph below.

Religious & Faith-Based Charities by Main Activity



The “Total” line at the bottom of the graph demonstrates that the combination of “religious purpose” and faith-based charities accounts for just over half (51.1%) of all registered charities. By recognising Faith-Based Charities, the number of “religious charities” jumps from 30% to 50%.

Why do so many faith-based charities fail to nominate that they have the charity sub-type ‘advancing religion’?

b. Public Benevolent Institutions

Part of the answer is the guidance provided in previous Public Tax Rulings and, most recently, the ACNC Commissioner’s 2016 Interpretation Statement on Public Benevolent

Institutions. The practice of the ACNC is that a Public Benevolent Institution (PBI) cannot be concurrently registered as having the charitable purpose of advancing religion

The effect of this decision is that almost all PBIs (97%) are not registered with the charitable purpose of advancing religion.¹ This is notwithstanding the fact that many of the largest PBIs in Australia are faith-based (such as St Vincent's Health Australia Ltd, Mercy Hospitals Victoria Limited, BaptistCare NSW & ACT, St Vincent's Private Hospitals Ltd, Catholic Healthcare Limited, Ozcare and Mission Australia).

The Commissioner's Interpretive Statement provides the following principles:

- A PBI must have benevolent relief as its main purpose, and that relief must be specifically targeted at people in need and provided to relieve the needs of those people (5.1.2)
- The terms "main", "predominant" or "dominant" can be used interchangeably when referring to the purposes or objects of an organisation (5.5.1)
- The main purpose of a PBI must be to provide relief to people in need. If an entity has other purposes that are not benevolent, it will be ineligible to be a PBI unless those purposes are ancillary or incidental to the main benevolent purpose (5.5.2)
- An entity's motives are not directly relevant to determining its main purposes. For example, if an entity's main purpose is advancing religion it will not be eligible to be registered as a PBI. However if the entity is motivated by religious faith and its main purpose is benevolent, it may still be eligible (5.5.3)

A plain reading of this statement suggests that a religious "motive" is not relevant to charitable purpose, the implication being that a religious institution with the purpose of providing relief to those in need is entitled to be registered only as a PBI, and NOT as a religious-purpose charity.

The Commissioner's Statement (and TR 2003/5, which the Commissioner's Statement replaced) only provide guidance on the situation where a religious purpose is in **conflict** with the benevolent purpose.² The statement does not give sufficient guidance as to the situation where the religious purpose is **concurrent, co-ordinate and concomitant** with the benevolent purpose, as will, much more commonly, be the case, especially in relation to PBIs arising from the Christian faith.

A faith-based PBI fulfils its benevolent purposes concurrently with its religious purposes. That both are fulfilled simultaneously does not derogate from the requirement that the charity have the dominant purpose of welfare relief.

¹ Of 8,318 PBIs, only 266 are also registered with the charitable purpose of "advancing religion". These reflect historic decisions of the ACNC, but are now contrary to current policy.

² TR 2003/5 para 154. Religious organisations can be public benevolent institutions only where their primary purpose and predominant activity is the direct relieving of poverty, sickness, suffering, distress, misfortune and helplessness. An example was the Hobart City Mission: see Case 101 (1945) 12 CTBR 823. If the benevolent activities are subsidiary to, or coordinate with, the religious purposes they will not qualify (citing Case T13, www.ato.gov.au/law/view/document?DOCID=%22JUD%2F86ATC188%2F00001%22)

Some may argue that this issue is largely academic; that there is no adverse consequence in distinguishing between a charity's motives and purposes. However there are serious adverse consequences.

Firstly, it forces faith-based PBIs to structure and register themselves in an artificial way that does not truly reflect their identity, and over time this leads to mission drift.

Anecdotally, we understand that a number of faith-based PBI's have not sought to be registered as their having religious purposes because of the expectation that to do so will compromise their PBI status. Furthermore, many also appear to have obscured their religious purpose in their governing rules. One way this is done is by re-categorising their purpose into "mission" and "objects". The benevolent objects of the entity are then separated out and explained as being "inspired by Jesus" or and "expression of God's love", for example.

