



**Australian Charities and Not-for-Profits Commission
(Repeal) (No.1) Bill 2014**

Options Paper

Submission by
The Australian Association of Christian Schools Limited.
to
**Civil Society and Programme Delivery Policy Branch
Department of Social Services**

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for
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INTRODUCTION

The Australian Association of Christian Schools (AACS) represents more than 120 schools and more than 50,000 students across Australia. Our schools are located in every state and territory and range from very small to very large; from urban to regional, rural and remote. Our schools are almost all low-fee or no-fee (indigenous) schools.

Notably, all of our schools are operated by not-for-profit organizations. Some are registered companies limited by guarantee under federal legislation, but perhaps most are registered as incorporated associations under state or territory legislation.

The very nature of our schools means that they are governed by boards of directors who are drawn from the membership of their school communities. They are therefore almost entirely voluntary, inexperienced but well-intentioned citizens wanting to make a substantive contribution within their local school community.

While many boards actively seek out governance training for their directors, the majority would lack any detailed input regarding their responsibilities as directors and boards.

Thank you for the opportunity to make this submission.

GENERAL COMMENTS

AACS wishes to point out that the Associations of Independent Schools that have made submissions on this issue may not accurately reflect the positions taken by many of their member schools including AACS members.

While initially very cautious about the potential for heavy-handed bureaucratic intrusion by the new ACNC, **AACS has found the ACNC to be a very welcome, efficient, responsive and reasonable agency to work with.** Compared to our previous dealings with the ATO and ASIC, the ACNC has been like a breath of fresh air to deal with.

To illustrate, let me draw your attention to the fact that past enquiries to the ATO and ASIC have taken up to 5 months to get a response. With ACNC, answers have been available over the phone within a few minutes. When making telephone enquiries to ATO and ASIC re the progress of an enquiry, it has been impossible to speak to the relevant officer. With the ACNC, we have, almost without exception, been able to speak to an expert officer on our initial call.

The concept of a one-stop-shop for charities and not-for-profits has been a very welcome and timely initiative. Far from being heavy-handed, our experience has been the opposite. While there have been new compliance/reporting regimes, the impost of these reporting regimes on our schools is, in the context of a full year, very minor. As to cost, these requirements are of no significance at all in the context of annual budgets, with the possible exception of very small schools.

AACS believes that the ACNC is an important support agency for the non-government not-for-profit, charitable sector. When taken as a whole, this sector makes a huge contribution to the nation and the economy. They carry out their work efficiently and are overwhelmingly reliable and honourable in their practices. Cases of malpractice, negligence, non-compliance and breaches of common law are relatively infrequent and, for the most part, minor.

Nevertheless, there have been cases in the not-for-profit sector of serious malpractice, embezzlement, corruption, negligence, poor governance decisions and outright manipulation of the charitable framework that do suggest that there is a need for education, vigilance and tighter compliance frameworks. AACS accepts that this is a reasonable expectation of government when an organization (no matter how small) is the beneficiary of substantial taxation concessions and/or generous government funding.

The ACNC charter, with its commitment to education, support and resources as well as its carriage of powers covering registration, data gathering, compliance reporting, monitoring, investigation and enforcement powers, is a work in progress. While they have made substantial progress in their short existence, there is much still to be done. AACS believes that there are good grounds to believe that further timely progress can and would be made to reduce multiple reporting, to reduce red tape and to reduce the time-commitment and cost-impost of compliance on charities/not-for-profits if the ACNC were given the opportunity to continue.

Notwithstanding the present government's intentions to preserve some of the positives achieved by the ACNC (should it be dismantled), **AACS believes that their commitment to the dismantling of a dedicated not-for-profit/charity agency within government is a retrograde step. The fragmentation of the ACNC functions and the allocation of some of these functions back to government departments that have been under recent serious criticism for incompetence and negligence makes no sense at all.**

The proposed Centre of Excellence is a total unknown as the present government has not produced a single blueprint of what the proposed alternative might look like. However, AACS acknowledges that the present Options Paper does give some indication of how the alternative arrangements might function. We will therefore comment accordingly.

Before turning to the specific proposals and questions of the Options Paper, AACS acknowledges the right of the present government to hold a different philosophy of government when it comes to regulation and accountability for the not-for-profit sector. We appreciate the desire and intention of the government to honour and trust non-government not-for-profit organizations. However, we would urge the government to be open to preserving the 'one-stop-shop' for the not-for-profits sector. While there may be some room for refinement of the ACNC charter and changes made to the responsibilities, goals and powers of the ACNC in response to the lessons learned from the past two years, AACS sees no reason to abandon what has been a very worthwhile initiative of the previous government.

The not-for-profits sector deserves a single, user-friendly, consistent, specialist agency to facilitate the many interfaces with government that they must have. AACS acknowledges that the aspirational nature of the 'harmonization' goals of the previous government have not yet been realised, but we believe that they should not be abandoned. The reasons for the failure of this aspect of the ACNC agenda are, of course, largely political and will, in due course, come about. **There are so many reasons why this element of the 'harmonization' goals of COAG must be pursued. It makes no sense at all to abandon them.**

AACS has particularly welcomed the 'governance standards' of the ACNC. As a statement of expectations of boards of governance, they can only improve the outcomes for organizations over the longer haul. The *enforcement* of such standards may prove to be a step too far, but, as a part of the educational function of the ACNC, they make a lot of sense.

