

Response to Consultation with Charities Paper

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BDO is a provider of accounting taxation and consulting services to a wide range of charities. This submission is based on feedback from those charities and upon research undertaken by BDO. Russell Postle is also a director of the Royal Flying Doctor Service (Qld section) (1994 to current)

Response

Questions for discussion - Self Reporting

- **Do you believe that these proposed requirements will be less time consuming than current requirements?**
 - BDO considers that the proposed reporting requirements as they relate to the financial statements will require not produce an outcome of a time saving.
 - If the ACNC reporting requirements are “switched off” and revert to what applied previously many charities are Companies Limited by Guarantee and will still be required to lodge their financial statements with ASIC.
 - As a general rule many charities present to their members each year a set of financial statements including a balance sheet and statement of income and expenditure. Many constitutions require that those financial statements be audited. This requirement is established as part of the charity’s own governance requirements.
 - In addition there remains an overlap between ACNC financial reporting requirements and in most State’s the legislation dealing with incorporated associations. For example, in Queensland the Incorporation Associations Act requires an association registered under that act and that exceeds a revenue/asset threshold to have an audit. A further requirement is that a copy of these financial statements must be lodged with the regulator in Queensland shortly after the AGM of the association.
 - Although the law may be changed regarding the lodging of the financial statements with the ACNC, the saving will in effect be that of not having to mail a set of financials to a Melbourne address
 - As part of its regulatory regime, the ACNC requires charities to extract information and to restate their financial information into a standard form, the Annual Information Statement. This additional reporting can be time consuming as it is difficult to have a format that will capture the information in a relevant manner across the diversity of size and activity of the Australian charities. Feedback from our clients generally has been that the process for completion of the AIS has not been onerous. We recognise the contribution that the National Standard Chart of Accounts will have on easing this burden
 - Consequently BDO considers that the requirement should be to lodge with a regulator the financial statements that are required to be prepared, and this is a minor requirement.
 - If all charities are required to lodge a set of their financial statements with a single regulator, this reinforces the accountability that all charities have to society in general.
 - Therefore there remains a benefit to society that all charities are required to provide a report that describes their activities as part of the continual evaluation that charities are required to make that they continue to qualify for the taxation concessions afforded to them by society.
 - BDO submits that a common threshold for reporting be maintained for all charities regardless of their legal structure.
 - BDO also submits that as charities in effect receive support from society through the available tax concessions, charities have a duty to report to society that they remain entitled to those concessions.
- **What changes would your organisation need to make to meet the new requirements?**
 - For the charities that we assist they already prepare financial statements generally on a general purpose reporting basis.
 - These charities will already include a copy of their financial statements on their website as part of their existing current approach to remain accountable to members, donors, supported sponsors and the general community.
- **Do you foresee any impediments to charities complying with these requirements?**