It may be that this is truly how these institutions understand the fulfilment of their objects, but, in our experience, it is not typically how most faith-based institutions would understand benevolence. Our expectation is that many faith-based PBIs restructure their objects in this way for reasons of compliance rather than that this is truly how they see themselves.

The mission of Jesus Christ includes ministering to the needs of the poor and oppressed. Jesus declared that he had come to "preach good news to the poor" and "sent to proclaim freedom for the prisoners and recovery of sight for the blind, to release the oppressed..." (Luke 4:18). Jesus demonstrated this in his ministry – he had compassion on the hungry and fed them, he healed the sick and comforted those in distress. A Christian is a follower of Jesus Christ, and consequently those who model themselves on Jesus will necessarily share his priority to minister to those in need. A key teaching in this regard is the parable Jesus told in Matthew 25.

³⁴ "Then the King will say to those on his right, 'Come, you who are blessed by my Father; take your inheritance, the kingdom prepared for you since the creation of the world. ³⁵ For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, ³⁶ I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.' ³⁷ "Then the righteous will answer him, 'Lord, when did we see you hungry and feed you, or thirsty and give you something to drink? ³⁸ When did we see you a stranger and invite you in, or needing clothes and clothe you? ³⁹ When did we see you sick or in prison and go to visit you?' ⁴⁰ "The King will reply, 'I tell you the truth, whatever you did for one of the least of these brothers of mine, you did for me.' (Matt 25:34-40, NIV translation).

As a result, Christians have from the earliest times responded to human need with love and compassion, which was not something distinct from their religious practice, but a practical expression of their "religion".

Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress, and to keep oneself from being polluted by the world. (James 1:27)

The outworking of this, historically, has been many, many Christian charities of a public benevolent character, in which the purpose of the charity is both religious and benevolent

concurrently. A statement of objects for a faith-based PBI would more typically be along the lines of the following:

The purpose of the entity is to demonstrate the love of Christ for all people by means of the relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness of persons in Australia.

In *Driven by Purpose: Charities that make a difference*, Judd, Robinson and Errington argue that there is a crisis of identity among Australian charities.³ They interviewed board members and chief executives of social service organisations and while each could say what their organisation did, how they did it and identify their stakeholders, many could not articulate who their organisation was and why they were doing what they were doing. Many of the organisations had become driven by expanding their service offering and fundraising without a connection to purpose. They had become mere servants of the State.

A failure of identity impacts on the values and ethos alignment of the staff, as well as their engagement with what the organisation is trying to achieve. It impacts on the connection between the organisation and its community, and the willingness of those within that community to volunteer and to donate funds. It also impacts on performance. Jim Collins, co-author of *Built to Last*⁴ and author of *Good to Great*⁵ argues that a key difference between a great organisation and a merely good organisation is a well-articulated identity and purpose that flows through into defining the organisation's core activity.

It is no accident that many of the largest, longest standing and best performing PBIs in Australia have a strong commitment to being faith-based. They succeed not despite having clearly articulated religious purposes, but because of them. It is imperative that the ACNC register not be structured in such a way that it forces PBIs to shroud their true identities.

Secondly, the ACNC register has become a source of definition of "religious institution" for other legislative purposes

The establishment of the ACNC in 2012 has led to a significant change in approach to the definition of "religious institution" in federal legislation.

In 2012, section 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) was amended to define a "registered religious institution" as an institution that is a charity "registered under the ACNC Act as the subtype of entity mentioned in column 2 of item 4 of the table in subsection 25-5(5) of that Act." An identical definition is also used in other federal legislation.⁶

We highlight the change of definition in the FBTAA because it has implications for whether benefits provided to religious-practitioners employed by a PBI are exempt from FBT. Many PBIs employ religious practitioners as chaplains to provide pastoral care in hospitals, prisons and other institutions. While all PBIs are exempt from FBT, this exemption is subject to certain caps. If the PBI is a "registered religious institution", no cap is applicable to the

³ Judd, S, Robinson, A and Errington, F 2012, *Driven by Purpose: Charities that make a difference*, Hammond Press, Sydney. P. 4-13

⁴ Collins, C and Porras, J, *Built to Last*, Harper, 1994.

