



# Australian Council of Social Service

Civil Society and Programme Delivery Policy Branch

Department of Social Services

[consultationwithcharities@dss.gov.au](mailto:consultationwithcharities@dss.gov.au)

Thank you for the opportunity to provide feedback to the *Options Paper, Australia's Charities and Not-for-profits* (the Options Paper), which sets out proposed replacement arrangements for charities in Australia.

The Department would be aware that ACOSS and the community sector have been working over many years to achieve effective regulation for the sector. This work has been prioritised to address decades of piecemeal and ineffective regulation.

Working with Government and its Departments and agencies, ACOSS has aimed to engage with constructive measures to improve regulation for the sector. We very publicly supported the move towards an independent regulatory agency and have voiced our concerns about the Government's stated intention to abolish the Australian Charities and Not for Profit Sector Commission (ACNC). These concerns arise from the fact that the ACNC is beginning to deliver significantly on its agenda to improve regulation and reduce red-tape for the not-for-profit (NFP) sector.

As a result, ACOSS has significant concerns about proposals outlined in the Options Paper, which are set out briefly below. ACOSS also recommends to the Department our [submission](#) to the recent Senate Inquiry into the Bill to abolish the ACNC, which clearly sets out our key concerns about the proposed approach.

## **Self-reporting arrangements**

ACOSS applauds the Government's intention to make reporting requirements easier to manage for NFP organisations. However, we are concerned the proposed arrangements will undermine a significant element of the effective regulation that the sector was promised when it began working with Government on this issue. While some problems did emerge through the initial implementation phase of reporting to the ACNC, organisations have now provided this information and we stand poised to see the ACNC deliver on a key value-add: the provision of a central register of information regarding the NFP sector. We agree with the Government on the need to get the balance of reporting right. However we believe that a small reporting requirement is a worthwhile investment in towards providing accountability and transparency to funders and the general public, particularly for organisations in receipt of significant tax concessions or funding from Government and other donors. The importance of a central, comprehensive and comparative register to supporting public confidence in the NFP sector has been highlighted by a number of inquiries, including the Productivity Commission's 2010 study.. The proposal outlined in the Options Paper will see this significant element of progress towards effective regulation eroded. As such, ACOSS strongly recommends the continuation of this mechanism, independent from the form of any future regulatory system.

## **Administrative Options**

ACOSS is one of the stakeholders referenced in the Options Paper that holds concerns regarding the return of regulatory functions to the Australian Tax Office (ATO). These concerns arise from real and perceived conflicts of interest, based on many years' experience of the ATOs difficulties in responding to the sector's specific needs in relation to the assessment of charity definition. Under the previous arrangements, the community services and social welfare sector did face significant challenges in convincing the ATO of charitable purpose due to a lack of understanding of the range of work undertaken by these organisations, and an understandable reluctance to provide tax concessions for organisations which undermined its primary purpose of revenue collection through taxation.



ACOSS is well aware of the arrangements currently in place whereby the ACNC shares resources with the ATO and has been comfortable with them as they have resulted in greater efficiency of administrative processes. As such, we do not see proposed arrangements as saving significant resources given administrative efficiencies have already been delivered.

ACOSS believes that a specific body within the ATO with an appeals process does not go far enough to ensure effective regulation for the sector. Given the economic and social value of the NFP sector, we believe there is sufficient justification for an independent, well-resourced and sector-focused regulator, rather than an 'add on' to a government agency focused on a completely different function. We also hold concerns that appeals processes may focus on administrative issues related to how decisions are made, rather than the merits of the decisions made.

### **Proportionate compliance**

ACOSS is proud to be part of a sector that is in large part motivated by good will and altruism. We view as positive the Government's exploration of the concept of 'rebuttable virtue'. However, ACOSS recognises the importance of public faith and trust in our sector and the need to protect it. We also recognise the increasingly complex nature of the sector's work and the need for professional standards to be in place in relation to industrial and governance arrangements and professional practice with clients. The current Royal Commission into Institutional Responses to Child *Sexual Abuse* demonstrates the dangers of failing to hold the NFP sector to the same standards as other organisations.

ACOSS is acutely aware of the potential damage to the whole sector of unscrupulous operators establishing themselves with the aiming of taking advantage of the benefits of charitable status for their own purposes. We are also aware of the fact that in a number of countries regulators have been established in response to scandals involving misappropriation within the charity sector. For these reasons, ACOSS believes to be beneficial proportionate compliance for the NFP sector, including active monitoring and auditing in areas of potential risk. ACOSS does not believe the agencies identified in the Options Paper have demonstrated their ability to undertake the compliance functions currently performed by the ACNC.

### **Transitional arrangements**

As noted, over the past two years the community services and social welfare sector has participated in a journey with Government to reform and improve regulation of the sector. We have been subject to the regulatory processes implemented by the ACNC and have done this in good faith. Any transitional arrangements must take into account the work that has been undertaken by the sector to date and to value the information, feedback and insights provided throughout this process.

If you require any additional information regarding this submission, please do not hesitate to contact the Deputy CEO of ACOSS, Rebecca Vassarotti, on 02 9310 6200.