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If submitting on behalf of a company or organisation

Name of organisation: Pitcher Partners

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

Professional Services Firm

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Response to Options Paper

GENERAL FEEDBACK

Pitcher Partners supports the existence of an independent oversight body for the not-for-profit sector to provide independent oversight, support the sector and co-ordinate the dissemination of information to the various interested stakeholders and funding bodies. The return of certain regulatory functions to the Australian Tax Office (ATO) and the Australian Securities and Investments Commission (ASIC) based on the Government's broader deregulation agenda, appears to merely move functions from the ACNC to the ATO and ASIC, with no real reduction in the regulatory burden, and a significant loss of support for the sector. An independent oversight body has the potential over the medium term to facilitate a reduction in regulatory burdens for charities, as well as other not-for-profits over the longer term, due to the centralised nature and specialised focus of such a body.

PART 1 – PROPOSED NEW REPORTING ARRANGEMENTS

Question 1 – Do you believe that these proposed requirements will be less time consuming than current requirements?

We do not believe that the suggested change will be less time consuming than current requirements. Charities will be required to maintain a publicly accessible website that features specified information including financial reports, instead of submitting this information to a centralised oversight body. The actual nature and content of the required information, including financial reports, does not change.

Question 2 – What changes would your organisation need to make to meet the new requirements?

The change will not impact our clients significantly, however represents a departure from the original aspiration to 'report once, report often' through a centralised oversight body. Presumably the burden of reporting to numerous stakeholders at numerous times, and in numerous formats will be maintained.

Question 3 – Do you foresee any impediments to charities complying with these requirements?

We do not foresee impediments to compliance with these requirements, however believe that the self-reporting requirements will make it more time consuming for users of the financial reports of charities to access, and specifically compare different charities with each other, which is due to the loss of access to financial reports of all charities from one centralised source.

Question 4 – Do you believe these requirements will provide transparency? If not, what changes would you make?

The new requirements do not change the reporting format of organisations, and will not lead to the disclosure of more reliable and relevant information to the users of the financial reports of charities. The changes will make it more difficult and time consuming for financial statement users to access and compare the financial reports of different charities, due to the loss of access to financial reports of all charities from one centralised source

PART 2 – DETERMINING CHARITABLE STATUS

Question 1 – Which of these options do you believe best guarantee the independence of the decision making process?

We do not believe that any of the options guarantee the independence of the decision making process. In our view a body independent of the ATO should determine the charitable status of an organisation. The ATO is tasked with collection of revenues and is significantly at risk of a perception of a conflict of interest.

It should be appreciated and clearly understood that in any proposal to hand over the powers of the ACNC to the ATO, the Commissioner is necessarily conflicted and cannot be an independent arbiter. As long ago as 1926 the High Court of Australia, in *Moreau v FCT* (1926) 39 CLR 65 held that the Commissioner's function was "...to administer the Act with solicitude for the Public Treasury and with fairness to the taxpayers".

By his very function the Commissioner is conflicted should he have the role of determining charitable status. That is by reason of his solicitude for the Public Treasury (or concern for the Consolidated Revenue), he cannot be an independent decision maker.

This issue is fundamental. This is not a "perceived conflict" as suggested by the Options Paper, but a clear actual conflict. The Options Paper states that:

"The Government is keen to ensure arrangements are put in place to ensure independence in the decision making process when determining eligibility for charitable status and related tax concessions".

Neither option presented allows for the Government's objective of independence. This is only achieved by removing the ATO from the decision making process, as is currently achieved by the role of the ACNC.

As either option commences the process of determining charitable status with a non-independent arbiter, the potential for disputes escalates to the Administrative Appeals Tribunal (AAT). This just

simply shifts the administrative burden to another area. That is, from the ACNC, to the ATO and the AAT.

Under Option 1 it is stated that "This panel would operate in a similar way to others that are maintained by the ATO, such as the General Anti-Avoidance Rules Panel". Should the Department of Social Services not already be aware, we point out that the Commissioner considers, but is not compelled to follow recommendations put to it by the General Anti-Avoidance Rules Panel, on a particular tax matter, as the Commissioner and the Taxation Office must maintain independence of his and its function.

Of the alternatives proposed option 1 (the establishment of an independent panel made up of external experts who would provide advice on objections raised by charities that disagree with the initial ATO assessment on the determination of charitable status), at least provides for an independent objection process.

Question 2 – Are there any other considerations that should be taken into account when these functions are undertaken?

No additional comment.

PART 3 – PROPORTIONATE COMPLIANCE FRAMEWORK

Question 1 – Are there any reasons why this approach may not work?

The current ACNC powers in relation to information collection, monitoring and compliance will now be decentralised to a number of regulatory bodies, for example ASIC, APRA, ATO and State and Territory governments. Potentially this can lead to different interpretations by the various regulatory bodies, potential overlap in powers, as well as uncertainty about the relevant and appropriate regulatory body.

Question 2 – Do you foresee any risks in this approach?

As stated in our response to the previous question, the current ACNC powers in relation to information collection, monitoring and compliance will now be decentralised to a number of regulatory bodies, for example ASIC, APRA, ATO and State and Territory governments. This can potentially lead to different interpretations by the various regulatory bodies, potential overlap in powers, as well as uncertainty about the relevant and appropriate regulatory body.

PART 4 – TRANSITIONAL ARRANGEMENTS

Question 1 – What other transitional arrangements might be required?

The transitional arrangements state that any assessments currently being undertaken by the ACNC to determine an organisation's charitable status will be transferred to the ATO for completion. However, the transitional arrangements do not state whether the ATO will uphold the previous decisions by the ACNC in relation to the charitable status of organisations.

Question 2 – Are there things the Department could undertake to assist charities with this transition?

No comment.

Question 3 – What factors should be considered in relation to the timing of the new arrangements?

Many charities have 31 December 2014 year-ends and therefore the speedy resolution and clarification of future requirements is imperative.