⁵ Collin, J, *Good to Great and the Social Sectors: Why Business Thinking is Not the Answer*, monograph, 2005.

⁶ Examples include the *Financial Transaction Reports Act 1988*, *Insurance Act 1973*, *the Social Security Act 1991* and *A New Tax System (Goods and Services Tax) Act 1999*.

benefits provided to religious practitioners in respect to pastoral duties undertaken as employees of the PBI. If a PBI is unable to register the entity sub-type 'advancing religion' it will not be able to rely on the exemption in the FBTAA for benefits provided to religious practitioners.

We also note that charity law is now being appealed to in discrimination claims to determine whether a defendant institution is exempt as "a body established for religious purposes". At the present time, federal anti-discrimination legislation does not make reference to an entity's sub-type(s) on the ACNC register to determine if it is a religious body. Nonetheless it could be expected that there will be intersection between the charitable purposes for which an institution is registered with the ACNC and a legal test in relation to the religious purposes for which it has been established.

In fact, in *Cobaw*⁷, the Victorian Court of Appeal used the test for determining ancillary purposes in charity law to determine whether an entity is a 'body established for religious purposes'. The case concerned facts that pre-dated the ACNC register, however it is easy to conceive of an entity's ACNC registration being relied upon in a similar case in the future.

We are concerned about the potential for charity law and anti-discrimination law to intersect in a manner that causes a PBI to be disentitled from exemptions due to not having registered 'advancing religion' as a sub-type on the ACNC register. This may mean these charities can no longer insist that members of their governing boards or their staff ascribe to and act in accordance with the religious beliefs on which charity is based. This gives rise to the same concern about identity expressed above. That the board members and staff (at least at the executive level) share the beliefs, values and ethos of the institution is crucial to an institution maintaining an understanding of its identity and a connection with its community.

We submit that charities applying for registration as a PBI should be permitted to have objects that properly reflect their concurrent, co-ordinate and concomitant religious and benevolent purposes, and to this end, be permitted to register as a PBI and as having additional entity sub-types (including 'advancing religion'). One way to achieve this could be to create a separate category of PBI in the ACNC registration system so that PBI status is separated from the entity sub-type.

Recommendation: That the ACNC amend its Commissioner's Interpretation Statement on PBIs to clarify that an entity can be registered with multiple charitable purposes, and that concurrent registration as a PBI and with the sub-type 'advancing religion' is appropriate where the "religious purpose" is ancillary to the benevolent purpose. This will be the case where the religious purpose leads to activities which are concurrent, co-ordinate and concomitant with the benevolent purpose.

c. Faith-based Schools

Based on the analysis in section 1(a), there may be more than 2600 faith-based schools (=62% of charities registered with the ACNC with the main activity of Primary and Secondary Education) which have not registered with the entity sub-type of "advancing religion".

⁷ *Christian Youth Camps Limited & Ors v Cobaw Community Health Services Limited & Ors* [2014] VSCA 75 (16 April 2014)

We note that the ACNC registration process does not encourage schools to register as having purposes for both the advancement of education and the advancement of religion. The registration guidelines provided by the ACNC do not give any examples of a charity registering with both education and religious purposes, and thereby the process inadvertently discourages such registrations.

The points made above concerning PBIs could equally be made in relation to faith-based schools. We acknowledge that there is no legal barrier to faith-based schools registering “advancing religion” as an additional sub-type, it a matter of the guidance and education provided by the ACNC to the sector.

Recommendation: That the ACNC issue a Commissioner’s Interpretation Statement to clarify that it is appropriate for a school to be registered as having the sub-type “advancing religion” if it has objects to the effect that education will be provided in a manner consistent with the beliefs, tenets, values or ethos of a particular religion, and that such registration does not mean that the Main Activity of the school is advancement of religion.

