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**Submission from OUR COMMUNITY AND THE INSTITUTE OF  
COMMUNITY DIRECTORS AUSTRALIA in response to the  
Consultation Paper on Regulatory Impact Assessment of  
Potential Duplication of Governance and Reporting  
Standards for Charities**

Please find enclosed our submission.

Yours sincerely

Denis Moriarty  
Group Managing Director

01 Find Money

02 Manage Money

03 Jobs

04 Marketing

05 Boards

06 Training

07 Insurance

08 Suppliers

09 Join the Directory

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11 Leadership

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## ***General Observations***

The most significant feature of the present cycle of consultation on the Regulatory Impact Assessment of Potential Duplication of Governance and Reporting Standards for Australian Charities is that its focus is too narrow to lead to any major benefits to the not-for-profit sector.

The major problems for the not-for-profit sector in this country are that

1. The historical development of the law of charities has left us with an insanely complicated and deeply irrational set of legal entities – trusts, charities, associations, companies limited by guarantee, cooperatives – with overlapping definitions and functions.
2. The historical development of the Australian federation has left us with State-based regulatory boundaries that are incapable of enabling truly integrated national operations for national not-for-profit enterprises.

Correcting the faults of this sprawling, ramshackle, and unproductive structure regulation by regulation is a recipe for delay and inaction. It is necessary for COAG to take a broad view of the issues involved and to take action at the level of general principle – that is to say, any potential reform must be directed not simply towards the narrow objective of “reduc[ing] or avoid[ing] regulatory duplication between existing governance and reporting requirements of the States and Territories and proposed requirements in ACNC legislation’ but also – but primarily – towards the broader objective of ensuring that “regulation for the sound governance and financial accountability of charities is effective and proportional”.

It is also true, nonetheless, that even the present restricted consultation points the way to the optimum solution; that is, the discussion paper clearly shows that the only possible way to have a smoothly functioning system of not-for-profit registration and reporting is for the States to vacate the field entirely to the Commonwealth, thus

- creating the possibility of a coherent national system that is consistent and based on activities and outcomes rather than entity type,
- streamlining regulatory responsibility,
- consolidating and harmonising charities’ reporting requirements, and
- addressing the informational needs of the Australian public.

## ***Consultation Questions***

### **Governance requirements**

#### **Standard 1 – purposes and not-for-profit nature of a registered entity**

A. Are there other duplicative requirements between state and territory legislation, and Governance Standard 1, the purposes and not-for-profit nature of a registered entity, that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

#### **Standard 2 – accountability to members**

A. Are there other duplicative requirements between state and territory legislation, and Governance Standard 2, accountability to members that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

#### **Standard 3 – compliance with Australian law**

A. Are there other duplicative requirements between state and territory legislation, and Governance Standard 3, compliance with Australian law, that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives

- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## **Standard 4 – responsible management of financial affairs**

A. Are there other duplicative requirements between state and territory legislation, and Governance Standard 4, responsible management of financial affairs, that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## **Standard 5 – suitability of responsible entities**

A. Are there other duplicative requirements between state and territory legislation, and Governance Standard 5, suitability of responsible entities, that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## Standard 6 – duties of responsible entities

A. Are there other duplicative requirements between state and territory legislation, and Governance Standard 6, duties of responsible entities, that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## Reporting requirements

### Entity tiers

A. Are there other duplicative requirements that have not been identified between the reporting tiers in state and territory legislation and the reporting tiers in the ACNC Act?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## Annual information statements

A. Are there other duplicative requirements between state and territory legislation, and the Annual Information Statement reporting requirements that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations

- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## Annual financial statements

A. Are there other duplicative requirements between state and territory legislation, and the Annual Financial Statement reporting that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## Notifying ACNC of change of particulars

A. Are there other duplicative requirements between state and territory legislation, and the requirement to notify the ACNC of change of particulars that have not been identified above?

B. Are there other impacts or unintended consequences that have not been identified?

If possible, please comment on how the standard would impact on regulatory duplication for the following entity types:

- Incorporated associations
- Cooperatives
- Charitable trusts
- Unincorporated associations
- Other bodies

We can identify no additional associated duplication that cannot be remedied by the implementation of Option 5 below. Our Community would also recommend that the regulation of incorporated associations, cooperatives, charitable trusts, and unincorporated associations also be referred to the Commonwealth.

## Proposed options

Are there other feasible options to address regulatory duplication that have not been identified? If you identify other feasible options, please describe the option and highlight the key advantages and disadvantages.

