



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.

Name (first and surname):

Name of organisation: McGrath Foundation Ltd

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

State/Territory: Australia wide

Contact email address:

RESPONSE TO OPTIONS PAPER:

1. Self-reporting requirements

Instead of reporting to the ACNC, it is proposed that charities will be required to maintain a publicly accessible website that features the following information:

- **Names of responsible persons;**
- **Details of all funding received from Government (Commonwealth, State and Local); and**
- **Financial Reports.**

The ASIC reporting obligations of those charities registered under the *Corporations Act* which existed prior to the establishment of the ACNC will be reinstated.

These arrangements will be initially time consuming given the need to restructure the Foundation's website to include this information. The requirement to have audited financial statements on the website does not negate the obligations to lodge these financial statements Annually with State fundraising bodies in ACT, QLD, South Australia and Western Australia. As such, the stated aim of reduced reporting for organisations is not a reality.

The only impediment to compliance is with regard to the requirement to disclose all funding from Government which may be precluded by the individual funding contractual arrangements.

Having charities administered under numerous Government Departments removes the advantage of a centralised body providing both transparency and simplicity for compliance purposes, which was the aim of the ACNC.

2. Determination of charitable status returned to the ATO

Two options are proposed for determination of charitable status by the ATO:

- (a) Establishing an independent panel of external experts to review objections to initial ATO assessments.**
 - (b) Formation of a separate area of review within the ATO.**
- The ability to apply on-line for charitable status will remain.**

The Options Paper does not state upon what basis the determination of charitable status will be made, either the current legislative definition of charity or a return to the common law definition (which has been suggested by the Minister Kevin Andrews).

Both options presented have problems:

- Both Federal and State bodies will be determining charitable status for different purposes. There needs to be uniformity or common determinants at both Federal and State levels, given the regulation of charitable fundraising remains with the States. This is particularly a problem for any new charities or where a charity needs to reapply;
- There needs to be a mechanism for resolving any conflict between the Commonwealth determination of charitable status and that accepted by the States. Will there be an exchange of information between the ATO and the State licensing bodies? There are potential constitutional and privacy issues arising here;
- A substantial amount of time is wasted administratively complying with the requirements of State government authorities with respect to various fundraising activities and ensuring that the Foundation not only complies with these, but keeps up to date with changes occurring. One centralised regulatory regime rather than a

collection of different Government agencies making determinations on charitable status would ensure that valuable resources are more efficiently utilized thus enabling compliance costs to be minimized; and

- The ATO determines charitable status for taxation purposes only and cannot be effective in considering community and social implications of such a determination.

Option 1 proposes the establishment of “an independent panel of external experts”:

- It is unclear what area(s) of expertise these “experts” will have;
- The degree of independence from the ATO is questionable given a set of established principles will be required to allow the “Experts” to make their determination; and
- The initial determination is made by the ATO. The appeal structure is 3 tiered and therefore the system is unlikely to be able to deal with requests in a timely manner and is likely to be bureaucratically cumbersome.

Option2 similarly has issues:

- Similarly to Option 1, the initial determination will be made by ATO staff with a second separate area of the ATO dealing with disputes arising. The absence of a requirement for independence in the appeal process means the dispute resolution area will be able to access the initial records etc and thus potentially be influenced.

Neither option takes into account that a centralized NFP Regulator such as the ACNC, is a forum for generating discussion, reviewing options, seeking input from interested parties and facilitating consultation on future developments and Government proposals affecting the sector.

3. **A proportionate compliance framework**
ASIC, ATO, Australian Prudential Regulation Authority (APRA) and the State and Territory governments will rely on their current powers to provide appropriate compliance frameworks that are proportionate to the level of harm they are designed to mitigate. Only cases of wilful non-compliance with reporting requirements will be investigated.
The director duties, obligations on charities and compliance measures that existed under the *Corporations Act* prior to being switched off by the ACNC legislation will be reinstated.

The proposed “proportionate compliance framework” is a return to the multiplicity of regulation that existed prior to the ACNC. The paper states that the ATO has “sufficient power of monitoring, enforcement and information gathering”. This is only in relation to financial misconduct rather than the broader societal role. NFP sector transparency and accountability for the community is important, in particular for the bigger charities.

The Foundation regards the following as risks involved in this approach:

- Lack of communication between the ATO and the States could mean failure to follow up noncompliance with reporting requirements or related to misuse of charitable funds;
- Investigative powers and penalties differ from State to State; and
- A rebuttable presumption of virtue and the stated focus on high risk areas will provide uncertainty in the sector as to what is or is not acceptable practice. Clear rules should apply and be enforced.

4. **Transitional arrangements**
The current arrangements will remain in place until the legislation receives Royal Assent.
All charities currently registered with the ACNC will receive information from relevant Government agencies prior to any changes

The Foundation has no issue with this approach as long as sufficient notice is given to NFP's to allow time for the appropriate systems to be put into place for the changes to be implemented.