



Mission Australia

Submission to the
Inquiry into the Australian Charities and
Not-for-profits Commission Bills

(Australian Charities and Not-for-profits Commission Bill 2012; Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012; Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012)

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Contact for this Submission

**Tim Morris-Smith
Chief Financial Officer
Mission Australia**

1. Introduction

This submission provides a brief outline of Mission Australia's additional response to the Bills establishing the Australian Charities and Not-for-profit Commission (ACNC) and related regulatory framework that were introduced by the Minister in the House of Representatives on 23 August 2012. Mission Australia appreciates the opportunity provided by the Parliament to have further input on the legislation.

In support of our original submission provided to the Inquiry by the House Standing Committee on Economics on 20 July 2012 and our supplementary submission dated 26 July 2012, we have limited our comments in this submission to certain key aspects of the legislation that have direct relevance to Mission Australia's governance and operations and that have not yet been addressed in the legislation before the House.

2. Overview

Mission Australia is on record supporting the objectives of a robust and streamlined regulatory framework for the not-for-profit sector. The ACNC Bills provide for the establishment of an independent regulator for the charities and not-for-profit sector but it is not clear what reduction in regulation currently covering the sector is to take place.

Mission Australia remains concerned that the bills as drafted are more prescriptive in certain key areas than had been foreshadowed and do not reflect that sufficient work has been done with Federal agencies and with State Governments and agencies with responsibilities in the charitable sector to reduce red tape and duplication. In addition, greater attention should be given to ensuring the independence of the charity and not-for-profit sector.

Mission Australia submits that the legislation needs further amendment to reflect clearly the Government's views and the views of the charity sector that governance standards to be established by regulation should be principles-based and not prescriptive.

3. Recommendations for amendments to ACNC Bills

Mission Australia proposes that the Committee should recommend that the Government make further amendments to the ACNC Bills in three key areas:

- Ensuring the governance standards are principles based;
- Reducing red tape and duplication; and
- Emphasising the independence of the sector

3.1 Principles-based governance standards

Mission Australia supports the principles-based approach to governance for the not-for-profit (NFP) sector proportionate to size and risk as canvassed in the Government's earlier Consultation Paper. We believe best practice governance principles focussing on an entity's mission and purpose are sufficient to ensure accountability to the range of stakeholders that NFP directors and responsible individuals need to consider. We welcome an approach that assists NFPs adopt good governance principles, and would support the ACNC making available guidance materials on governing principles and best practice.

In summary, Mission Australia's preferences for the new regulatory environment include:

- Principles-based standards rather than prescriptive; and
- Proportionality – in governance standards, reporting requirements and expectations.

Mission Australia submits that the legislation needs further amendment to ensure that governance standards to be established by regulation should be principles-based and not prescriptive.

The Minister's second reading speech says:

Registered entities will need to comply with a set of minimum principles-based governance standards.¹

And the Explanatory Memorandum to the Bills says: at 5.3

The Governor-General is expected to make the standards principle-based, specifying the outcome to be achieved, rather than detailing how an entity must meet the standards in its particular situation.²

However, the ACNC legislation does not refer to a principles-based regime and Subdivision 45-10: Regulations establishing governance standards³ states:

- (1) The regulations may specify the **governance standards**.
- (2) Without limiting the scope of subsection (1), those standards may require a registered entity to:
 - (a) ensure that its governing rules provide for a specified matter; or
 - (b) act, or not act, in a specified manner; or
 - (c) establish and maintain processes for the purpose of ensuring specified matters.

Accordingly, we submit that section 45-10 needs amendment to state clearly that the governance standards shall be principles-based and not rules based. The legislation as currently drafted reflects neither the commitments made by the Government to the sector nor the Minister's Second Reading speech that the governance standards are to be principles based.

3.2 Reduction of red tape

One of the purported benefits (and now objects) of the ACNC legislation is reduction of red tape and the complexity of multiple reporting and regulatory requirements. The Regulatory Impact Statement notes that "there are currently more than 178 pieces of Commonwealth, State or Territory legislation that involve 19 separate agencies regularly determining the charitable purpose or status of an NFP entity⁴". As a national organisation operating in all States and Territories, Mission Australia currently reports to, or is regulated by, nearly 30 regulators and accompanying legislation. A list is provided at Appendix One.

In any year we will provide hundreds of copies of our financial statements, our governance arrangements, our incorporation and copies of insurance certificates in tenders and in acquittals. There is a very real cost in providing this information and for the government departments who

¹ Hansard, House of Representatives, Minister's Second Reading Speech, ACNC Bills, 23 August 2012

² Explanatory Memorandum to ACNC Bills, Ch. 5 Governance Standards and External Conduct Standards, Section 5.3, Page 57

³ ACNC Bill, Division 45 - Governance Standards, introduced by the Minister, House of Representatives, 23 August 2012

⁴ Regulatory Impact Statement: Explanatory Materials ACNC Draft Bill p. 229 (2012)

receive that information and must review it. We strongly support the removal of this duplication and our support for the ACNC has been largely predicated around reducing this compliance burden.

As the legislation's Regulatory Impact Statement notes, we said in our submission in 2011 "Mission Australia supports the referral of powers from the States to the Commonwealth to establish a national NFP regulator. It is acknowledged that without State support and further progress through COAG, a less than optimal national regime would result with ongoing duplication and inconsistencies in regulatory treatment across jurisdictions."⁵

We support the notion of the ACNC as a one-stop regulatory stop and support the notion of a Charity Passport that will see us provide our financial and governance information once, to be used often. Yet it is disappointing to see no evidence of how this is being achieved. Our overriding concern is that rather than reducing red tape and compliance burden, the ACNC will add another layer of compliance and that nothing will be taken away.