2. Basic Religious Charities

The ACNC Act sets out qualification criteria for a subset of charity known as a Basic Religious Charity (“BRC”). Basic religious charities provide much the same information for the ACNC register as all other charities, but are relieved from the obligation to provide a financial report, are not subject to the ACNC governance standards and the ACNC Commissioner does not have power to remove the responsible entities of a BRC.

The concept of a Basic Religious Charity emerged in consultations on the exposure draft for the ACNC Act, as it was apparent that for many religious charities, the Act would lead to an increase in regulatory obligations and compliance costs without a commensurate community benefit. This would have been inconsistent with the Act’s object to “promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector” (section 15(1)(c).

In our submissions to the Parliamentary Joint Committee on Corporations and Financial Services concerning the *Australian Charities and Not-for-profits Commission Bill 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012*, we commented as following concerning the Basic Religious Charity concept -

The inclusion of the Basic Religious Charity (BRC) definition in the Bill is a welcome initiative which recognises the particular characteristics of religious entities and the challenges they face. We expect that the main types of entity that will rely on the BRC status will be local churches and parishes, although other religious charities will also qualify. These entities typically operate within and are accountable to a broader denominational community. Having included the concept of BRC in the Bill, it is important that the concept works in practice.

We then went on to make some further drafting suggestions in our submission, many of which were adopted.

a. The value of the Basic Religious Charity category

Having questioned how the BRC concept might work, we are pleased to affirm that in our experience it has worked excellently in practice. The concept strikes the correct balance by providing a high degree of transparency about the activities, personnel, size, governance

and responsible persons of Basic Religious Charities, while recognising the unique nature of these charities by not imposing an unnecessary compliance burden.

Some of the unique features of Basic Religious Charities which justify differential regulatory treatment are as follows:

(i) Denominational structures

Many BRCs operate under a denominational (or umbrella) structure. The irregularity of these structures makes standardised reporting and governance standards inappropriate for BRCs.

Denominational BRCs may be required to prepare their financial statements in a prescribed form for internal purposes, such as the calculation of assessments to determine contributions to shared expenses and network costs. This prescribed form is typically the same for all BRCs in that denomination, irrespective of the size of the entity.

The BRC category recognises this, by exempting BRCs from the three-tiered reporting structure that applies to other charities. Without the BRC category, a Diocese which wished to continue to use a standardised form of accounts across all parishes would either need to require those parishes which are categorised as small charities to also comply with the Accounting Standards, or require those parishes categorised as medium or large to maintain two sets of accounts.

Some particular examples of the difficulty in applying the Accounting Standards follow:

- (a) Currently parishes in our Diocese are required to account on a cash basis. If the BRC category did not apply, those parishes which are categorised as medium or large charities would be required to account on an accrual basis to comply with accounting standards. A similar point could be made with respect to the increased burden on churches in having to produce “special purpose” (and in some cases “general purpose”) financial statements in full compliance with accounting standards
- (b) Parishes would be required to obtain valuations for all of the real property on their balance sheets. This would be an expensive and complex exercise. Furthermore the heritage nature and special purpose zoning of many church properties mean it is difficult to obtain a reliable measurement of ‘fair value’. At the present time, a parish would typically only need to seek a valuation of its real property if it was intending to sell or mortgage the property.
- (c) Almost all assets of parishes are held on charitable trusts by a corporate trustee. The Accounting Standards would require the real property of a parish to be recorded on the balance sheet of the corporate trustee. Presently they are recorded in the balance sheet of the parish since the corporate trustee acts as a ‘bare’ trustee and the properties are variously held on trust for the purposes of the parish. The offertory income of a parish is also held on trust, usually by the wardens of the particular parish. The Accounting Standards may well require this income to also be accounted for separately to the parish itself. This would mean that the financial statements of the parish would give the misleading impression that it had no income, expenditure, assets or liabilities.

There may be hundreds of BRCs within a denominational structure (as our own example demonstrates). It is not apparent that anyone, other than the members or other stakeholders of the institution or the trust property, has an interest in the financial information, or the capacity to properly understand its nature and relevance.

To require financial reporting and compliance with the Accounting Standards, would involve much cost and effort on the part of local churches (many of which have volunteer treasurers) with little to no apparent community benefit.

