



Catholic Social Services
Australia

Catholic Social Services Australia

Response to the consultation process
relating to draft regulations and
accompanying explanatory material
relating to the Australian Charity and
Not-for-Profits Commission – Financial
Reporting Guidelines released
December 2012.

15 February 2013

Contact: Paul O'Callaghan
Executive Director
CSSA Australia
PO Box 326, Curtin ACT 2605
Telephone: 02 6285 1366

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1 Executive summary

Catholic Social Services Australia (CSSA) is the peak organisation representing 66 Catholic social service agencies delivering services throughout Australia.

CSSA and its members already demonstrate exemplary levels of accountability and transparency, not only to their stakeholders but to the public in general. CSSA is strongly committed to the overall objective of good governance in the not-for-profit sector and believes it to be in the national interest. However, given that there was a delay in legislating the Australian Charities and Not-for-Profits Commission (ACNC) which resulted in other shifting timeframes relating to financial reporting requirements, CSSA recommends delaying the start date of the new financial reporting regime until the commencement of the 2014/2015 financial year.

Whilst some of our member organisations' financial statements are currently compliant with the proposed requirements, there are some organisations within our network which will not be. They are currently providing financial reports to government and funding agencies which are considered adequate for their needs so there should be no need to rush changes for no apparent benefit. The measurable impact on the sector that can be guaranteed is an increase in red tape.

CSSA remains concerned that good intentions expressed by both the Federal Government and the ACNC have not been realised. We believe that the Federal Government and the ACNC have an imperative to deliver on a number of outcomes aimed at reducing red tape. These include:

- 1.1** State/Territory/Federal harmonisation of regulatory requirements
- 1.2** Timely development and introduction of the Charity Passport
- 1.3** Enacting legislation to prevent anti-'gag' clauses within government funding agreements

The current body of work focusing on governance standards needs to be viewed within the broader context of not-for-profit (NFP) reform. At the present time there are a number of consultation processes in train:

- (a) the consultation process focusing on the draft regulations and accompanying explanatory material outlining the proposed financial reporting requirements applying to charities registered with the ACNC;
- (b) current revision of ACNC's recommended Standard Chart of Accounts;
- (c) the ACNC's Regulatory Approach Statement consultative process; and,
- (d) COAG's Regulatory Impact Assessment of Potential Duplication of Governance and Reporting Standards for Charities,

Matters pending include:

- (i) Definition of “Charity”;
- (ii) Proposed changes to the definition of not-for-profit; and,
- (iii) Proposed changes to the ‘in Australia’ requirements.

CSSA has been a keen contributor to the NFP reform debate at all levels. We remain committed to achieving the stated objectives of the ACNC Act aimed at maintaining, protecting and enhancing public trust in the Australian NFP sector; supporting and sustaining a robust, vibrant, independent and innovative Australian NFP sector; and promoting the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector. CSSA makes this submission in keeping with these objects.

2 Introduction

- 2.1** In December 2012, the Commonwealth Government of Australia released for consultation the draft regulations and accompanying explanatory material outlining the proposed financial reporting requirements applying to charities registered with the ACNC. Feedback was sought on the content and application of the draft regulations..
- 2.2** This submission on the draft regulations and accompanying explanatory material relating to the ACNC's Financial Reporting Requirements is made by CSSA.
- 2.3** CSSA and its members already demonstrate exemplary levels of accountability and transparency, not only to their stakeholders, but to the public in general. CSSA is strongly in favour of the overall objective of good governance within the NFP sector, and believes it to be in the national public interest.
- 2.4** CSSA is concerned with the speed with which the new financial reporting requirements are being introduced. It submits that insufficient time has been allowed for the preparation for the new reporting regime. Delays in information being provided to the sector have increased the difficulties which will occur.
- 2.5** Although the ACNC has quoted that 78% of registered organisations are small, the vast majority of our organisations are medium to large registered entities and subject to the most onerous reporting requirements. The organisations will be subject to audit or review, and may have to make an informed decision about whether they are a reporting entity. We submit that the implementation of these measures be delayed so that we are able to properly assess the impact and prepare adequately.
- 2.6** Whilst some of our member organisations' financial statements are currently compliant with the proposed requirements, there are some organisations within our network which will not be. However, they are currently providing financial reports to government and funding agencies which are considered adequate for their needs so there should be no need to rush changes for no apparent benefit.

