



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: Independent Schools Victoria

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

State/Territory: Victoria

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Response to Options Paper:

Introduction

Independent Schools Victoria supports the broad deregulation agenda of the Coalition government.

In previous submissions relating to the establishment of the ACNC we have raised concerns that the new regulatory body has the potential to increase the administrative burden on our Member Schools even though key objectives of the current ACNC Act is to promote reduction of regulatory obligations on the not-for-profit sector.

Some duplication of reporting has been removed, in particular financial reporting to the ACNC and the Commonwealth Department of Education. However there continues to be duplication and an extensive compliance burden on Member Schools generated by a range of Commonwealth and state government agencies. In addition there are inconsistencies across states and territories in removing duplication of reporting requirements across the two levels of government.

Independent Schools Victoria notes that most submissions relating to the proposed repeal of the ACNC Act were opposed to repealing the legislation but this was not the case in the health and education sectors where there were higher levels of support for repeal. This is because institutions in these sectors operate in an intense regulatory environment. We consider that the ACNC has not yet created a risk-based, proportionate approach to the oversight of charities and other not-for-profits, particularly Independent schools in Victoria.

Independent Schools Victoria considers that whatever alternative arrangements the Australian Government proposes to implement, they should be underpinned by the principles of the current ACNC Act; that is reduction in red tape, minimising reporting requirements and enhancing transparency in relation to the operation of charities. There is simply no point in repealing the ACNC Act and establishing alternative administrative arrangements through other agencies such as ASIC and the ATO if the new arrangements continue to increase the compliance burden on the not-for-profit sector.

Proposed New Reporting Arrangements

Independent Schools Victoria seeks clarification on what information will be included in the new reporting arrangements.

Self-reporting would be consistent with existing requirements that Independent schools publish annual performance reports on their websites and provide information for the *MySchool* website. We support the proposal in the paper to provide exemption from separate reporting where organisations already make information publicly available. It is essential that consideration is given to ensuring there is a clear rationale for collecting and publishing data, consistent with the objectives of the new reporting arrangements.

Determining Charitable Status

Independent Schools Victoria strongly supports the current definition of charity, including the right of charities to advocate on behalf of their constituents.

The Australian Government intends to return the responsibility for charitable status to the ATO and is '*...keen to ensure independence in the decision-making process in determining eligibility for charitable status and related tax concessions*'. Independent Schools Victoria supports the fundamental principle of independence in decision making and in determining eligibility for charitable status in any review process. We question how this can be achieved within the organisational structure of the ATO.

- Option One (establish an independent panel) outlined in the paper does not resolve the potential conflict of interest between the regulator of charitable status and the organisation that determines tax concessions; the 'independent panel' also appears to only have an advisory function.
- Option two (form a separate area within the ATO) is more favoured as it appears to limit the possibility of conflict of roles involving assessing charities and providing a right of review.

Independent Schools Victoria considers there is lack of procedural detail in the Options paper to indicate whether either of the above options satisfactorily removes conflict of roles within the ATO.

A third option that establishes a panel of experts who would make initial decisions relating to charitable status should be considered.

It is also unclear whether the Australian Government intends to rely on existing powers of the ATO or to create new legislation to enshrine the key principles of the ACNC Act and to identify how the independence of decision making, as described above, will be implemented.

Proportionate Compliance Framework

Independent Schools Victoria broadly supports the compliance framework outlined in the Options paper. However it is essential that all national, state and territory governments adhere to the fundamental principles of reducing administrative red tape and duplication of reporting across government departments. If the approach outlined in the Options paper is to be implemented, the focus should be on reforming the processes based on the above principles, as well as on the structural arrangements.

The principle of proportionality should be incorporated into any replacement legislation and accompanying regulations. Reverting to previous structural arrangements in relation to the functions of ASIC, ATO and state and territory regulators without reforming the processes will not achieve the Australian Government's deregulation agenda.

Transitional Arrangements

We have stated in previous submissions that Independent schools across the country face uncertainty about their future level of recurrent government funding with the introduction of the Gonski reforms and, more recently, federal government budget announcements. The continuation of the debate about the future arrangements for the regulation of charities and other not-for-profit institutions adds to this uncertainty. Schools need certainty to plan effectively for the future.

Conclusion

Independent Schools Victoria is aware of concern within the not-for profit sector about the proposed repeal of the ACNC Act and planned alternative arrangements. However the

government must continue to pursue its agenda to reduce red tape and streamline regulation of the sector through a risk-based proportionate approach.