(ii) Mutuality

The vast majority of Basic Religious Charities operate similarly (though also differently) to mutuals in that financial support is provided by a known supporter base (or members) who share a common purpose. It is unusual for BRCs to make fundraising appeals to the general public. BRCs also differ from mutuals, in that their activities and services are not carried on only for the benefit of members. Indeed for many BRCs, community service is a large part of what they do and an expression of their religious purpose.

Where an entity is not a mutual principally supported by its members, and instead engages in significant fund-raising from the general public, it is appropriate that there be a higher level of public accountability. This principle is reflected in the disqualification criteria for BRCs that are endorsed as DGRs (or operate DGR funds with total revenue of \$250,000 or more in a financial year) or which receive more than \$100,000 in government grants in a year or either of the previous two years.

(iii) Freedom of religion

The responsible entities of religious institutions are appointed or elected by stakeholders, not only on the basis of skills and experience relevant to the operations of the institution, but usually also on the basis of having provided a statement of faith and support for the values and ethos of the institution, as well as having a demonstrated suitability in this regard.

The ACNC Act does not empower the ACNC Commissioner to remove and appoint the responsible entities of BRCs. This limitation recognises that the ACNC is not equipped to make judgments about the suitability of persons as responsible entities for BRCs.

There is potential for the ACNC Governance Standards to interfere with freedom of religion, were they to apply to BRCs. At present the five standards are relatively general, but that may change. For example, the ACNC has stated that it is working to re-map its Governance Standards to the *Australian Council for International Development (ACFID) Code of Conduct* and has indicated that compliance with the ACFID Code will also meet the Governance Standards. Some of these ACFID standards go beyond the requirements of Australian law, especially in the area of human rights and non-discrimination. There are examples of religious institutions withdrawing from ACFID because the non-discrimination requirements of the ACFID Code impinge upon their capacity to partner with local churches in disadvantaged communities overseas.

Furthermore, denominational churches are already subject a legislative regime in relation to church trust property and have formal parliamentary bodies. The entities of the diocese report and are accountable to this parliamentary body (in our case, the Synod). The Synod can also make legislation for the 'order and good government' of the church within the diocese, which are legally binding on church bodies and members in so far as they relate to church trust property.

b. Accountability

The ACNC Act provides an appropriate level of accountability for charities that are BRCs.

BRCs continue to provide annual information statements and update their details on the ACNC register (including in relation to their governing rules and responsible entities). This provides a high level of transparency into the activities and affairs of these institutions.

The ACNC Act provides for a BRC to voluntarily submit financial reports. This gives a BRC flexibility to provide additional information on the ACNC Register should it wish to do so.

It should also be noted that BRCs are subject to the ACNC Commissioner's enforcement powers in Part 4-2 of the ACNC Act in the same manner as any other charity (except the Commissioner's power to remove the responsible entities of a BRC). The Commissioner can still hold a BRC accountable by investigating and taking enforcement action if the Commissioner is concerned that the BRC may be in contravention of the legislation.

c. The disqualifying criteria for BRC status

Subject to one exception, we consider that the disqualifying criteria for BRC status to be proportionate and appropriate.

The exception is the requirement that a BRC not be a body corporate registered under the *Corporations Act 2001* or incorporated under State or Territory incorporated associations' legislation.

We recommend that this disqualifying criterion be removed. We have not been able to ascertain the original rationale for this disqualifying criterion, other than perhaps that since these incorporated religious institutions were already subject to a statutory regime for financial reporting and governance standards, it was seen fit that they should continue under an analogous regime under the ACNC Act.

It is apparent that there are BRCs and non-BRCs which are very similar in purpose, governance, activities and size, and which materially differ only in that one is incorporated and the other is not. We consider that religious purpose charities should not be disqualified from being a BRC by reason only that they are incorporated.

Recommendation: Remove the disqualifying criterion in section 205.35(2) of the ACNC Act which requires that a charity not be registered under the *Corporations Act 2001* or incorporated under State or Territory incorporated associations' legislation to be a Basic Religious Charity.