3 Catholic Social Services Australia

CSSA is the national peak organisation representing 66 Catholic social service organisations. These agencies provide around \$700 million each year in quantifiable social services to the Australian community. The unquantifiable value of these services, taking into account the 'value add' nature of social services delivered by NFP providers, would certainly be higher.

Members of CSSA employ over 10,000 staff and are assisted in their work by around 4,000 volunteers. The range of services provided by CSSA members includes:

- Aged care
- Child care and children's services
- Community detention

- Disability services
- Drought and emergency relief
- Drug and alcohol services
- Employment services
- Employee assistance programs
- Family and Relationships Services
- Financial counselling
- Foster care
- Gambling counselling
- Housing and homelessness services
- Immigration settlement
- Indigenous services
- Mental health and counselling services
- Other counselling services, including financial counselling, gambling counselling, and school counselling
- Pastoral ministries
- Policy and research
- Pregnancy counselling and support
- Residential care
- Youth services

The majority of CSSA members are medium to large organisations.

4 The ACNC Financial Reporting Requirements within the NFP Reform Context

4.1 A dominant theme throughout NFP reform discussions since the Australian Labor Party pre-election commitment and including in the final report of the Treasury's Scoping Study in 2011¹, has been about measures to enhance the sector's capacity. This has especially focussed on reducing red tape and duplication of administrative processes. The December 2011 Consultation Paper exploring the topic 'Review of not-for-profit governance arrangements' acknowledged that:

- (i) "duplication during a transitional period might result while Australia moves towards a truly national NFP regulation, however the governance arrangements are likely to be similar and not pose a large burden on NFPs".²

¹ Australian Government: The Treasury, "Final Report – Scoping Study for a National Not-for-Profit Regulator", April 2011

² Review of not-for-profit governance arrangements", Consultation Paper, December 2011. p3

- (b) The Final Report of the Scoping Study for a National Regulator, stressed the importance of achieving COAG agreement on key aspects of regulatory reform:
 - (i) Through the COAG process, the Australian Government should work with state and territory authorities with the aim of ensuring that the regulator's registration applies throughout Australia, and be accepted by every government agency. (Recommendation 9)

4.2 The absence of a framework agreement for harmonisation with State and Territory governments points to an extended transition to achieve the goal of a harmonised national regulator. CSSA continues to remain troubled that despite repeated advice on the critical role of State and Territory governments in achieving regulatory harmonisation for the NFP sector, there is still an absence of a framework agreement for achieving a harmonised national regulatory environment.

- (a) CSSA acknowledges the release on 25 January of the Council of Australian Government's "Regulatory Impact Assessment of Potential Duplication of Governance and Reporting Standards for Charities" (COAG RIA). However, this seems but a first step in a process which should ideally be further advanced than it currently is.
- (b) Ideally, we encourage Commonwealth, State and Territory governments to act quickly on the findings of the COAG RIA and implement as soon as possible Option 4B whereby States and Territories enter into an agreement with the Commonwealth to allow the requirements of the ACNC in relation to governance and/or reporting to satisfy the equivalent provision in the State or Territory legislation.

4.3 The Charity Passport³ to be developed by the ACNC is a reporting mechanism which will provide a more streamlined and centralised method for accrediting charities and NFPs. CSSA has consistently supported the development of the Charity Passport on the basis that this 'tool' is intended to be used to streamline regulatory requirements across Federal agencies. CSSA recommends that development and implementation of the Charity Passport be fast-tracked given that the power to address the necessary legislative and administrative arrangements to activate its use sit squarely within the authority of the Federal Government.

