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Civil Society and Programme Delivery Policy Branch
Department of Social Services
PO BOX 7576
Canberra Business Centre
ACT 2610

By Email: consultationwithcharities@dss.gov.au

Dear Sir/Madam

Options for Replacement Arrangements following the abolition of the Australian Charities and Not-for-profits Commission (Options paper).

We welcome the opportunity to provide feedback on the proposed replacement arrangements for charities in Australia following the abolition of the Australian Charities and Not-for-profits Commission (ACNC). Chartered Accountants Australia and New Zealand is made up of over 100,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses and not-for-profit entities all over the world.

Not-for-profit entities, and in particular charities, perform an integral social function, consume significant resource and, in some instances, draw upon taxation to fulfil objectives. We note that such a dynamic provides the need for accountability mechanisms that simultaneously promote transparency and the cost effective provision of accounting information. It is in this latter regard that we note the government's deregulatory agenda.

Premised on the above context, Chartered Accountants have supported the establishment of the ACNC as an independent national Not-for-profit regulator, since it was first suggested by a Howard government inquiry into the definition of charities and related organisations in 2001. This position has been generously supported by the majority of the Not-for-profit sector and various consultation and reviews including, but not limited to, the Productivity Commission, the Henry Review and Senate Inquiries. We believe that a national regulator has the best capacity to bring efficiencies to the sector.

In considering the reform alternatives to the ACNC, a clear distinction must be made between the conceptual objectives of the regulation currently in place and the regulatory mechanism of the legislation itself. The conceptual objectives remain constant regardless of the regulatory mechanism as the requirement for cost-effective and transparent accounting information remains.

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We note the ACNC objectives as follows:

- to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector
- to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector
- to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector (similar to objectives referred to in the Options paper).

The objectives noted above could be achieved under a variety of structures although, at this stage, such detail contained within the Options paper does not permit comment as to the effectiveness. A large number of our members have voiced concerns that it would be challenging to achieve these objectives without a dedicated independent regulator.

In the course of considering alternatives, we urge the consideration of some prominent and well received features of the current regulatory environment. One such feature is the work commenced by the ACNC and the Council of Australian Governments (COAG) to remove the duplication of reporting requirements imposed by state and territory and other Commonwealth agencies and regulators. This work should be continued. Previous commitments to reform incorporated associations and charitable legislation by the South Australian and Australian Capital Territory governments should not be overlooked in this instance.

Encouragement is given to exploring the collaborative possibilities, such as the proposed Civil Society National Centre of Excellence (NCE) by the Centre for Social Impact. In pursuing new collaborative opportunities, caution should be exercised so that positive aspects of current relationships and regulation are not lost. Consideration should be given to how the advances already made by the ACNC, in terms of the above objectives, can be incorporated into the return of regulatory power to the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC) alongside the establishment of the NCE.

Detailed comments on the specific questions posed in the Options paper are included in the attached Appendix. We have limited our recommendations to charities as no other Not-for-profits are the subject of the Options paper.

Should you have any questions regarding this submission, please do not hesitate to contact Dr Michael Fraser CA at michael.fraser@charteredaccountantsanz.com or +64 4 917 4594.

As a major stakeholder in the accountability and transparency of the Not-for-profit sector, we look forward to discussing future reform activity.

Yours sincerely



Rob Ward AM FCA
Head of Leadership & Advocacy

Appendix

1. Self reporting requirements

- **Do you believe that these proposed requirements will be less time consuming than current requirements?**
- **What changes would your organisation need to make to meet the new requirements?**
- **Do you foresee any impediments to charities complying with these requirements?**
- **Do you believe these requirements will provide transparency? If not, what changes would you make?**

- I. The Options paper proposes that charities will be required to maintain a publicly accessible website that features certain details including:
- Names of responsible persons
 - Details of all funding received from Government (Commonwealth State and Local)
 - Financial reports.

We note the above requirements are intended to achieve a balance between the need for public accountability and a commitment to not burden organisations with unnecessary reporting obligations.

In the instance of permitting publicly accessible details, we note that a centrally maintained register of charities more readily achieves the objective of public accountability. Data stored on a centrally held database achieves a number of objectives. It fosters greater transparency and accountability as omitted data can be more easily identified and rectified. It enables members of the public to easily research charities when making bequest or donation decisions. Data collected on the charities register is also a valuable source for policy development in the Not-for-profit sector. We believe the maintenance of the charities register would be of great benefit to the sector and could be potentially performed by the ATO and/or monitored by the proposed NCE. Self-reporting in this instance should give way to accountability and research objectives.