- BDO submits that if the sole requirement is to load a set of financial statements onto the charity's own website that in the case of the larger professionally run charities this is already occurring so will not have an impediment.
 - For smaller charities that are seeking public support through contributions of time or money, accountability is essential and they will already be producing the financial statements and making them available.
 - For very small charities the websites may be very basic and include little more than a link to a document being the financial statements. Many small charities may not have access to resources to maintain a website.
 - Some organisations have several charities that are associated with that organisation - if a charity does not have a website that is dedicated to that particular charity are they required to establish a website specific to that charity just to display a set of financial statements?
 - If a charity has multiple websites as part of its service delivery is it required to place a link and / or a copy of the financial statements on each website?
- **Do you believe these requirements will provide transparency? If not, what changes would you make?**
 - It is our observation that the layout and content of the website for every charity differs significantly as the focus of each website is about the promotion and service delivery of the particular charity's purpose / mission.
 - Consequently BDO considers that it will be an outcome that the location and accessibility of the financial statements of every charity will differ which may make it difficult for individual interested parties to navigate the web site and find the required reports
 - The proposed format of the ACNC is that all of the charities registered at the ACNC will be required to lodge a set of financial statements subject to the different reporting / review & audit requirements linked to size.
 - A search for a charity on the ACNC website can be done by ACN or ABN and from that the direct link to the details of the charity as shown on the ACNC website, including the financial statements.
 - A search of the Australian Business Register or ASIC using the ACN or ABN will generate a link to the charity's name but there is no corresponding link to the charity or to the website at which the financial statements might be located. The search for the website will require searches using Search engines such as Google. If a charity has a website with a totally different name combination to the legal entity name this link may prove difficult to locate.
This will reduce transparency because it puts obstacles in the way of anyone undertaking the search
 - BDO submits that overall this approach may reduce transparency.
 - The discussion paper states that the website must also contain "details of all funding received from Government (Commonwealth, State and Local)"
 - BDO submits that this reporting requirement has the potential to result in mistaken interpretations to distinguish between:
 - Funding received to cover regular services delivered by the charity;
 - Funding received to assist with the acquisition of assets;
 - Funding received as a lead entity where other charities / entities assist in subcontract the delivery of services;
 - Funding that is not yet acquitted;
 - The distinction between funding through grants and receipts from governments under open market tenders.
 - The proposed reporting is not required of for profit organisations and the reason for the suggested disclosure is not clear.
 - If the disclosure requirement is intended to be detailed, this will place charities at a competitive disadvantage in open market competitive bid circumstances.
 - The ATO passed the list and available information of known charities to the ACNC when it was established. The ACNC identified a significant number of entities recorded as charities for which no current contact information was available. This culminated in the ACNC cancelling the registration of over 250 charities effective 15 August 2014 with a further 3,000 charities for which contact details are missing.
 - BDO submits that this indicates that self regulation has historically had deficiencies.
 - A fundamental requirement of a charity in obtaining and maintaining its registration is its "not for profit" status that has the underlying requirement that the income of the charity cannot be distributed to / benefit members, and the capital upon winding up must be distributed to a charity with a like purpose.
 - If a charity is to cease operating, the website will no longer be funded, so there will be no website for the public to access the financial information.

- This compares to the current situation where the historical information is made available on the ACNC website.
- The closure of the charity's website and effective removal from the public domain of the financial information will allow a charity that has something to hide to potentially constrain scrutiny

Questions for discussion - Administrative Options

- **Which of these options do you believe best guarantees the independence of the decision making process?**
 - BDO submits that the determination of whether a proposed activity will meet the test to be treated as charitable involves a specialist knowledge of the taxation laws including the statutory definition of charity, case law and previous pronouncements of the interpretation of the law through Rulings and similar.
 - We consider it will also require a detailed understanding of the proposed activity of the entity applying for recognition of the charity.
 - BDO considers that a specialist team in the ATO should be able to achieve the necessary outcome from a technical perspective. However this will require those on the team to develop that specialist expertise.
- **Are there any other considerations that should be taken into account when these functions are undertaken?**
 - A question arises in respect of the ongoing / regular review of the charity status of organisations as each entity is required to regularly challenge itself that it continues to be entitled to charity status - will the same group be charged with the responsibility of managing the analysis required for the ongoing reviews?

Questions for Discussion - Compliance Framework

- **Are there any reasons why this approach may not work?**
 - The discussion paper refers to the intention to reverse the consolidation of the duties of directors (responsible entities) and to reinstate the Corporations Law
 - BDO submits that there is only limited differences between a company limited by guarantee and a company limited by share capital
 - BDO submits that for those entities that are incorporated under the Corporations Law that this does make sense to have a singular set of rules applicable to all companies.
 - The outcome of this will be that directors of charities will need to understand the legal structure to determine where their duties are detailed, all being subject to the governance rules:
 - The Corporations Law for companies limited by guarantee;
 - State legislation for Incorporated Associations;
 - Common Law for unincorporated bodies.
 - BDO submits that there remains a significant advantage if there is a consistency of duties across the three categories - this may be achieved by a rule that an entity that receives official recognition of charity status is a deemed company for the purpose of determining the duties of its controllers
- **Do you foresee any risks in this approach?**
 - BDO submits the primary risk is that some charities may regard the release from the requirements under the ACNC legislation as a relaxation from the requirement to apply appropriate governance standards.