



# 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: **Thomson Geer**

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

State/Territory: **Australia wide**

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## **Response to Options Paper:**

Thomson Geer lawyers acts for a number of leading providers of health, aged care and welfare services in Australia, and major religious organisations, that are currently registered with ACNC.

Overall, we do not see any material reduction in the extent of regulation, registrations, reporting and disclosures required from charities, flowing from implementing the actions in the options paper – most of what is now with ACNC will go to the ATO or return to ASIC (in the case of companies limited by guarantee).

Our clients are disappointed that no progress at all is being made in harmonising charitable fund raising legislation, probably one of the most confusing areas that charities have to grapple with. We acknowledge the blame here is shared by the federal, state and territory governments.

### **Proposed new reporting arrangements**

Some of our clients do not perceive any advantage in unstructured reporting on their website on compulsory areas requiring constant updating, compared to a structured annual information statement or similar filed report with ASIC.

Our clients are concerned about the proposed new requirement of having to disclose on websites sources of all funding received from commonwealth, state and local authorities. At the Sydney consultation session, the department representatives said that they only wanted to have cash grants disclosed but as discussion proceeded, it seems what is being sought is transparency on the extent of all levels of government assistance a charity receives. If that's reflected in the legislation, it would open up lengthy analysis of all commonwealth and state and local tax rating and other revenue exemptions, stamp duty exemptions etc (including land tax, council and water rates). Depending on the drafting of the provision, it could also require reporting of recurrent funding and even payments under service agreements.

In any event, reporting accurately on every dollar of cash grants received, would in itself be an unwanted new burden – hardly lining up well with the government's declared aim of reducing red tape. In particular, it will be a nightmare for the aged care sector.

### **Proportionate compliance framework**

The government must recognise the confusion that has existed under the current multi-regulator regime and frame its new and transition arrangements to improve matters. For example, charities that are companies, have struggled with dual regulation of directors' duties by both ACNC under the governance standards and ASIC under Corporations Act provisions that were not 'turned off'. Please don't continue this when the ATO will have powers of suspending directors – it would be undesirable if wider criteria were applied by the ATO beyond Corporations Act breaches. There should only be one regulator who suspends directors.

### **Determining charitable status**

In relation to appeal mechanisms, we believe most charities and potential charities would prefer review of challenged ATO decisions by an independent panel rather than just ATO officers.

### **Transitional arrangements**

Under ACNC, some of our clients went from a single reporting entity to multiple ones. Please ensure the change to ATO regulation includes a capacity for charities to effect a 'tidy up' of anomalies that have crept in and created multiple reporting for entities that are essentially part of the one charity.

The federal government needs to do better on the quality and effectiveness of communication between its own entities and with the states and their entities. The objective of creating national or at least uniform regulation of charities Australia wide should not be abandoned.