

**Response to the: Options Paper -
Australia's Charities and Not-for-profits**

NATIONAL DISABILITY SERVICES

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National Disability Services

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About National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes more than 950 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

NDS is pleased to provide the following comments to the Department of Social Services on options for replacement arrangements following the abolition of the Australian Charities and Not-for-profits Commission (ACNC).

Summary

Alongside the majority of the not-for-profit organisations, NDS supported the establishment of the ACNC as a mechanism to strengthen public trust and confidence in the sector and to reduce the regulatory burden. If the repeal of the ACNC proceeds, NDS seeks to have these two important objectives fulfilled by other means. Several critical functions of the ACNC need to find a new home.

The proposals presented by the Department are not sufficient. They will likely return the sector to the regulatory problems and the lack of transparency identified in extensive consultations over last decade, and as outlined by the Productivity Commission in 2010. NDS urges the Government to return to the drawing board to develop a replacement for the ACNC that will better achieve the goal of reducing the regulatory burden on the sector. With this in mind, NDS has suggested amendments to the Department's proposals. While we do not support the Australian Tax Office (ATO) determining charitable status, if this approach is adopted, we recommend broadening the functions of the proposed new unit within the ATO.

Comment on the options for replacing the ACNC

1. Self-reporting to ensure public accountability for charities' operations

The proposal is to require organisations to maintain a publicly accessible website with financial reports; however, there are a range of exemptions from this if there are other reporting requirements, or for smaller organisations. This may be less time consuming for exempt organisations but it is not straightforward. There is a risk that providers will be unclear about what is required due to the various exceptions and because there is no point of contact to gain advice and information. There is also a lack of a consistent template across financial reporting requirements.

It is suggested that organisations will need to provide details of all funding received from governments, but the format of this detail is unclear and in many circumstances this will be complex. For example, what will be the reporting expectations for organisations that receive funding that is individualised and fluctuating from the National Disability Insurance Agency? It is unclear where advice about this and related matters will be developed and how it will be distributed.

There is a lost opportunity to streamline reporting across Commonwealth regulators and states and territories which a 'one-stop-shop' approach could have addressed over the longer term. As noted to the Senate Economics Legislation Committee: "the ACNC has done more in a little over a year than COAG and most government agencies have done in 20 years to reduce red tape."¹ But there is much more which could be done to streamline reporting across Australia. At present a national charity operating across jurisdictions must prepare multiple financial reports to satisfy different regulatory requirements².

The proposal could also reduce transparency and public confidence. Without consistent reporting

1 The Community Council of Australia June 2014.

2 McGregor-Lowndes, Myles, Poole, Glenn, Flack, Ted, & Marsden, Stephen (2014) Defining and Accounting for Fundraising Income and Expenses : Executive Summary : ACPNS Current issues Information Sheet 2014/2. The full report is available for download at <http://eprints.qut.edu.au/73420/>

arrangements or a website where it is possible to search and find authoritative information the public will find it hard to access information or make informed judgements. In some cases there will be no reporting required, which could perpetuate poor practice. The proposal will also make it easier for the very few dishonourable organisations to obfuscate and hide malpractice.

To reduce these risks, NDS recommends that this proposal be complemented by the development of a best practice online financial reporting framework. This should be provided to the not-for-profit sector as a resource. This would provide both a useful template and a benchmark for the public to assess the quality of information.

2. Returning determination of charitable status to the ATO with a framework in place to ensure independence of decision-making

NDS is disappointed that, despite opposition from the sector, the Government is proposing to return the power to determine charitable status to the ATO. However, NDS is pleased to see the proposal to establish a dedicated unit within the ATO to address the needs of the charitable sector. This will help alleviate some of the previous concerns about the expertise and independence of the ATO.

To be effective the proposed dedicated unit's functions need to be extended to include:

- the provision of advice on the financial reporting requirements;
- the maintenance of a register of charitable organisations; and
- the issuing of authoritative up-to-date certificates regarding charitable status.

These functions will ease the burden on not-for-profit organisations, particularly in relation to proving their charitable status when this is required: for example, to gain discounted rates to hire venues or to encourage philanthropy. They will also aid sector transparency and help build confidence and support for the sector.

NDS also supports the establishment of an independent panel of external experts to advise on disputes about an ATO determination on charitable status. To ensure this review process occurs in a timely way, NDS recommends that mechanisms are put in place to ensure a maximum timeframe.

NDS does not support the second option for review processes which involve another separate area within the ATO. This would lack independence, transparency and expertise and is unlikely to be an appropriate review mechanism.

3. A proportionate compliance framework that would leverage existing powers

As noted earlier, NDS is concerned that the proposals for reporting will reduce transparency and public confidence. This combined with the proposed extremely 'light touch' compliance will make it easier for unscrupulous individuals and organisations to take advantage of well-meaning people, with a potentially detrimental impact on the reputation of the sector.

Therefore, NDS encourages the Government to re-think this proposal - in particular the idea that "only cases of wilful non-compliance with reporting requirements will be investigated to ensure the self-reporting framework is maintained..." Instead, the Government should ensure the proposed ATO dedicated unit has sufficient resources to ensure financial self-reporting at the same time as it establishes charitable status, issue certificates and maintains a register.

In addition to the increased risk of abuse of charitable status privileges, NDS is concerned that this proposal will ultimately increase the regulatory burden for charitable organisations. Returning the full responsibility for addressing misconduct to multiple authorities, including the

Commissioner of Taxation, the Australian Prudential Regulation Authority, Australian Securities and Investments Commission and various States and Territory government authorities, will complicate life for charitable organisations and increase the cost of compliance. The result will be the growth of overlaps, inconsistencies and administrative burdens, especially in response to publicised wrong-doing by a small minority. This is the problem the ACNC was set up to solve.

Government should rethink returning responsibility for regulating charitable status to such a wide range of authorities.

4. Appropriate transitional arrangements to provide certainty for the sector

NDS hopes that some of the useful work that has been completed by the ACNC can be maintained and handed over to appropriate bodies. These could include a properly resourced and dedicated unit within the ATO and perhaps a new Civil Society National Centre of Excellence for the sector that is currently being explored by the Centre of Social Impact. To ensure a smooth transition, attention needs to be paid to the handover process which would require some level of overlap between the time the ACNC ceases to operate and the establishment of the new bodies.

In particular, NDS would like to see the work the ACNC has completed on a national register transferred. If this register is not maintained and available it is likely some states and territories will develop independent registries, thereby creating duplication and inconsistency. Any work developing a financial reporting framework would also be usefully transferred and it would be wasteful if findings from investigations that have occurred are lost.

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