

Response to Options Paper

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1. Responses to Questions about Self Reporting

- a. The proposal to require self-reporting on a web site is likely to be less time consuming than current requirements for most medium and large charities, however, many small charities do not currently have a web site nor the expertise to create and administer one. For those charities the proposed arrangements will substitute for the present compliance burden and may add to their costs. Some arrangements will need to be made to either exempt small organisations or sponsor the creation of "Community Hub" arrangements whereby web site facilities could be shared for this purpose.
- b. The extent of the compliance burden of compulsory disclosure of all government funding would depend on the nature of the disclosures required. If the disclosures were to be limited to the name of government department and the total value of funding in the previous financial year, then there would be little compliance burden. However if details of each department, each program and details of the purpose of the funding were to be required, the additional compliance burden would become significant for some organisations. (See Flack, T., & Ryan, C. (2005). Financial Reporting by Australian Nonprofit Organisations: Dilemmas Posed by Government Funders. Australian Journal of Public Administration, 64(3), 69–77.)
- c. It is important to note that many organisations already produce annual reports (including their audited annual financial statements) for their members, donors and other stakeholders and these are already available on charity web sites. (Good examples can be seen at [Mission Australia](#); [MS Society](#); [Rosie's Street Mission](#); [Surf Life Saving](#))
- d. The encouragement of high quality annual reporting practices by charities would be a good way to improve and enhance levels of transparency. Public policy directed towards encouraging greater levels of transparency could be facilitated by encouraging charities and other not-for-profit organisations to enter annual reporting awards like <http://www.arawards.com.au/> and <http://www.pwc.com.au/about-us/corporate-responsibility/transparency-awards/>)
- e. Any additional, specialised disclosure requirements imposed by the Commonwealth government could create duplication for those organisations that already produce annual reports. The unintended consequences of such requirements may be to discourage continuing comprehensive disclosure by those who currently publish annual reports.
- f. It should be noted that the ATO already administers the Australian Business Register (ABR) which already contains the names, Business Number and tax concessions granted to all registered charities and other not-for-profit organisations. It would be relatively simple to add the proposed information to that Register and either, facilitate charities and other not-for-profit organisations to upload the additional information, or to provide the link to their own annual reports on the charity web site.

POLICY DOWNSIDE

The great disadvantage of the proposed self-reporting policy is that such arrangements hinder the collection of much-needed comprehensive and comparable data about the charity and the rapidly growing (13% p.a.) which represents **3.9% of Australia's Gross National Product and 1,081,900 employed persons** (<http://tinyurl.com/ov7yaxy>.)

2. Responses to Questions about Determining Charitable Status

- a. In our view, no arrangement that involves the ATO in determining the tax status of charities is the best solution since the perception is that it puts the tax collection agency in charge of the decisions about what is, in effect, outside their jurisdiction. Such a situation must inevitably be perceived as a conflict of interest.
- b. If the ATO is to be given that responsibility, then Option 1 provides at least a arguable measure of procedural fairness by introducing a level of review by an independent panel of experts. Several important charity law cases in Australia have recently been unsuccessfully

3. Responses to Questions about Proportionate Compliance Framework

a. Accountability for Commonwealth funds and activities that benefit from tax concessions.

Comment: In our view accountability in not-for-profit organisations is not just about acquittal of funds and sending forms to government departments. Accountability in the not-for-profit sector is also about the members of the governing body explaining the conduct of the organisation to members, donors, service users and other stakeholders. This is best done formally in meetings informed by well written annual reports. Some form of annual reporting already occurs in the great majority of incorporated not-for-profit organisations. We believe that the existing culture of annual reporting can be leveraged for the purposes of public accountability. (See Flack, T. (2008). Annual reports still valuable for not-for-profit organisations. Keeping Good Companies, 60(2), 72.)

b. Enforcement at Commonwealth level

Proposals to transfer to the ATO the current enforcement powers of the ACNC in respect of the removal of responsible persons is a concern since it places the office bearers of a charity under investigation in a position where their continuing capacity to challenge a decision of the ATO is in the hands of the ATO. In our view, the ATO's responsibilities should be restricted to the administration of the tax law and should not include the authority to remove office bearers. The relevant authorities administering the form of incorporation whether they are the Australian Securities and Investment Commission (ASIC), the relevant State and Territory Departments responsible for the administration of associations and societies or the State and territory Attorneys General, should retain those powers.

It is not clear how the new requirement to publish certain information on the charity's website would be enforced, but given the wide range of technologies available and the lack of any detailed data standards, more detail will be required before any judgement can be made about enforcement.

c. Fraudulent activity

Although the State and Territories currently have laws in place to prevent charities undertaking fraudulent activity and misusing public funds, these laws have been widely criticised for being out-of-date and no longer fit-for-purpose. (See <http://tinyurl.com/oru3u8g>). In the absence of the ACNC, which had begun work on reform in this area, the Commonwealth government has an important and urgent role to play through the Council of Australian Governments (COAG) to achieve reform in this area.

Perhaps the single most compelling reason for the need for urgent reform in this area is the emergence of on-line charitable fundraising. The use of the Internet makes the traditional registration of charities and community organisations at a state or territory level increasingly problematic. Following the example of Australian Consumer Law, the regulation of charities at State and territory level needs to be updated and "harmonised". The Commonwealth needs to take a leadership role in that process.

d. Three Dangers

The three great dangers are that, first, the public policy appetite for reform, particularly of the out-dated State and Territory charity laws, will be lost. Secondly the proposed arrangements, without amendment, will mean the loss of a capacity to collect national data about an important part of the important not-for-profit sector of the Australian economy. Finally, in a

period of considerable public support for the apparent benefits of the ACNC (see <http://tinyurl.com/kpq8h64>), any future highly publicised “charity fraud scandal” will be blamed (unreasonably) on the abolition of the ACNC.

4. Responses to Questions about Transitional Arrangements Required

- a. There are several other transitional arrangements that will need to be made, including the updating of the ABR to ensure that the data currently held by the ACNC on each registered charity is reflected on the ABR. It should be relatively simple to upgrade the ABR to allow for inclusion of other basic elements of information and to include a link to charity websites. Such an arrangement will enhance public access to information similar to that which currently is included on the ACNC Register and assist with enforcement.
- b. New arrangements will need to be negotiated with those States and Territories that have entered into arrangements with the ACNC to allow those State regulators to access ACNC data for their State regulatory purposes. (See <http://www.treasury.sa.gov.au/economy/charity-regulation>.)
- c. New arrangements will need to be made to transfer elsewhere the administration of the National Standard Chart of Accounts (NSCOA) which is currently administered by the ACNC. The NSCOA is an important COAG agreement that helps to standardise the financial acquittal of government grants at both state and commonwealth level. (See <https://www.coag.gov.au/node/63>.) Failure to ensure that NSCOA survives the transition will ADD to the red-tape burden of charities.
- d. New arrangements will need to be made to transfer the Charity Passport Project to another Commonwealth government department. This important project is part of the effort to reduce the red-tape burden on charities caused by requirements to provide the same data to numerous government departments. (See <http://tinyurl.com/okvgndj>).