3. Total revenue thresholds for charity categorisation by size

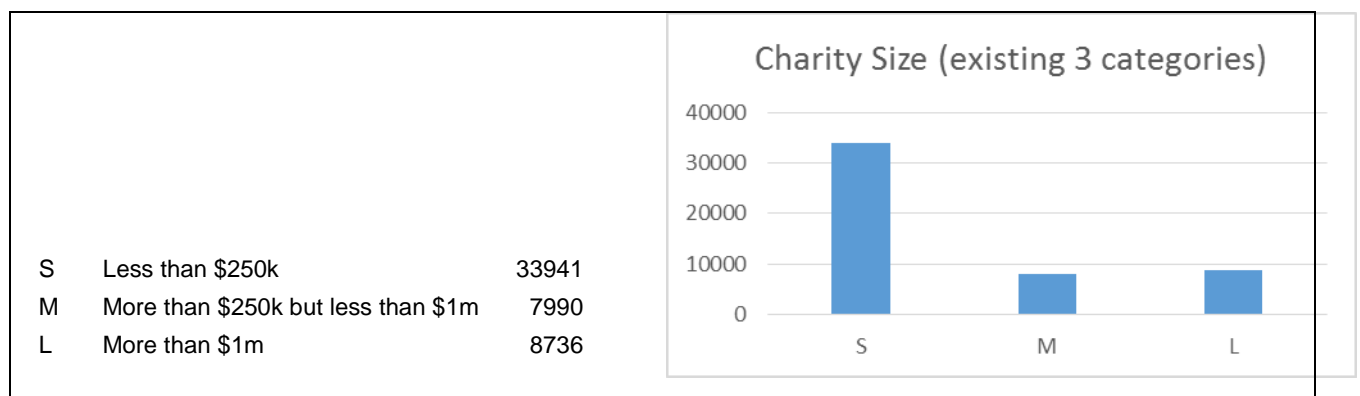
We consider that the total revenue thresholds for classification as a small, medium or large charity should be adjusted to better reflect the diversity of the charitable sector. The thresholds should be set at intervals which allow materially similar resourced charities to be grouped together and made subject to appropriate and proportionate regulation for their respective sizes.

Presently the thresholds are as follows:

	<i>Total Annual Revenue</i>
<i>Small</i>	Less than \$250k
<i>Medium</i>	More than \$250k but less than \$1m
<i>Large</i>	More than \$1m

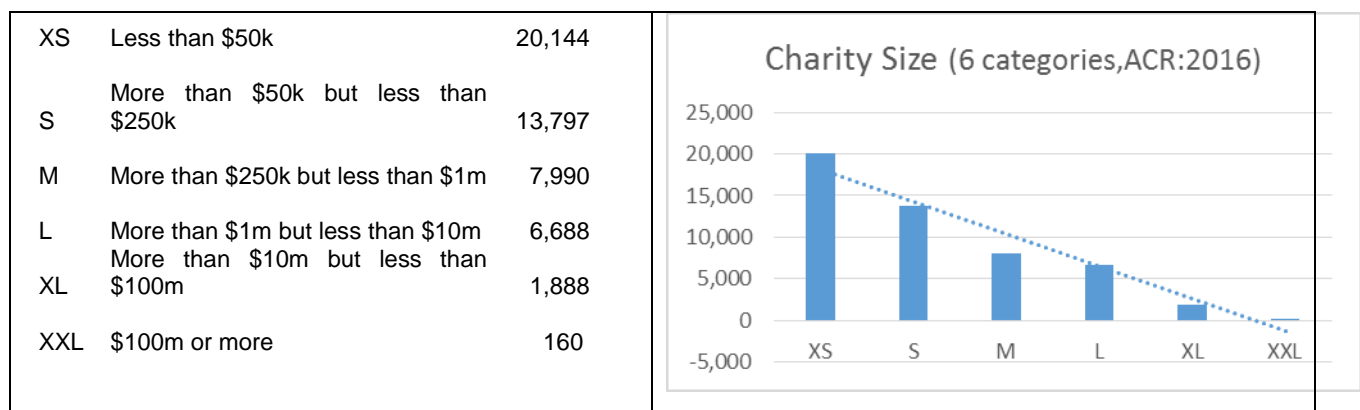
These thresholds were developed prior to the establishment of the ACNC, when reliable data on the revenue of charities was largely unavailable. It is apparent, now that a more comprehensive dataset is available, that these thresholds should be adjusted.