Finally, AACS notes that, when one charitable organization fails or is found to have acted dishonourably or negligently, there is a flow-on effect to other similar organizations. The trust of the wider community in the not-for-profits sector is undermined by such events and the capacity of charities to grow and thrive is set back. Healthy, reasonable compliance and accountability protocols are not to be feared. In fact, it is in the interests of the charitable sector to face such protocols so that the confidence of the community can be strengthened rather than undermined and so that the risk of failures can be minimized. The ACNC has made significant progress towards those goals and we believe that such protocols must be protected into the future.

PROPOSALS FROM THE OPTIONS PAPER

If the legislation passes through both houses and the ACNC were to be collapsed and broken up, AACS would make the following responses/submissions in relation to the Options presented:

1. Proposed New Reporting Arrangements

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

Taken as a whole, AACS believes that the total time-commitment of reporting under the proposed regime for organizations that are not exempt would be about the same as it currently is under the ACNC. In fact, when taking into account the self-reporting on websites and the ASIC reporting obligations that will be switched back on, it may take a little longer and cost a little more. It must be remembered that our schools will still have to report in great detail to the Commonwealth Department of Education (The Financial Questionnaire and Census) and ACARA (for MySchool transparency), and at various times to the Boards of Studies/Registration Boards in each state/territory and the State/Territory Departments of Education.

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

Setting up the website to accommodate the self-reporting would be an initial time and cost impost for all our schools. However, these would be relatively minor, one-off imposts in the overall demands on the schools' resources.

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

The costs of making changes to website designs and functionality to accommodate self-reporting requirements could be quite considerable. Otherwise, no.

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

The changes proposed will, of course, provide adequate transparency. They only repeat that which has already been available in other places such as ACARA, ACNC, School Annual Reports, ASIC (or State Incorporation Agencies). No matter how one cuts this issue, there will be multiple reporting! For the non-government schools sector, transparency has not been an issue for years. This will make no difference in terms of transparency.

2. Determining Charitable Status

AACS believes that the return of this function to the ATO is a serious retrograde step. We have no confidence in the ATO to 'change its spots'. As a huge government department, it has been oppressively bureaucratic, remote, unapproachable and painfully slow and unreliable. These characteristics come from the top and are a product of size, structure, policy, processes and culture. The proposal to set up 'a dedicated function ... with responsibility for determination of charitable status' does nothing to address our lack of confidence. **This function needs a *dedicated agency* external to the ATO and ASIC, not a *dedicated function* within a huge bureaucracy. Charities and Not-for-Profits deserve better than this.**

However, in answer to the questions presented in the paper:

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

Option 1

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

The agency must start by being knowledgeable of the not-for-profits sector, sympathetic in assisting the application process, flexible in dealing with applicants' relative inexperience, responsive to requests for assistance and prompt in conducting the process. It must assume honourable motives and refrain from placing bureaucratic obstacles in the way of the process.

3. Proportionate Compliance Framework

It is very difficult to comment on these matters until one sees what the government sees as 'proportionate'. **Details of the compliance requirements must be open to public scrutiny before implementation**

Against this observation, AACS sees no reason to change the 'information collection, monitoring and compliance' functions that have been operating under ASIC. They are neither intrusive nor a substantial compliance burden. Surely these would be little different, and perhaps less heavy handed, than the powers currently invested in the Commissioner of Taxation. It just seems to be a more fragmented and inefficient model for maintaining compliance.

AACS has less confidence in ASIC, the ATO and the states and territories to provide a coherent compliance framework than in the ACNC to progress the 'harmonization' agenda – a far more pressing need than a self-managed compliance framework.

AACS appreciates the 'rebuttable presumption of virtue', however, that does little to cover the reality of the absence of experience and competence in many not-for-profit organizations. Compliance must sit closely alongside education, resourcing, communication and data gathering to ensure that volunteer boards are sympathetically encouraged, empowered and motivated to be constantly improving their governance practices and due diligence. That is something on which the ACNC has been making good progress.

The last paragraph of this section of the Options Paper is, in our view, aspirational and naïve and, in all likelihood, it would be a backward step.

However, in answer to the questions presented in the paper:

- *Are there any reasons why this approach may not work?*

It assumes a relatively high level of knowledge, depth of experience and competence in voluntary, not-for-profits boards that very often are simply not there. ATO and ASIC are simply the wrong kinds of agencies to achieve the sensitive balance between compliance

data gathering on the one hand and education, resourcing and communication on the other. That is why the not-for-profits sector deserves a sympathetic, dedicated, specialist agency that covers all these elements that are needed to advance a healthy not-for-profits sector.

- *Do you foresee any risks in this approach?*

I believe the risks are anticipated in my previous paragraph

4. Transitional Arrangements

- *What other transitional arrangements might be required?*

No comment

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

Any change must be heavily scaffolded in **user-friendly communications** that cover off on all elements that have been part of the strength of ACNC. Schools need to know where information will now be accessible; which agency will take up which functions; how schools can access someone to speak to; how to lodge complaints and questions regarding the inevitable confusions or blind-spots that will emerge (ie a help desk or enquiry line).

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

No action should be taken to dismantle ACNC until all elements of the new structure are in place and training conducted re new protocols, a new culture, specialised knowledge of the not-for-profits sector, educational resources, governance standards, communications standards and mechanisms, etc

We would be very willing to speak further to the comments and suggestions made in this submission should that be desired.

Consultant

For the CEO of the Australian Association of Christian Schools

POSTSCRIPT

AACS acknowledges that there are numerous different types of charity in the not-for-profits sector. This has been the source of some of the case that has been mounted against the ACNC. Rather than allowing these differences to become the ground for dismantling the ACNC, surely it makes sense to create different protocols for the different types of organization.