- II. In order to achieve the objectives of the proposed reform, the reporting requirements should be no more onerous for charities than those under the ACNC legislation. It is noted that the Options paper proposes retaining such exemptions provided for small organisations under some circumstances. We fully support this proposal. In extending the concept of reform imposing no greater reporting burden than necessary, financial reports should not be defined as general purpose financial statements. Only those charities meeting the definition of a 'reporting entity' under Statement of Accounting Concept SAC 1 should be required to prepare full financial statements in accordance with full Australian accounting standards AASBs. Such a proposal tempers accountability with the provision of cost-effective accounting information.
- III. We note that consideration is to be given to providing an exemption from self reporting to organisations currently making information publicly available through another Commonwealth regulator. The effective work commenced by the ACNC and the Council of Australian Governments (COAG) to remove the duplication of reporting requirements imposed by state and territory and other Commonwealth agencies and regulators on Not-for-profits should be continued.

- IV. Further consideration is required with regard to the method proposed in section three of the Options paper whereby members of the public would need to report on instances of non-compliance to ensure details are maintained on websites. Asking members of the public to patrol non-compliance is likely to be of limited effectiveness in achieving the objective of public accountability. In some instances some smaller organisations may not actually maintain a publicly accessible website. This would be in tension with the objectives of the reform by increasing administrative cost. To date, such organisations have complied with the requirements of the ACNC legislation to provide their Annual Information Statements (AIS) to the ACNC.
- V. We acknowledge that the Options paper is at a stage of development where not all the desired information is confirmed. Further detail regarding the nature of required information will need to be provided as it may influence the architecture of the proposed reform at the design stage. For example, does the term 'funding' include government service contracts, along with indirect and direct funding?

2. Determination of Charitable Status

- **Which of these options do you believe best guarantees the independence of the decision making process?**
- **Are there any other considerations that should be taken into account when these functions are undertaken?**

We note that the responsibility for determining eligibility for charitable status and related tax concessions will return to the ATO. Many of our members share the concern acknowledged in the Options paper about an inherent conflict of interest in the ATO determining eligibility for such tax concessions and raising revenue. Independence is of central importance and, as such, we agree that arrangements must be put in place to ensure independence in the decision making process when determining eligibility for charitable status.

Option One of establishing an independent panel outside the ATO would be our preference of the proposals mooted. This panel should be given decision making authority and be able to decide on the interpretation of the law by the ATO. A referral to the panel should not involve any cost to the applicant.

We are supportive of the intention to maintain many of the processes which have reduced the workload for charities when applying for charitable status, including the ability for organisations to apply on-line. The ACNC has received very positive feedback in respect of customer satisfaction (ACNC Annual Report 2013). Having knowledgeable, professional and dedicated staff providing assistance which is enabling, helpful and responsive has driven these results. Retaining ACNC staff and other improvements in processes achieved by the ACNC would be of significant benefit to the charities sector. All attempts should be made to retain the advances achieved.

3. Proportionate Compliance Framework

- **Are there any reasons why this approach may not work?**
- **Do you see any risks in this approach?**

We support the approach of a proportionate compliance framework. This approach was a positive feature in the ACNC Act and required consideration of the principle of regulatory necessity, the principle of reflecting risk and the principle of proportionate regulation. The presumption that most people involved in charities are acting honestly is generally a well-founded premise. However, in order to protect consumers and public confidence, careful planning is needed to address the rare cases of serious wrongdoing in instances of both wilful non-compliance and gross negligence. As noted in section one of this submission, instances of self-reporting are not necessarily conducive to adequately addressing the inherent non-compliance risk.

A proportionate approach, including the provision of information and education to support the knowledge, expertise and capacity of those involved in charities would consume resource from the ATO and ASIC. Sufficient resource must accompany this responsibility. If sufficient resource cannot be mobilised by regulators then consideration should be given to the NCE partially undertaking this role. The NCE could liaise with regulators on behalf of charitable organisations where difficulties in communication with the ATO/ASIC have arisen.

4. Transitional Arrangements

- **What other transitional arrangements might be required?**
- **Are there things the Department could undertake to assist charities with this transition?**
- **What factors should be considered in relation to the timing of the new arrangements?**

A positive feature of current legislation is the relaxation of requirements for companies limited by guarantee regarding directors' duties and meetings. Member feedback indicates this feature should be retained when their regulation is returned to ASIC.

Additional transition guidance solicited from members includes details of the information collected in the ACNC register. This information should be carried forward to the ATO register and provide for the removal of inactive charities and updating of other necessary details.

Communication regarding all aspects of the transition should be made readily available and communicated to charities in a timely and clear manner. Appropriate consultation and education should take place as early as possible. This is particularly important given that there has already been significant and prolonged change in a sector which is traditionally under-resourced and largely volunteer staffed.