



Australian Government
Department of Social Services

Options Paper - Australia's Charities and Not-for-profits

Options for Replacement Arrangements following the abolition of the Australian
Charities and Not-for-profits Commission

July 2014



Options for Replacement Arrangements following the abolition of the Australian Charities and Not-for-profits Commission

Charities and Not-for-profits play a vital role in Australian civil society. The Government believes it should not impose an unnecessary regulatory burden on the sector.

This approach is consistent with the Government’s broader deregulation agenda which is designed to boost productivity by reducing the cost of excessive, red and green tape on business, community organisations and individuals by at least \$1 billion per year.

The Government is committed to a risk-based, proportionate approach to the oversight of the charitable and not-for-profit institutions that make up Australia’s civil society sector. This approach recognises that charities themselves work hard to build the trust of the Australian public and should be accorded with the presumption that they are operating in the interests of those they serve and in accordance with their mission.

The Australian Government has committed to abolish the Australian Charities and Not-for-profits Commission (ACNC) and return certain regulatory functions to the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC).

This paper outlines the proposed replacement arrangements for the reporting obligations of charities that will follow the abolition of the charities regulator. Consultation on these and other replacement arrangements will inform the refinement of further legislation.

The Government is committed to introducing effective replacement arrangements that reduce the burden of regulation on the civil society sector. Some of the new proposals are detailed in this options paper. These are:

1. **Self-reporting requirements** to ensure public accountability for charities’ operations
2. Returning **determination of charitable status** to the ATO with a framework in place to ensure independence of decision making.
3. A **proportionate compliance framework** that would leverage existing powers.
4. Appropriate **transitional arrangements** to provide certainty for the sector.

Next Steps

The Government introduced the *Australian Charities and Not-for-profits Commission (Repeal) (No.1) Bill 2014*, on 19 March 2014. This Bill repeals the *Australian Charities and Not-for-profits Commission Act*, but leaves open the proposed arrangements that will replace the ACNC.

Your feedback on the proposed arrangements will be used as a basis for consultation with stakeholders during July and August and help inform drafting of the *Australian Charities and Not-for-profits Commission (Repeal) (No.2) Bill 2014*, to be introduced later this year.

Current Legislative Requirements

Established on 3 December 2012, the ACNC is the national regulator of the charities sector.

The *Australian Charities and Not-for-profits Commission Act 2012*, the *Australian Charities and Not-for-profits Commission Act 2012 Consequential and Transitional Act 2012 (Cth)* and the *Australian Charities and Not-for-profits Commission Regulation 2013 (CT)*, (the regulations) provide the ACNC and its Commissioner with powers in relation to information collection, monitoring and compliance that did not previously exist at the Commonwealth level for many smaller charities.

While registration with the ACNC is voluntary, a number of Commonwealth laws have been amended to the effect that registering with the ACNC and meeting its conditions are required to receive Commonwealth tax concessions. In addition, all registered charities are required to submit an Annual Information Statement (AIS) and from 1 July 2014 organisations with an income of \$250,000 or more must submit financial reports. For some charities this represents a new regulatory burden. For others it is a continuation of requirements that existed prior to the establishment of the ACNC.

1. Proposed New Reporting Arrangements

The Government is committed to self-reporting and self-management for charities as a guiding principle.

In determining replacement arrangements, the Government is looking to achieve a balance between the need for public accountability and a commitment to not burden organisations with unnecessary reporting obligations. It is appropriate to require some level of accountability for those charities and not-for-profits that receive government funding and support in the form of tax concessions.

Rather than reporting to a separate entity, the Government proposes that as part of replacement arrangements charities will be required to maintain a publicly accessible website that features the following information:

- Names of responsible persons;
- Details of all funding received from Government (Commonwealth State and Local); and
- Financial Reports.

Self-reporting will allow organisations to make more information public if they so choose. This will provide members of the public with insight into how charities are spending public funds and a level of confidence when members of the public consider making donations.

In order to ensure that reporting requirements are consistent with other organisations operating as companies-limited-by-guarantee or Australian registered bodies, charities also registered under the *Corporations Act* would see the reinstatement of their previous ASIC reporting obligations that were “switched off” when the ACNC was established. These would include:

- The collection of directors’ and company secretaries’ details;
- The requirement to have a ‘physical’ registered office and place of business; and
- The reinstatement of the annual review fee.

In keeping with the principle of reduced reporting and compliance, it is proposed that charities currently exempt from providing financial reports would retain that exemption (i.e. small organisations, basic religious charities) under the new arrangements.

The Government understands that many charities are currently required to provide reports to other Commonwealth regulators in addition to the ACNC. In many cases, this information is made publically available. For example, universities report to the Tertiary Education Quality Standards Agency; independent schools report to the Department of Education; and Aged Care services that report to the Department of Social Services.

In keeping with the principle of reduced reporting for organisations, consideration will be given to an exemption from separate reporting requirements where organisations already make information publically available through another Commonwealth regulator.

Proposed compliance mechanisms under the new arrangements are further detailed in this Options Paper under *Proportionate Compliance Framework* at page 7.