4.4 Another feature of NFP reform yet to be realised is the legislation to prevent 'gag' clauses within Government funding agreements. In September 2012, CSSA issued a media release⁴ welcoming this announcement as it has the potential to ensure the

³ The purpose of the Charity Passport is contained in the Australian Charities and Not-for—Profits Commission Bill 2012, Australian Charities and Not-for-Profits Commission (Consequential and Transitional) Bill 2012: Revised Explanatory Memorandum at 1.98, 8.9, 8.10, 8.11, 15.63, 15.64.

⁴ Media Release: "Good step to protect an independent NFP voice", 19/09/2012 - <http://catholicsocialservices.org.au/node/44795>

critical role that CSSA and its members play in public discourse is not only protected but valued. CSSA recommends that this legislation be introduced to Parliament without delay.

4.5 Alongside these issues and the current Governance Standards Consultation framework exists a number of other significant consultative processes in train being run by the Federal Government. These include:

- (a) the Consultation process focusing on the draft governance standards for charities registered with the ACNC.;
- (b) current revision of ACNC's recommended Standard Chart of Accounts;
- (c) the ACNC's Regulatory Approach Statement consultative process; and,
- (d) COAG's Regulatory Impact Assessment of Potential Duplication of Governance and Reporting Standards for Charities,

These should factor within the context of the debate regarding the draft Governance Standards.

5 Reporting exemptions

5.1 With regard to financial reporting generally, CSSA believes that it is inconsistent that only non-government schools have received comprehensive transitional exemption. Whilst schools' existing obligations are onerous and exhaustive, so too are the compliance procedures imposed on other not-for-profits. It is precisely because of this problem that the ACNC was contemplated in the first place.

5.2 The Commissioner already has the power to accept reports made to other agencies. The question must be asked why only schools should be provided with a red tape-related exemption, rather than all entities already reporting to Federal and State government agencies in a manner that those agencies find acceptable. Our submission is that at least until the close of 2014/2015 financial year, the ACNC should guarantee acceptance of such agency reports.

6 The problem of 'non-reporting' entities and declarations

6.1 The Exposure Draft seems to acknowledge the somewhat arbitrary nature of the boundaries between reporting and non-reporting: 'whether the reporting entity test is satisfied depends on the extent to which there are external users of the report who are able to command tailored information, not by whether those reports are publicly available'.⁵

⁵ Exposure Draft Explanatory Memorandum, p 7.

- 6.2** A responsible entity may make a declaration that, in his or her opinion, notes to the annual financial reports satisfy the Act's requirements. If they are wrong, because they misjudged the requirements of 'the reporting entity' test, a donor could claim that they made a substantial donation on the understanding that the notes were correct and they would not have done so had they known the truth. This could give a donor rights of action to recover the donation. Does the donor now have a statutory based right of action for misstatements causing economic loss? What if the responsible entity's statement communicated that the charity intended to run a program for patients with a particular illness in a particular area, and donations were received as a consequence, but the program was not in fact intended for those patients, or perhaps that location, or the program could not proceed due to a decision of government or a funding agency? What rights of action should a donor have in these circumstances? This increases the risk to the responsible entity and personal risk to individuals.

