



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: Anglican Church Diocese of Sydney

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

State/Territory: NSW

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Response of the Anglican Church Diocese of Sydney to the Options Paper

We welcome the opportunity to respond to the proposals in the *Options Paper – Australia’s Charities and Not-for-Profits* (the Options Paper) issued by the Department of Social Services in July 2014.

The Anglican Church Diocese of Sydney is an unincorporated voluntary association comprising multiple organisations, schools and charitable trusts together with a network of 271 parishes. Collectively these are accountable to the members of the Church through the Synod of the Diocese.

Some of our larger organisations may provide their own comments in response to the proposals in the Options Paper. Accordingly, the focus of these comments concerns the impact of the proposals on smaller charities.

Self-reporting

We support charities being transparent with their stakeholders concerning their governance and operations and are generally supportive of the proposal in the Options Paper to move towards greater self-reporting and self-management of charities, particularly through publicly accessible websites.

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

We have two significant concerns with the self-reporting proposals.

Firstly, the proposals assume that all charities have the capacity to establish and maintain a website. This is simply not the case for many, usually smaller, charities. Accordingly a mechanism needs to be found to facilitate the public disclosure of relevant basic information about charities without necessarily requiring each charity to operate their own website.

We recommend that this concern be addressed as follows –

- Augment the Australian Business Register (ABR) with relevant information currently held about charities on the ACNC Register. Retaining both the ABR and the ACNC Register is a duplication of effort. However an augmented ABR would provide an appropriate platform from which an entity can be identified as being a charity and basic information about all charities can be accessed by the public.
- If a charity has its own website and wishes to use its website as a means of making relevant information about itself available to the public, such charities should have the option of including on the ABR a reference to their website address in place of the basic information which would otherwise be published directly on the ABR.

Secondly, the self-reporting proposals appear to assume that all charities are stand-alone organisations with, for example, a separate set of responsible persons. There are a significant number of charities which are trusts held by a common trustee or trustees. There are other related charities which prepare financial reports on a consolidated basis. To the extent the Government pursues its proposals for self-reporting by charities via

website, such proposals need to accommodate these group arrangements by permitting multiple related charities to report using a common website.

If the Government were to adopt our recommendation for the use of an augmented ABR as a default platform for the disclosure of relevant information about all charities, those administering the ABR would need to accommodate the provision of bulk-information, where for example there is a change in a responsible person which applies to multiple charities. The accommodation of group arrangements and bulk notifications are features of the ACNC Register which should be continued for the ABR.

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

In general, we consider the proposals in the Options Paper provide adequate transparency.

We consider that the continued publication of responsible persons is appropriate, although if regulation of charities registered under the Corporations Act is returned to ASIC, consideration would need to be given to avoiding duplicate reporting of responsible persons and directors. Furthermore it would be appropriate to ensure that the current definition of responsible persons which excludes the concept of “shadow directors” continues for all charities, except perhaps those which are registered under the Corporations Act.

We support generally the continued publication of financial reports, subject to the continuation of exemptions for small charities and basic religious charities. However we would encourage the Government to find a way to continue with the development of a “report-once-use-often” facility on an opt-in basis for those charities which interact with Government agencies on a regular basis. This has been a useful feature of regulation under the ACNC which should be developed further.

We are less certain about the necessity of charities being required to publish all funding received from Government and whether any benefit achieved is justified by the cost in charities being required to publish this information. In particular –

- The body most interested in knowing who receives Government funds and how such funds are used is, presumably, the Government body providing such funding. Presumably Government bodies keep their own records of this information.
- Some information about Government funding would already be available in the financial reports of charities.
- If it is intended to use information about Government funding to enable governments to inform policy decisions concerning the funding of the sector generally, it seems to us that the self-reporting proposals in the Options Paper would make the collection and aggregation of this information for that purpose unworkable.

Accordingly we question the benefit of requiring the publication of information about Government funding beyond that which appears in the financial reports of a charity.

Determining charitable status

Our preference is that the role of determining charitable status not be returned to the ATO but be exercised by an independent body, perhaps a Charities' Registrar. In our view this would also be an effective way to continue with the development of a “report-once-use-often” framework for charities.

However in view of the stated commitment of the Government in the Options Paper to return the role of determining charitable status to the ATO, the following comments assume this as an outcome.

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

Of the two options proposed in the Options Paper, our preference would be for the establishment of an independent panel made up of relevant experts (Option 1). We consider this option would go some way to addressing the sector's concerns regarding the need for independent decision making. However other administrative and legislative safeguards are likely to be necessary in order to adequately address the concerns

widely expressed by the sector about the ATO determining both charitable status and eligibility for related tax concessions.

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

We would encourage the Government to find a way to maintain and further develop the expertise and culture of service that has been developed within the ACNC, particularly in terms of its clarity of communication and accessibility to the broader sector. For example, we would encourage the ATO to avoid the use of excessively lengthy and technical regulatory guidance for the sector, and avoid a situation where those staff responsible for developing sector-specific expertise and interacting with the sector are located at multiple sites. A dedicated Charities' unit within the ATO would be helpful.

Transitional arrangements

The expectation that charities will update their websites by 1 July 2015 may be possible for those charities which currently have a website. However this date is too ambitious for those charities which do not currently have a website and will put those, usually smaller, charities which do not have the ability to establish a website in a very difficult situation.

The transitional arrangements should instead focus on the establishment of an augmented ABR which incorporates relevant information currently held on the ACNC register as the platform for minimum public disclosure requirements for all charities as a default with the option of disclosure of such information via website for those charities that have one (as we recommend above). It would therefore be necessary to maintain a limited form of the ACNC Register on an interim basis pending the incorporation of relevant information into the ABR. The timing for this process would be entirely in the hands of the Government and would not prejudice those charities which do not have website capability.

ROBERT WICKS
Diocesan Secretary

20 August 2014