



THE TAX INSTITUTE

THE MARK OF EXPERTISE

20 August 2014

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

The Tax Institute welcomes the opportunity to make a submission to the Department of Social Services in relation to the *Options Paper – Australia's Charities and Not-for-profits (Options Paper)*.

The Tax Institute makes the following submission on behalf of our members in the tax profession, as Australia's leading professional association in tax. In the interests of full disclosure, while The Tax Institute is also registered as a charity with the Australian Charities and Not-for-Profits Commission (**ACNC**), we do not make this submission in that capacity.

Overview

This submission has been made taking account of the Government's intention to abolish the ACNC¹ and to largely return the role of regulating charities to a range of State and Federal regulators, chief among them being the Australian Taxation Office (**ATO**). The Tax Institute expresses its concern that this intention appears to run contrary to the recommendations of a number of government inquiries and reports into the not-for-profit sector over the last decade.

¹ See the *Australian Charities and Not-for-profits Commission (Repeal) (No.1) Bill 2014* which will repeal the *Australian Charities and Not-for-profits Commission Act 2012*.

Self-reporting and self-management

In light of the Government's deregulation agenda, the Government intends to create a 'self-reporting and self-management' environment for charities. The Options Paper proposes that this be achieved by each charity individually creating and maintaining a publicly accessible website containing certain information about the charity.

For many charities, self-reporting will impose an additional compliance burden, particularly for organisations such as churches that have many separately registered charities (eg church parishes). There will also be a lack of uniformity in how information is to be reported.

In the interests of administrative and cost efficiencies for charities and donors, The Tax Institute recommends that rather than individual websites, there be a single government maintained website to which charities can upload and update their own information (similar to, or as part of, the Australian Business Register which permits entities to upload their own information and amendments to a government operated website). For charities that already report the information elsewhere, a web link to the alternate site may suffice. Having a national website that charities could update themselves would also potentially enable a "report once, use often" approach in some circumstances, so as to minimise the compliance burden on charities.

Determining charitable status

The Options Paper highlights a perceived conflict of interest with the ATO having the functions of both determining charitable status / eligibility to be endorsed for tax concessions and raising revenue. Two options have been proposed in the Options Paper to overcome this, both of which only apply at the later stage of objecting to a determination. The option for an independent panel is the preferable of the two options proposed in the Options Paper, subject to our comments below.

In preference to the two options contained in the Options Paper, The Tax Institute suggests that there should be separation within the ATO between the division that determines charitable status / eligibility to be endorsed for tax concessions on the one hand (carrying out the functions previously carried out by the ACNC) and the general enforcement/compliance division on the other. This will create separation between ATO officers who determine charitable status and those who enforce compliance with the tax endorsement requirements.

In addition to this, making available a panel of independent experts to have some form of high level oversight role over decisions made about charitable status/eligibility for endorsement by these divisions in the early stages of determining charitable status/eligibility (rather than the later stage of objection) would also be useful while the

ATO rebuilds its expertise in this area. It may be appropriate for this panel to sit within the “National Centre of Excellence for Civil Society²” proposed to be formed.

Proportionate Compliance Framework

The Tax Institute has some concern with the lack of clarity and structure in the proposed proportionate compliance framework. Relying on a ‘rebuttable presumption of virtue’ is unlikely to lead to the level of accountability for charities and not-for-profits that is currently provided by the framework administered by the ACNC. For instance, it is unclear whether it is intended that the ACNC’s Part 4.2 enforcement powers will be transferred to the ATO (which The Tax Institute supports). Without the range of enforcement options, it is difficult to see how the ATO will be able to do anything but adopt its previous practices of applying an ‘all or nothing’ approach in respect of administering the compliance requirements imposed on not-for-profits.

In this regard, some flexibility could also be introduced into the approaches the ATO will take when considering entities for endorsement for tax concessions and dealing with breaches of the conditions for endorsement.

Division 15 of the *Australian Charities and Not-For-Profits Commission Act 2012* (Cth) (**ACNC Act**) contains a set of objects and principles which the ACNC Commissioner is to abide by in regulating the not-for-profit sector. We suggest that the ATO be required to abide by similar principles though it may be more appropriate to set out these principles in a guiding document (such as a Law Administration Practice Statement) rather than enshrining them in the law.

i) Support/education role of the ATO

The ACNC issues “Interpretation Statements” on cases and legislation relevant to the not-for-profit sector which the sector has found to be of value. In addition to giving guidance on cases and legislation, the ACNC also holds an education/guidance/advisory role with respect to this sector. This has meant the ACNC has been able to actively support the not-for-profit sector.

It is recommended that the ATO be as responsive as is the ACNC in issuing guidance, both legal and non-legal, for this sector and that it should adopt a similar supportive role to the sector as held by the ACNC.

² <http://www.civilsocietycentre.org.au/>

ii) Other not-for-profits affected

How not-for-profits that are not charities will be affected by the new framework will also need to be taken into account in the design of the framework as the ATO will become responsible for regulating both charities and other not-for-profits that are not charities.

Transitional Arrangements

The ACNC had an explicit legislative objective of championing a reduction in the sector's regulatory burden, where appropriate. The abolition of the ACNC will mean that there is no federal coordinating body focused on not-for-profit sector deregulation. This is a key issue as significant regulatory complexity and duplication is due to a lack of harmonisation between State/Territory and Federal requirements. This may also be an appropriate function for the proposed National Centre of Excellence for Civil Society to assume.

In addition, consideration should be given to allowing the ACNC to continue to handle applications on foot while the process begins to transfer regulation back to the ATO for a short period (perhaps 6 months) after the legislation giving effect to this receives Royal Assent. This would allow the ATO the opportunity to increase its resources to take back the responsibility of regulating this sector and would ensure that applications in progress are not unduly delayed by the transfer of regulatory authority from the ACNC to the ATO.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Flynn', followed by a long, horizontal, slightly wavy line.

Michael Flynn
President