The range of options is sufficient, but, as expressed above, the ambit of the options should be expanded to cover all aspects of not-for-profit regulation.

For each option, are there other advantages and disadvantages that you think jurisdictions should consider?

Negative objectives, such as reduction of duplication, are, in the final analysis, of considerably less importance than positive objectives, such as offering the Australian public a national not-for-profit entity information system, and the balance of advantage should be considered in this light.

Which option do you consider that jurisdictions should pursue? Why do you prefer this option?

The report makes clear that only Option 5 offers any possibility whatsoever of fixing in place a community-friendly system that would reduce the burden on not-for-profits and increase their potential reach interstate. Every other option relies, at best, on the indefinite continuation of consensus among all parties, and in addition requires increased investment by the States in a field where they will hold less responsibility.

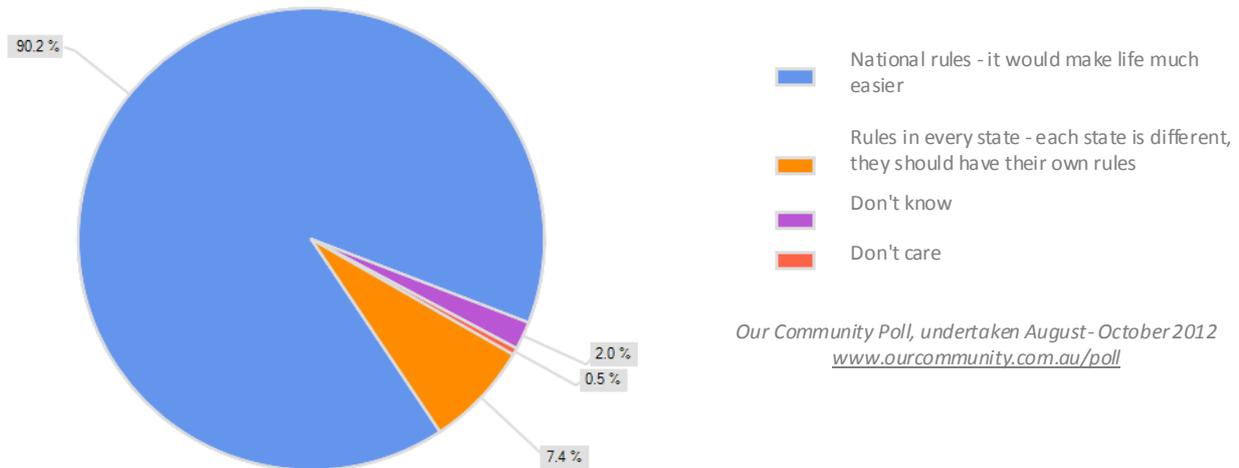
This approach is overwhelmingly supported by the sector.

Our Community members have provided emphatic support for nationalisation of rules governing their operations. A membership poll we undertook in 2012 (see next page) asked community group representatives their view on whether or not there should be separate incorporation and fundraising rules in every state (as is the case now), or if they would prefer one Australia-wide model.

A total of 90% of the 200-plus respondents said that there should be national rules, while just 7% wanted to continue with state-based rules.

Levels of apathy were impressively low – just 2% said they did not know and 0.5% said they did not care.

## Should there be separate incorporation and fundraising rules in every state, or would you prefer one Australia-wide model?



Do you have any other suggestions on how to minimise costs arising from regulatory duplication?

The abolition of the State registration and regulation agencies listed in the report should provide a considerable and recurrent saving sufficient to remove all objections.

If jurisdictions decide to pursue an option other than the status quo, do you have any suggestions on how to manage the cost of transition?

The value added to the sector and to the Australian community are sufficient to justify expenditure in this area by the Commonwealth.<sup>1</sup>

### Impact analysis

Do the cost assumptions underlying the impact analysis appear reasonable?

Yes.

If not, what changes would like to suggest?

N/A

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<sup>1</sup> The Commonwealth might recognise the savings achieved by the States though a minor reduction in transfer payments.

Does the summary of the impact of Options 1 to 5 appear reasonable? If not, what changes would like to suggest?

The Impact Analysis should give more weight to the exciting possibilities for the not-for-profit sector that national registration and regulation would make possible.

The moral of the report would seem absolutely undeniable.

**Only a national body can ensure national regulatory consistency, and as national consistency is absolutely essential for the smooth operation of Australian not-for-profits only a national solution is acceptable.**

