



Australia's Charities and Not-for-profits

Written Submission

The Options Paper, Australia's Charities and Not-for-profits sets out proposed replacement arrangements for charities in Australia. The paper outlines policy directions proposed by the Government to introduce effective replacement arrangements that reduce the burden of regulation on the civil society sector.

The paper is being released to seek feedback from charities and interested parties on the proposed replacement options. Comments and feedback will inform development of the replacement arrangements. A summary of written submissions will be provided on the Department's website in September 2014.

Please use this submission template to provide your feedback on the proposed replacement arrangements for charities in Australia.

Completed submissions are to be sent by 20 August 2014 to:

consultationwithcharities@dss.gov.au (preferred method) OR

Civil Society and Programme Delivery Policy Branch
Department of Social Services PO BOX 7576
Canberra Business Centre, ACT 2610

Submissions received after 20 August may not be considered.

Unless otherwise stated, the information and feedback you provide may be used for publishing purposes. Please state if you do not wish for your comments to be published.

Instructions for completing the Submission Template

- Download and save a copy of the template to your computer.
- Refer to the *Options Paper, Australia's Charities and Not-for-profits* for context and discussion questions.
- You do not need to respond to all of the questions.
- Please keep your answers relevant to the topic being addressed, we ask that submissions be limited to two pages.

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If submitting on behalf of a company or organisation

Name of organisation: Anglicare Diocese of Sydney

Stakeholder category (e.g. service provider, client, peak body, academic): Service provider

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Anglicare Sydney's Response to Options Paper on Australia's Charities and Not-for-profits

Introduction

Anglicare Sydney is a Christian organisation operating a wide range of community services and programs across the Sydney Metropolitan and the Illawarra regions of New South Wales; it embodies the Christian commitment to care for all people in need, as comes from Jesus' command to love your neighbour as yourself.¹ Our range of services include: counselling and family support services (including Family Relationship Centres); community education for families; disability case management and respite; youth services; emergency relief for people in crisis; foster care and adoption for children including those with special needs; migrant services including humanitarian entrants and newly emerging communities; English as a second language classes; aged care both through residential aged care facilities and community services; opportunity shops providing low-cost clothing; disaster recovery services; and chaplains in hospitals, prisons, mental health facilities and juvenile justice institutions.

1. Proposed new reporting arrangements

Do you believe that these proposed requirements will be less time consuming than current requirements?

It is unclear from the Options Paper the level of detail that organisations would be obliged to provide on their websites. Information of the type outlined in the Options Paper could potentially be provided at an organisational or consolidated level, or it could be provided at a service stream or program level. This raises issues not only of the burden placed on organisations in providing and maintaining such information but also the best level of information needed to inform the public.

There is no indication about the definition of a 'responsible person'. Under the Australian Charities and Not-for-profits Commission Act 2012, a 'responsible entity' appeared to be limited to an individual who is a member of a governing body (a company director, trustee). However at a service stream or program level there are many others who could potentially be classified as 'responsible persons'. As an example, funding for foster care placements define a 'responsible person' and this person holds no formal office within the organisation at executive or director level.

Details of Directors of our board contained within the Annual Accounts are already displayed on our website.

In relation to the proposed requirement to display the details of Government grants, such funding can change regularly depending on variations to scope, expiry dates, changes in government department names, changes to program names, termination and replacement, top up funding,

¹ The Gospel of Matthew, chapter 22 verse 39.

enhancement of services and re-alignment of geographic areas. What is not clear would be how DSS expects this information to be displayed, how often updated, alignment to agencies, relevance, and program name or expiry date. The ability for small charities to undertake these activities may be prohibitive. However for larger charities such as Anglicare, the maintenance of this information would add a considerable extra burden given the considerable number of programs and funds managed.

Some of the Government funds utilised are augmented by Anglicare as the amount granted is insufficient to fully fund the service and the identification of the funds would give the impression that a service is fully funded by government when it is not. Therefore, displaying the funding on a website may give Anglicare's major donors and other potential donors an incorrect understanding of the need for donations. The management of the expectations of our donors creates an additional administrative and management burden.

It is unclear what the purpose is for displaying details of government grants or how this may enhance the accountability of charities to the public. Simply displaying fund amounts gives no information about how well, efficient or beneficial those funds are to the clients or causes the charity serves or promotes.

All federal funding amounts are known by the Federal Government. It is not considered appropriate that the burden of displaying, maintaining and duplicating that information be borne by the provider of a program, particularly as this activity does not fall within its current funding requirements. The onus of undertaking these activities is unfunded and could come at considerable cost to Anglicare depending upon the level and detail of information required to be displayed. It could be argued that funding provided by federal agencies is known by those departments and would be better displayed on their websites.

Furthermore it may not be appropriate for a federal agency to require a charity to display funds from State or local government of which the Federal government has no control, influence or understanding. Some local and State government grants are available to both for-profit and not-for-profit organisations. There would be no requirement for the for-profit organisations to display those funds and no clear reason why the charity would be required to do the same.

All our funded programs are required to be acquitted on an annual basis and there is sufficient control and accountability through that process to eliminate the need for disclosure through another means. As we are already subject to a mandatory reporting requirement, Anglicare and other such charities should be granted an exemption from these requirements.

What changes would your organisation need to make to meet the new requirements?

Depending upon the level and detail of information required, possible changes that would be needed include:

- Multiple and repetitive changes to the website on a frequent basis;
- Increased burden of donor marketing to educate our donors about our ongoing needs;
- Duplication of the acquittals process in a different format and process;
- Increased costs associated with time and effort for reporting.

