

**AMNESTY
INTERNATIONAL**



Submission to
Department of Social Services
Options Paper – Australia’s Charities and Not-for-profits

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Submitted by
Amnesty International Australia

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About Amnesty International

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world's largest independent human rights organisation, comprising more than 3 million supporters in more than 160 countries and has over 400,000 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

Introduction

Since its establishment in December 2012 the Australian Charities and Not-for profits Commission has gone a long way towards providing a 'one-stop-shop' for the NFP sector and facilitating greater transparency of the sector for the Australian public. Though still a fledgling body, the ACNC has reduced duplication, eased administrative burdens, offered simplified reporting mechanisms and provided tailored assistance to charities and NFP organisations. Amnesty International considers that the ACNC has provided valuable regulatory support to the NFP sector since its inception.

Amnesty International calls for the ACNC to be given the opportunity to refine its regulatory processes in order to recognise its full potential as a 'one-stop-shop' for charities and not-for-profit organisations, small and large. Amnesty International urges the Australian Government to support the development of the ACNC rather than restructure the NFP sector towards an as yet unspecified alternative regulatory model.

Response to Questions for Discussion

SELF-REPORTING

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

No. The ACNC currently provides a simple, streamlined reporting process consistent with the Government's focus on ease of reporting. One of the key benefits provided by the ACNC is that advice on compliance obligations is readily accessible – in the form of fact sheets and person to person advice. Similarly, completing and submitting the Annual Information Statement is simple, effective and fast, as is updating information on 'responsible persons'. Amnesty International is a company limited by guarantee and has reporting obligations under the *Corporations Act 2001* to ASIC.

Submitting documents and otherwise meeting compliance obligations to ASIC has been significantly more time consuming than experienced with the ACNC.

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

Yes. One of the benefits of reporting to the ACNC over ASIC is the ease of providing information directly through the portal. While ASIC has attempted in the past to create such an online portal, the reality has been that it was not user friendly. Additionally, the search functions on the ACNC website are free and easy to use.

The proposed new reporting arrangements include the reinstatement of an annual review fee which places a financial burden on organisations in addition to the increased duties of self-reporting. It does not make sense that fees should be payable for self-reporting functions.

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

No. Removing the independent oversight of the ACNC will not provide transparency. It is difficult to see how matters on which the sector will be required to report under the proposed arrangements will assist transparency in any way other than in relation to financial accountability. While this is an important aspect of the sector's transparency, it does not go to whether the organisation is, for example, working towards the stated objectives or purposes of that entity as described in its founding document.

Additionally, NFP entities' information will be housed across a number of different federal and state agencies. This will make it very difficult for a member of the public to access information beyond board composition and financial information.

If the new arrangements are not proposing to enhance transparency it makes it difficult to understand why the existing arrangements need to be abolished. As such, Amnesty International supports the preservation of the ACNC as the regulatory body for the NFP sector.

ADMINISTRATIVE OPTIONS

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

Neither. The independence of the decision making process is currently guaranteed by the separation of the roles of the ACNC and the ATO. The proposed administrative options complicate the administrative process by creating new bodies within the ATO and compromise independent decision making by handing eligibility determinations and tax rulings to the same body.

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

Consideration should be given to the functioning, independent decision making body already existing in the form of the ACNC.

COMPLIANCE FRAMEWORK

Are there any reasons why this approach may not work?

The compliance approaches of the ATO and the APRA are demonstrably unsuitable for the NFP sector. The extensive consultation process undertaken before the establishment of the ACNC took the needs of the NFP sector into account and developed the mechanisms of the ACNC accordingly. The result was a graduated compliance regime which was proportional to the potential harm caused by compliance breaches.

Do you foresee any risks in this approach?

This approach risks enforcing a 'one-size-fits-all' approach onto a sector comprised of diverse organisations with varied compliance needs. The ACNC currently provides tailored assistance to organisations within the NFP sector and it is this individually focused approach which has benefited the sector.

TRANSITIONAL ARRANGEMENTS

What other transitional arrangements might be required?

It is not possible to offer comment on transitional arrangements until the *Australian Charities and Not-for-profits Commission (Repeal) (No.2) Bill*, detailing arrangements for replacing the ACNC, has been introduced into Parliament later in 2014.

Are there things the Department could undertake to assist charities with this transition? What factors should be considered in relation to the timing of the new arrangements?

Consideration should be given to the effectiveness of the current working model of the ACNC and to the extensive efforts already invested by charity and NFP organisations in the establishment of and compliance with this regulatory body.