Questions for discussion - Self Reporting

- 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?

2. Determining Charitable Status

Under the replacement arrangements, responsibility for determining eligibility for charitable status will return to the ATO.

In recognition of work that has occurred to reduce the workload for charities when applying for charitable status, many of the processes in place under the current arrangements would remain, including the ability for organisations to apply on-line.

It is proposed that a dedicated function be established within the ATO with responsibility for determination of charitable status and eligibility for related tax concessions.

A dedicated unit (or function) operating within an integrated framework would ensure staff with expertise in issues specific to the charitable sector would also carry responsibility of both determination of charitable status and determination of eligibility for related tax concession.

Some stakeholders have raised sensitivities about a return of previous functions to the ATO. This concern is based on a perceived conflict of interest in the ATO determining charitable status and determination of eligibility for related tax concessions, as the ATO is responsible for raising revenue. In other words, would the ATO be influenced by the potential tax consequences when considering the question of whether an organisation might be considered a charity?

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.

In order to ensure that charities are provided with sufficient independence in the decision making process, two options are proposed to safeguard this.

Administrative Options for discussion

Option One

Establish 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.

This panel would operate in a similar way to others that are maintained by the ATO, such as the General Anti-Avoidance Rules Panel. It would be made up of experts in charitable law as well as ATO staff and would provide an independent point of review for charities.

Similar to other arrangements currently in place, the advisory panel would consider the case made by the organisation and make a recommendation on the dispute to the Commissioner of Taxation. Should an organisation continue to dispute the decision, it is proposed that they would have a legislated right to appeal to the Administrative Appeals Tribunal.

This option provides a process for assessment and appeal of decisions impacting charities.

Option Two

Form a separate area within the ATO that would be responsible for determining outcomes for applicants who objected to findings on eligibility for charitable status and related tax concessions.

This option allows for independence of decision making within the ATO, ensuring that the decision to grant charitable status and grant tax concessions is subject to a right of review that sits outside of the administrative areas responsible for assessing charities. Officers would not have a dual role of

assessing charities and providing a right of review, mitigating the potential bias. This will be detailed in administrative arrangements.

Should an organisation continue to dispute the decision, it is proposed that they would have a legislated right to appeal to the Administrative Appeals Tribunal.

Questions for discussion – Administrative Options

- 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?

3. Proportionate Compliance Framework

The Government supports compliance arrangements being simple and efficient and ensuring appropriate accountability for Commonwealth funds and activities that benefit from tax concessions. Central to achieving this outcome is a commitment to introduce compliance requirements that are proportionate to the level of harm they are designed to mitigate.

Under this proposed approach, current regulatory powers in place for charities in relation to enforcement and removing responsible persons would be retained by the ATO and the Australian Prudential Regulation Authority (APRA). New ACNC powers introduced under the current arrangements have increased information collection, monitoring and compliance that did not previously exist at the Commonwealth level for small unincorporated charities, and will be removed.

The Commissioner of Taxation is currently vested with a number of powers in relation to monitoring, enforcement and information gathering which are considered to be sufficient to address any potential misconduct undertaken by charities.

In addition, State and Territories have laws in place to prevent charities undertaking fraudulent activity and misusing public funds.

It is proposed that ASIC, ATO and State and Territory governments will rely on their current powers to provide an appropriate compliance framework. Those director duties, obligations on charities and compliance measures that existed under the Corporations Act and were turned off by the ACNC legislation would be reinstated.

When considering new compliance arrangements to support self-reporting, the Government believes that charities and not-for-profits should enjoy a rebuttable presumption of virtue. Compliance arrangements for self-reporting will take this approach by focusing on areas of high risk and not burdening organisations with gratuitous reporting requirements or invasive investigations. Thus, only cases of wilful non-compliance with reporting requirements will be investigated to ensure the self-reporting frame work is maintained.

Questions for Discussion – Compliance Framework

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

4. Transitional Arrangements

Legislation for the proposed arrangements, the *Australian Charities and Not-for-profits Commission (Repeal) (No.2) Bill* is scheduled to be introduced into Parliament later this year and will come into effect upon receiving Royal Assent.

While the new arrangements for regulators such as the ATO and ASIC will take effect straight away, charities will have until 1 July 2015 to update their website with the details outlined in this paper. Any assessments currently being undertaken by the ACNC to determine an organisation’s charitable status will be transferred to the ATO for completion.

The legislation will make a provision for the information that is currently housed in the register to be archived, and where required, be available to other regulators, particularly the ATO and ASIC, to assist with the transition to the new arrangements. This information will be stored and used in a manner that is consistent with Australian Privacy Principles and other relevant legislation.

In order to provide certainty for the sector, current arrangements will remain in place until the legislation receives Royal Assent.

All charities currently registered with the ACNC will receive information from relevant Government agencies prior to any changes occurring.

Questions for discussion – 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?

How to provide feedback?

Written submissions in response to this options paper can be provided by 20 August 2014 by completing the template available at the Department of Social Services website.