Graphing the thresholds across ACNC registered entities based on 2016 data reveals the following:



There is a lack of granularity in the ‘small’ category and there are more ‘large’ charities than ‘medium’ charities. There is also significantly more diversity across the sector than the categories suggest. There are charities that have total revenue of well in excess of \$100 million, and yet these highly resourced charities are subject to the same regulation as charities with total revenue of just over \$1 million. In reality these are very different entities, with very different resources to meet their compliance obligations.

In its 2016 Annual Report, the ACNC extended the three categories to six by adding Extra-Small, Extra-Large and Extra-Extra-Large categories. This reveals the following spread:

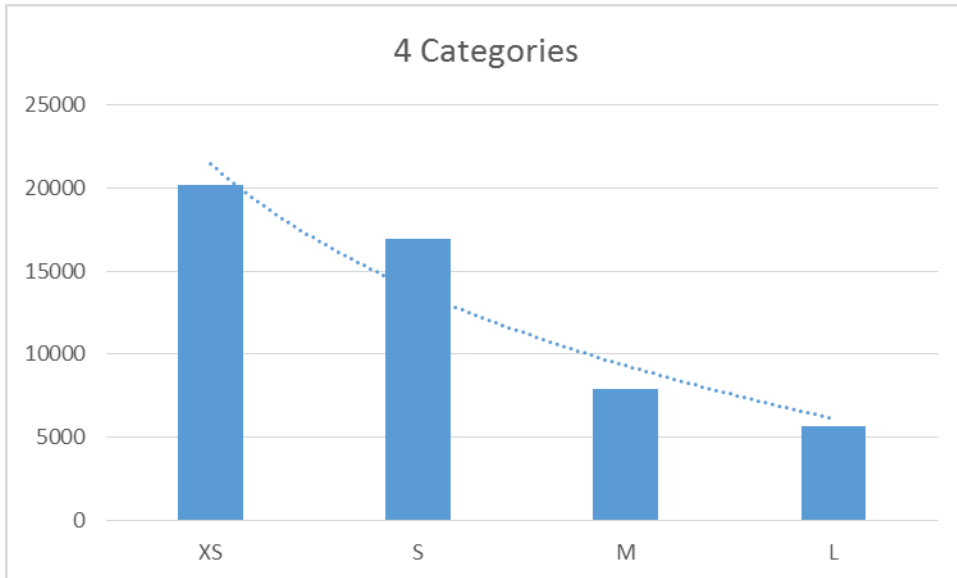


While this provides a better spread among the sector, six categories is perhaps too many to provide a material distinction in regulatory obligations.

We recommend that the total revenue thresholds be set as follows:

	<i>Total Revenue</i>
<i>Extra Small</i>	Less than \$50k
<i>Small</i>	More than \$50k but less than \$500K
<i>Medium</i>	More than \$500K but less than \$2.5M
<i>Large:</i>	Over \$2.5M

This would reveal the following, more even, spread among ACNC registered entities:



This spread enables more similarly resourced charities to be grouped together for regulatory purposes.

Presently there is no Extra-Small category in the ACNC Act. We consider there would be merit in creating an additional extra-small category and removing some compliance obligations. For example, it might be appropriate that this category be required to update the register for change of details (similar to the obligation to update the Australian Business Register) but not provide an AIS.

Recommendation: That the total revenue thresholds for charity classification by size be readjusted as follows:

	<i>Total Revenue</i>
<i>Extra Small</i>	Less than \$50k
<i>Small</i>	More than \$50k but less than \$500K
<i>Medium</i>	More than \$500K but less than \$2.5M
<i>Large:</i>	Over \$2.5M

4. Recommendations made by the ACNC in its submission

There are two recommendations made by the ACNC in its submission to Treasury's review of the legislation that we wish to comment on.