We expected to see the transitional arrangements that would provide assurance that co-operative agreements with States and Territories would be in place with concrete plans to transfer those powers and that a clear timetable should be laid out for that to happen. In fact, Section 185-5 of the ACNC Bill would appear to enable State and Territory legislation to co-exist and the Regulatory Impact Statement suggests that these conversations are still to happen or are not yielding positive results.

We also expected to see evidence of an agreement between the agencies such as ASIC, the Australian Taxation Office (ATO) and other sector specific regulators including those foreshadowed such as the National Housing Regulator.

Given the importance of reduction of red tape, we commend the Government for including a reduction in regulatory burden in the objects of the Bill but we would wish to see more concrete evidence that this will be achieved.

3.2.1 Limits to the provision of audited financial statements

As a concrete example of how red tape and duplication could be reduced, we propose an amendment to the legislation that states that where a charity provides audited financial statements to the ACNC, then that charity is no longer required to provide the same or similar financial statement documentation to any other Federal Government agency as part of any contract, grant or acquittal, unless an agency has reason to suspect fraud or other serious wrongdoing. The Committee could consider proposing this amendment under Subdivision 6-25 -- Large registered entities must have financial reports audited.

3.3 Independence of the Charities and Not-for-profit sector

The Government has often emphasised its support for a productive, transparent, accountable, vibrant and independent charity and not-for-profit sector. Many of these vital characteristics are enshrined in the legislation, which we support. Mission Australia would like additional emphasis in the legislation around the fundamental characteristic of independence, meaning that charities are autonomous entities that have Boards responsible for management oversight, accountability, transparency and strategic direction.

⁵ Regulatory Impact Statement, Explanatory Materials ACNC Bills, Chapter 16, Section 16.114 (Page 286), 23 August 2012

Mission Australia and other similar organizations have a vital function to advocate on behalf of the most vulnerable members of our community whom we work alongside to transform their lives. We propose that the legislation should recognize that advocacy is a central facet of many NFP entities and as such cannot be limited or controlled through contractual arrangements with government agencies. We are in accord with other NFP organizations that have proposed an amendment to Subdivision 205-C – Other Concepts to reflect and protect the independence of the sector.

4. Support for amendments made to Draft ACNC Bills

Mission Australia commends the Government and is pleased to support the recent changes to the Bills that were made as a result of submissions by Mission Australia, peak bodies and other agencies to the House Standing Committee on Economics, including:

- Adding a new clause to the Objects in the legislation to make clear that the ACNC’s role includes promoting a reduction in the regulatory burden on the NFP sector;
- Additional procedural fairness requirements where the ACNC Commissioner exercises particular powers under the legislation;
- Adding a statutory review provision to provide for a review of the legislation after it has been in operation for 5 years;
- A substantial redrafting of provisions relating to directors’ liability, clarifying that a director of an incorporated charity will only be liable under the Act where there is a deliberate act or omission of the director involving dishonesty, gross negligence or recklessness. No criminal offences will now apply to directors of an incorporated charity, as the one criminal offence relating to directors included in the exposure draft of the Bill has been removed. This will provide additional assurances and protections for volunteer directors. In our view, this change is important to ensure the ongoing involvement of experienced and senior directors of charities who give their time and expertise on an entirely volunteer basis to improve the lives of Australians in need.

5. Conclusion

In conclusion, while we commend the Government for making improvements to the draft ACNC Bills, further changes are required to the legislation to clarify that the Government intends to adopt principles-based governance standards and Mission Australia would like to see further evidence of the work being undertaken by the Government to ensure that red tape and duplication is decreased, not increased as a result of the establishment of the ACNC and its accompanying regulatory framework.

Appendix One: List of regulatory agencies and legislation for Mission Australia and related entities

Commonwealth

- Australian Taxation Office
- Australian Securities and Investments Commission
- Health Department (Aged Care Standards and Accreditation Agency)
- Education and Care Services National Law Act & Regulations (childcare)

NSW

- Department of Education and Communities (Childcare)
- Registrar of Community Housing (Mission Australia Housing Ltd)
- Charitable Fundraising Act 1991 & Regulations 2008
- Lotteries & Art Unions Act 1901 & Regulations 2007

Queensland

- Department of Housing (Registration as a housing and accommodation provider)
- Collections Act 1966 & Regulations 2008
- Charitable and Non-Profit Gaming Act 1999 and Regulation 1999

Victoria

- Housing Registrar (Mission Australia Housing (Victoria) Ltd)
- Victorian Children's Services Act 1996 & Regulations 2009
- Fundraising Act 1998 & Regulations 2009
- Gambling Regulation Act 2003 and Regulations 2005

South Australia

- Education and Care Services National Regulations, Education and Early Childhood Services (Registration and Standards) Act 2011 & Regulations 2011
- Collections for Charitable Purposes Act 1939
- Lottery and Gaming Act 1936 & Regulations 2008

Tasmania

- Collections for Charities Act 2001
- Gaming Control Act 1993.

Western Australia

- Department of Housing, Office of the Registrar (Registration as a housing and accommodation provider)
- Street Collections (Regulation) Act 1940 (paramount over Charitable Collections Act) & Regulations 1999
- Charitable Collections Act 1946 & Regulations 1947
- Gaming and Wagering Commission Act 1987 & Regulations 1988

Northern Territory Australia

- Gaming Control Act
- Gaming Control (Community Gaming) Regulations

Australian Capital Territory

- Charitable Collections Act 2003 & Regulation 2003
- Unlawful Gambling Act 2009 and Regulation 2012
- Lotteries Act 1964