7 The question of timing

- 7.1** It was May 2012 when the Federal Government announced that the new regulatory regime would apply from 1 July 2013. There was an expectation that draft financial reporting requirements would follow shortly after this. However, it was seven months later, close to Christmas Eve 2012, before the first draft of either the governance standards or financial reporting requirements were made available. The Regulation Impact Statement was not made available at this time and was not released until the end of January 2013. Given that this document is 111 pages long we have not had sufficient time to adequately assess its contents at this stage. The Standard Chart of Accounts that are being prepared as a template for NFPs to use as a basis for their reporting are still in draft form and an updated "for discussion" version of this document will not be released by ACNC until late February.
- 7.2** We can expect that official comment on submissions and any changes to the draft frameworks will not emerge until sometime in March 2013, after submissions close in mid-February. CSSA understands that the government did not anticipate the drawn out process involved in creating the ACNC legislation, which did not become law until 3 December 2012. Political delays and the need to make multiple amendments to the ACNC Bills, however, does not justify creating hardship for charities. Rather, the difficulties encountered in the Parliament should give government an indication of the complexity involved in ensuring that we have an appropriate and adequate compliance regime.
- 7.3** The Government will be aware that most charities have voluntary boards, and that most voluntary boards do not meet in January. Whilst technically about six weeks has been allowed for submissions on the Consultation Paper and Exposure Draft, the sector has in reality not been given the time it needs to adequately consider the possible impacts of the proposed standards and reporting requirements. A further consultation paper, on the ACNC's regulatory approach, has also been published for comment during the same time frame. In addition, submissions regarding the Regulation Impact statement are required prior to 21 February 2013. Due to the large

number of members we have and the short time frame allowed we have not been able to properly assess the impact on each of these organisations.

- 7.4** If the proposed commencement date of 1 July 2013 remains, charities will have barely three months to prepare – and that assumes some form of finalised standards will be released in March this year. Annual Information Statements will then be due for some at the end of December 2013. The ACNC has only just been established, and has not yet released its Annual Information Statement forms.
- 7.5** Further, for organisations who want to use the Standard Chart of Accounts once they are finalised there will be a very short period of time to make the necessary changes to their accounting systems.
- 7.6** Time is also necessary for auditors and reviewers of registered charities to develop clarity about the principles to be applied to in determining whether an entity can properly be classified as a 'non-reporting entity' and therefore whether financial reports comply with the accounting standards. In this context, the concept of 'user' in Part 3 of the draft legislation will become important, but its application is not necessarily straightforward in a not-for-profit context where volunteers, donors and client stakeholders all have different needs and claims on an organisation.
- 7.7** The discussion and examples provided in draft legislation are helpful, but time is needed to consider both of their applications to the circumstances of specific not-for-profit organisations. In contrast to this, however, the table of reporting versus non-reporting entities probably creates more confusion rather than creating any clarity. Allowing a further 12 months of the sector to consider and respond to the proposed changes is likely to produce a much better regulatory regime.

8 Conclusion

- 8.1** CSSA has been a supporter of reform in the NFP sector. A key element of this support has been an assurance by Government and the ACNC that it is intent on ensuring that the sector is recognised and respected for its diversity and that both the Government and the ACNC support the continuing growth and development of the NFP sector. CSSA's submission attempts to balance the regulatory function of the ACNC and these principles.
- 8.2** Given that the financial reporting requirements will certainly result in organisations facing an increased load to their reporting requirements, such an outcome is not in keeping with one of the stated objectives of the ACNC which aims to reduce red tape for the sector.
- 8.3** To offset the impact of these measures CSSA:
- (a) would like to see the Federal Government uphold its commitment to reducing the red-tape and administration burden incumbent on the NFP sector. We believe there is positive scope for this to be achieved through the establishment of the Charity Passport. Time is of the essence.

- (b) Would like to see greater collaboration across State and Territory Governments with the aim of reducing unnecessary red tape and cost to the sector.
- (c) Would welcome the introduction of 'anti-gag' clause legislation into Parliament before end of June this year.

8.4 Whilst the new financial reporting requirements are obviously being introduced to ensure transparency and provide adequate financial reporting in the sector there is a concern that in some cases this will cause disproportionate and unnecessary expense in terms of both time and money. This is a particular concern for our member organisations as most of them will be classified as large but are already providing financial reports to government for funding purposes. Funds which should be used to provide services may need to be diverted to the preparation of more onerous financial reporting, the review or audit of these reports, upgrading of accounting systems, external advice and other related expenses.

8.5 The process is being rushed due to the short, arbitrary timeframe that has been set by the Government. The introduction of the new reporting regime should be delayed until the commencement of the 2014/2015 financial year.