



21 February 2013

The Manager
Philanthropy and Exemptions Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: NFPReform@treasury.gov.au

Dear Sir/Madam.

***Regulatory Impact Assessment (RIA) of Potential Duplication of Governance
and Reporting Standards for Charities***

1 Overview

- 1.1** Catholic Social Services Australia (CSSA) welcomes the Government's decision to release the RIA. CSSA is concerned that the RIA methodology has not led to a comprehensive picture of compliance related costs for charities. This means that, in making critical decisions about a number of reform measures the Government will not have before it an adequate empirical base upon which to make decisions.
- 1.2** Given that the transition to the new ACNC regulatory framework will increase the compliance burden on registered charities, CSSA believes that it is essential for the Government to take steps in a timely way to demonstrate its commitment to reduce the red tape burden on charities as soon as possible.
- 1.3** CSSA welcomed the Government's commitment to introduce a charity passport and to simplify Commonwealth Grant Guidelines. Given the anticipated delay in moving towards harmonisation of regulations across all Australian jurisdictions, CSSA strongly urges the Government to take early action to implement these commitments.

2 Catholic Social Services Australia

- 2.1** 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 not-for-profit providers, would certainly be higher.

- 2.2** The majority of CSSA members are medium to large organisations.
- 2.3** These bodies draw funding from a wide range of sources, including;
- (a) Government contracts for service delivery at Commonwealth, state and local level
 - (b) Church resources (provided both directly as cash grants and indirectly as ‘in kind contributions’ – peppercorn rents, use of capital infrastructure, use of administrative and support systems and personnel, etc.)
 - (c) public fundraising, both within the Church community and amongst the broader population
 - (d) corporate bodies and philanthropic institutions
 - (e) international organisations.
- 2.4** In order to comply with various reporting and disclosure regimes, Catholic agencies report on their use of government and public funds to a selection of the following;
- (a) Commonwealth government (including under corporations law), state governments and local government funders via a range of reporting requirements (even the same Departments sometimes require different reporting for different activities);
 - (b) Commonwealth, state and local government authorities in order to comply with various regulations and guidelines
 - (c) The various state and territory legislative requirements relating to fundraising
 - (d) A diverse range of funding bodies, philanthropic institutions and corporate sponsors according to the particular requirements of each
 - (e) Various Church governance bodies, trustees and owners, in relation to both compliance with civil law and conformity to Church law and ethos.
- 2.5** Members of CSSA employ 12,000 staff and are assisted in their work by around 4,000 volunteers. The CSSA members provide a comprehensive range of social services for the Australian Community.

3 The RIA

- 3.1** The RIA’s stated objective is to ‘identify and quantify the extent of duplication between existing and proposed governance standards and reporting requirements on charities’. However, the RIA only identifies and attempts to quantify part of regulation and governance requirements for Australian NFPs, including those in the CSSA network. Moreover, the RIA’s assessment of cost fails to adequately recognise administrative costs borne by NFP agencies as they address governance and reporting requirements. As a result, the RIA’s quantification of costs understates the quantum of real costs significantly.
- 3.2** CSSA believes that the Commonwealth government should be concerned that the RIA omits a major area of reporting requirements for charities. This relates to requirements related to funding grants. The RIA focusses solely on *Potential Duplication between the proposed Commonwealth Governance and Reporting standards and the existing State and Territory regulation.*

- 3.3** All Federal and State government agencies which provide funding support to CSSA member agencies for services to the community have rigorous and detailed reporting requirements. A survey of CSSA members in 2008 found that 19 agencies were bound by 620 separate contracts and funding agreements. Each of those contracts had its own compliance and reporting requirements. The Senate Standing Committee on Economics Committee Inquiry into Disclosure regimes for charities and not-for-profit organisations, found that evidence persuasive in considering the costs and complexity of such reporting. The only change that has occurred for the CSSA network since that time is an increased number of reporting requirements.
- 3.4** Table 2 of the RIA, at page 98, outlines the extent of new or additional requirements for charities and confirms CSSA's concerns about adding to the red-tape and compliance burdens currently faced by charities. Each new element of compliance adds a direct cost for an agency. This has led to many CSSA members having to engage additional staff to simply address the increasing scale of reporting over recent years.
- 3.5** While CSSA welcomes the government's objective in sharing the RIA with the sector at this time, such consultation prior to finalisation of the ACNC governance standards is problematic in ensuring that government decisions based on the RIA will lead to sound policy.

4 The RIA within the NFP reform context

- 4.1** A dominant theme throughout not-for-profits (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. CSSA has been a strong advocate of this commitment since 2008, especially as it translates into tangible reduction in red tape and reduced 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
- 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** CSSA acknowledges the significant challenges facing a Commonwealth government in seeking to progress such reform through harmonisation with State and Territory governments. At the same time, we believe that the fact that such harmonisation will only be achieved over the medium term does generate an additional compliance burden for registered charities. While this has been openly acknowledged in recent ACNC briefing sessions, the impact of additional costs related to this delayed transition continues to be treated inappropriately by officials as a second-order issue.

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

- 4.3** CSSA acknowledges the release of the Council of Australian Government’s “Regulatory Impact Assessment of Potential Duplication of Governance and Reporting Standards for Charities” (COAG RIA). We urge all jurisdictions to take action. In particular, CSSA recommends **Option 4B** as the basis for action, 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.
- 4.4** The **Charity Passport**³ 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.
- 4.5** CSSA recognises the administrative complexities for the relevant portfolio agencies in finalising a Charity Passport. However, in view of the increased compliance burden which is being generated as a result of the ACNC coming into being without federal harmonisation, early implementation of a Charity Passport is vital to demonstrate the Commonwealth’s bona fides in addressing Object 3 of the ACNC Act. Moreover, this does not require agreements with other jurisdictions.
- 4.6** Another feature of NFP reform yet to be realised is the legislation to prevent ‘**gag clauses**’ within Government funding agreements. In September last year, CSSA congratulated the government publicly⁴ on its commitment to proceed with this legislation. CSSA sees this protection as essential for the long term protection of the voice of its members in public discourse. CSSA recommends that this legislation be introduced to Parliament without delay.
- 4.7** Alongside these issues and the current RIA consultation framework exists a number of other significant consultative processes in train being run by the Federal Government. These include:
- (a) The consultation into the Draft ACNC governance standards
 - (b) 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;
 - (c) current revision of ACNC’s recommended Standard Chart of Accounts;
 - (d) the ACNC’s Regulatory Approach Statement consultative process; and,

I would welcome an opportunity to discuss any of these matters further.

Yours sincerely,



Paul O’Callaghan
Executive Director

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>