Law Council
OF AUSTRALIA

Legal Practice Section

28 February 2025

Dr Keith Kendall
Chair, Australian Accounting Standards Board
PO Box 204
Collins St West
MELBOURNE VICTORIA 8007

By email: standard@aasb.gov.au

Dear Chair,

Not-for-profit Financial Reporting Framework—ED334 and ED335

1. This submission has been prepared by the Charities and Not-for-profits Committee of the Law Council of Australia's Legal Practice Section (**the Committee)**. The Committee welcomes the opportunity to make a submission to the Australian Accounting Standards Board in relation to *Exposure Draft ED 334* "*Limiting the Ability of Not-for-Profit Entities to Prepare Special Purpose Financial Statements"* and *Exposure Draft ED 335 "General Purpose Financial Statements—Not-for-Profit Private Sector Tier 3 Entities".*

2. We understand that the proposed new standards are intended together to promote the Board's objective of removing the ability of many not-for-profit organisations to prepare special purpose financial statements and, in particular, to introduce a new accounting standard (*General Purpose Financial Statements—Not-for-Profit Private Sector Tier 3 Entities*) for "smaller NFP private sector entities".

3. We acknowledge that these standards can only be issued by the Australian Accounting Standards Board, and that any requirement for their application needs to be made by legislative and regulatory change, which will require regulators to undertake an assessment of the entire accounting reporting requirements so as to ensure the proposed standards are commensurate with the reporting needs of the impacted charities and not-for-profits.

4. Therefore, we submit that the Australian Accounting Standards Board, the Australian Charities and Not-for-profits Commission, the Office for Indigenous Corporations and the Australian Securities and Investments Commission and the State- and Territory-based regulators should work together to articulate the intended application of these reporting changes, including as to confirming reporting entity sizes, so that the sector, governments and other stakeholders can respond more effectively to the likely full impact of the proposed regime.

5. We offer our feedback in the context of the need for the accounting standards applying to the not-for-profit and charities sector to establish preparation and presentation requirements that represent a proportionate response to the risk and information

needs of users such that the cost of preparation and presentation is outweighed by the benefits accrued from their application.

6. It is our submission that there should be clarity in terms of what would constitute the "smaller NFP private sector entities" that are intended to be impacted by these standards, particularly but not limited to:

   (a) not-for-profit organisations which are charities registered with the Australian Charities and Not-for-profits Commission (**ACNC**) (**registered charities**);

   (b) not-for-profit organisations which are not registered charities but fall into the eight categories of eligibility for income tax exemption[1];

   (c) Aboriginal and Torres Strait Islander not-for-profit and charitable corporations registered with the Office of Indigenous Corporations (**ORIC**); and

   (d) all incorporated associations (whether or not they fall within the above categories).

   Currently the ACNC sets thresholds for registered charities as follows: large (annual review over $3 million per annum), medium (annual revenue of $500,000—under $3 million per annum) and small (annual revenue of under $500,000).

7. The ACNC 10th Annual Charities Report indicated that 30.9 per cent of registered charities were classed as extra small with less than $50,000 turnover and a further 21 per cent with turnover between $50,000 and $250,000.[2] This confirms what we know from information released from the Queensland and Victorian incorporated association registries. In Queensland four out of five associations have less than $100,000 of income, and in Victoria 90 per cent of Victorian associations have less than $250,000 in annual turnover.[3]

8. As such, the proposed reporting requirements set out in the EDs potentially leave a very large proportion of small charities and not-for-profits in a position where they either have to apply Tier 3 requirements or do not have any guidance whatsoever. Therefore, we also support the concept of a Tier 4 set of reporting requirements for the significant cohort of very small not-for-profit organisations.

9. These organisations are usually volunteer-led, and often the members at monthly meetings approve receipts and pass a motion for the treasurer to pay accounts. Any external reporting and verification of accounts should be commensurate with the actual risks.

10. Such organisations are vital to the health of Australian civil society, and the costs of transitioning, training and education (to acquire the necessary knowledge and capability), and of ongoing compliance with accounting standards will be debilitating

[1] See https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/your-organisation/does-your-not-for-profit-need-to-pay-income-tax/types-of-income-tax-exempt-organisations#ato-Selfassessingeligibilitytoincometaxexemption

[2] ACNC Australian Charities Report – 10th Edition 2024, see https://www.acnc.gov.au/tools/reports/australian-charities-report-10th-edition

[3] 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

for them. What is to be required from these organisations should be proportionate to the risks they face and what the users of their financial statements need.

11. A Tier 4 standard could simply set out the preferred financial reporting information attributes to guide those governing the organisation in determining what is suitable content of financial reports in the context of risk and cost, rather than a set of prescriptive reporting requirements. For example, a small local sporting club could provide documents such as a copy of the closing bank statement, the bank reconciliation, and a list of assets and liabilities for their annual general meeting rather than more complex financial statements.

12. Importantly, many smaller not-for-profits and charities have their financial records audited notwithstanding they have no regulatory responsibility to do so. We think this set of proposals may inspire those entities that currently have an audit to discontinue that practice which we think is undesirable. One reason this is a concern is that there is feedback from auditors that they would modify their opinions if Tier 3 requirements were not implemented. Therefore, we believe a Tier 4 standard that articulates the information attributes of financial reporting for small charities and not-for-profits would also provide auditors with criteria that can be used by them to assess the financial information provided by the governors of the entity to support their opinion and so avoid this problem.

13. The Committee also believes that it will be necessary for a well-coordinated and wide-reaching education programme to be undertaken by the Australian Accounting Standards Board:

    (a) For regulators as they consider the relevant thresholds to set—we observe varying levels of financial literacy among regulators, which may affect how organisations are categorised and regulated.

    (b) For government agencies and philanthropists who may utilise financial information to assist in their procurement and donation decision making—we observe varying levels of financial literacy which may affect the funding allocation decisions made, including as to quantum and timing.

    (c) For not-for-profit organisations which will be affected—we also observe varying levels of financial literacy, low particularly in the smaller organisations (see paragraph 7 above). This education should be taken in conjunction with the principal regulator, for example, the ACNC in the case of registered charities and ORIC in the case of organisations registered with it.

14. The introduction of the proposed new standards is also an opportunity to review legislation to ensure wider reporting outcomes are proportionate to the risks faced by the relevant organisations. Important to this are the questions of who the users of the financial statements of the relevant organisations are and what they need. We do not see in ED334 and ED335 any exposition of the needs and context of users, who rely on financial reports to make decisions. There is a lack of clarity about who these users are, and how the proposals will meet their needs.

15. We also bring to the Australian Accounting Standards Board's attention the fact that additional reporting requirements relating to economic, social and environmental sustainability are also being considered in relation to this sector. Additionally, there are significant reforms to the reporting requirements for self-assessing income tax exempt non-charitable not-for-profits. The costs in time and money, combined with

the opportunity costs to service delivery as a result of redirecting resources and attention need to be considered as the cumulative impact can be very significant to these organisations.

16. The successful implementation of the measures will depend significantly on cooperation between state and territory legislators and regulators, and those at the Commonwealth level. We draw your attention to the challenges encountered in the long-standing pursuit of consistency in fundraising legislation across the States and Territories, a project which is still incomplete with delays and problematic as different approaches are taken to implement the National Fundraising Principles.

17. The Committee would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact the Committee Chair, Brigid Cowling [redacted]

Yours sincerely



Greg McIntyre SC
Section Chair