(a) ACNC objects

The ACNC has recommended that the following additional object be inserted in section 15-5 of the ACNC Act:

"To promote the effective use of the resources of not-for-profit entities"

The ACNC notes that it does not have specific powers or functions under the ACNC Act in this respect and that if the additional object were to be inserted that consideration would need to be given to whether additional powers, functions and resources were needed.

The ACNC has not set out how it would go about determining whether a charity is effectively using its resources. While we support charities making effective use of their resources, we do wonder how this can be appropriately measured and whether the ACNC will always be in a position to understand what is an effective use of resources to achieve a particular charitable purpose. This may be particularly so when in relation to the most common charitable purpose – ‘advancing religion’.

Recommendation: That the ACNC Act not be amended in the manner recommended by the ACNC in its submission by including an “effective use of resources” object.

(b) Charity categorisation by size and one-off receipts of income

We note the ACNC’s recommendation 22 that the ACNC Act be amended so that a charity’s size in any given reporting period is the lower of its current and immediately previous reporting period revenues.

We support this amendment. It is not uncommon for a charity to receive a large donation or bequest in a reporting period that pushes it into a higher tier for that year. While the ACNC Act does have a mechanism for the ACNC Commissioner to treat the charity as being in a lower tier if satisfied the charity is likely to return to that tier in the next reporting period, this is administratively burdensome for the charity and creates timing difficulties in the preparation of AIS and financial reports.

Recommendation: That the Panel adopt Recommendation 22 in the ACNC’s submission, so that a charity’s size in any given reporting period is the lower of its current and immediately previous reporting period revenues.

5. Other matters

(a) Bulk application processes

The exposure draft of the ACNC Act was amended in the course of consultations with the sector by including provision for the bulk lodgment of Annual Information Statements (“AIS”) and notification of a change of details on behalf of multiple charities. We have found these provisions to be particularly helpful and wish to make some comments regarding them.

Lodgment of Annual Information Statements on behalf of multiple entities.

Bulk lodgment is the process that allows entities to submit more than one AIS on behalf of multiple registered charities on a single form, provided by the ACNC as an Excel spreadsheet.

Bulk lodgment is commonly used for organisations such as a corporate trustee administering multiple trusts, or a denominational administration office assisting multiple religious charities with their reporting obligations to the ACNC.

In 2017, the bulk lodgement process enabled the Diocese to submit one document that contained an Annual Information Statement for the 355 trusts managed by the Anglican Church Property Trust Diocese of Sydney (“ACPT”). Without this process, the time needed to lodge all the AISs required for trusts managed by the ACPT would be at least tenfold the time taken to complete and lodge the bulk form.

Notification of a change of details on behalf of multiple entities

Under section 65.5 the ACNC Act, registered entities must notify the Commissioner in the approved form if certain circumstances change, including the governing rules of a registered entity. In certain circumstances, it is helpful for one entity to lodge a bulk notification where one change has been made to the governing rules of multiple organisations, or where multiple organisations have the same membership of their governing body.

One such example of this is that the Synod of the Diocese controls the governing rules of each of the Anglican Parishes within the Diocese of Sydney. There are currently 271 of these Parishes. When a change is made by ordinance to the governing rules (in this case, the Parish Administration Ordinance 2008), the ACNC permits the use of Form 3A and the attachment to Form 3A, which provides an excel spreadsheet by which the details of each charity, and details of the change, can be efficiently submitted to the ACNC. If this were not permitted, it would require the same notification to be made separately for each entity through the ACNC Portal.

(b) Charities with no registered purpose

We note that there is a very large number of charities without any registered entity sub-type. This appears to be in relation to charities registered with the ACNC prior the passing of the Charities Act 2013, which introduced 12 charity entity sub-types. The registration of charities prior to 2013 reflected the common law definition of a charity, which does not map neatly unto the new entity sub-types. The matter could be addressed through the AIS requiring charities to nominate a sub-type if they have not already registered a subtype.