These requirements are in sharp contrast to the proposed Charity Passport, annual reporting and 'report once use often' approaches that were being implemented under the ACNC. Anglicare Sydney strongly recommends that the Government maintain the best features of the previous ACNC approach to reporting.

Do you foresee any impediments to charities complying with these requirements?

There are a number of impediments including extra resources, costs and time to comply. The best outcomes for civil society are to ensure that donor's funds are spent on that charity's cause in the most efficient manner possible with sufficient transparency to that donor. At present, donors are able to discern between organisations and also able to make their own informed decisions about where they invest their funds.

Do you believe these requirements will provide transparency? If not, what changes would you make?

As mentioned above, it is unclear what the purpose is for displaying details of government grants or how this may enhance the accountability of charities to the public. Simply displaying fund amounts gives no information about how well, efficient or beneficial those funds are to the clients or causes the charity serves or promotes. Should high levels of detail be required, this would ensure the information is never current and would always be outdated.

2. Determining Charitable status

Which of these options do you believe best guarantees the independence of the decision making process?

Anglicare agrees that there has been a conflict of interest between the ATO's dual roles of raising revenue for the Government and being responsible for determining not-for-profits' tax concessions. However, it also needs to be recognised that the ATO is a large organisation, leading to the likely dilution of expertise on Not-for-profits and poor communication with Not-for-profit clients. Given there will no longer be a dedicated Not-for-profit regulator, it is important that the ATO seek to retain the culture of service for Not-for-profits that was being developed in the ACNC. This may best be perpetuated by the establishment of a dedicated Not-for-profits unit within the ATO.

Of the two options presented, the independent panel (option 1) appears to share more of the characteristics of the previous regulator in that it has a degree of independence from the ATO.

Are there any other considerations that should be taken into account when these functions are undertaken?

It is most appropriate the existing knowledge and culture of serving not-for-profits developed as part of the ACNC should be transferred to ensure maintenance of that information for all future applicants.

3. Proportionate compliance framework

Are there any reasons why this approach may not work?

It remains unclear how compliance arrangements for self-reporting will 'focus on areas of high risk and not burden organisations with gratuitous reporting requirements or invasive investigations.' Whilst Anglicare agrees that some of the proposed investigative powers and reporting

requirements for the ACNC were excessive, it is unclear to us how the proposed self reporting requirements focus on areas that are 'high risk' and are not a 'burden'. As outlined previously in this submission both the purpose and administrative burden of the proposed self-reporting requirements remains unclear. It has also not been made clear in the Options Paper the readiness of ASIC, ATO and State and Territory Governments to resume previous roles, given that there has been a process of legislative harmonisation taking place during the period of the ACNC.

Do you foresee any risks in this approach?

Whilst the risk of an individual charity being found to be in breach is low, the gross risk exposure for the donating public is considerable and this approach has not dealt with that cumulative risk. Prior to the establishment of the ACNC, the need for a national regulator had long been recognised, being identified in both Tax Review² and Productivity Commission³ reports. In returning to the previous regulatory regime, careful appraisal is needed of the associated risks.

4. Transitional arrangements

What other transitional arrangements might be required?

The time frame for transition may be too short, depending upon the level of detail and frequency of updating required for the website. More time may be needed to consult with donors and also the recipients of those funds or services the charities actually exist to serve. It is noted that there does not appear to have been any consultation undertaken with stakeholder groups such as donors in relation to these changes. There is no justification for a rapid transition between the two systems.

Are there things the Department could undertake to assist charities with this transition?

The Department should allow more time and have a phased approach to transition where smaller charities that do not have regulatory reporting requirements to larger ones that need a phased approach to adopt the new requirements. The Government has done this previously with such consequential matters as the 'Working With Children Check' regime. The issue of compliance among charities would appear significantly less exposed to risk.

What factors should be considered in relation to the timing of the new arrangements?

As outlined, a phased transition would be less burdensome. Many activities to alter structures and reporting requirements will have easily identifiable milestones. Those milestones should be considered and an appropriate timeframe identified. That information could be given to charities so they could understand the necessary activities, stages and requirements for the impending changes. The Department should also consider establishing some engagement of appropriate industry professionals to assist smaller charities to transition.

5. Concluding Comments

Anglicare is concerned with the proposed processes as they add to the management and administrative burden. In many previous submissions, Anglicare has outlined significant levels of 'red tape' that exist for not-for-profits, some of which the ACNC was designed to address. This 'red

² Australia's Future Tax System (2009) *Australia's Future Tax System. Report to the Treasurer*, The Treasury, Canberra, p43.

³ Productivity Commission (2010) *Contribution of the Not-for-profit Sector*, Research report, Canberra, pXLIII.

tape' includes the need for common information requirements to streamline funding application, tenders and accreditation processes; simplification of contracts; removal of multiple reporting arrangements; implementation of a common acquittals process and standardised reporting requirements across Federal and State Governments. The changes increase duplication of effort and thus create another level of 'red tape' that government has committed to reduce.

The requirement for Anglicare and other charities to report their funds received from Federal government agencies should not be introduced. Anglicare does not agree with the requirements of the Department to create a website and maintain information that is already freely available to the Department internally and from other government departments. The Department may not have the authority to mandate charities to display funding amounts from State and local government bodies. Instead the DSS could maintain and display the funding information they provide to charities on their own website.

Grant Millard
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19th August 2014