

20 July 2012

Mr Stephen Boyd
Committee Secretary
House Standing Committee on Economics
Parliament House
Canberra ACT 2600

By Email: economics.reps@aph.gov.au



Heart Foundation
ABN 98 008 419 761

Level 12, 500 Collins Street
Melbourne VIC 3000

Telephone (03) 9329 8511
Facsimile (03) 9321 1574

For heart health information
1300 36 27 87
www.heartfoundation.org.au

Dear Mr Boyd

Submission: Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills

The National Heart Foundation of Australia welcomes the opportunity to make a submission to the House Standing Committee on Economics' inquiry into the *Australian Charities and Not-for-profits Commission Exposure Draft Bills*.

The Heart Foundation is a charity dedicated to reducing death and suffering from the leading killer of Australians, cardiovascular disease.¹

As a Not-for-profit (NFP) charity, the Heart Foundation largely supports the Government's proposed reforms of the sector, the establishment of a single regulator and the simplification of the current governance arrangements.

As a federated charity, the Heart Foundation has eight state and territory divisions, and a national body with a binding Memorandum of Understanding that provides a framework for operations. The complexity of the legislative environment is a huge burden on these organisational arrangements with various structures and reporting requirements across the states, territories and nationally.

The establishment of the Australian Charities and Not-for-profits Commission (ACNC) and streamlining governance arrangements for charities should simplify the administrative processes for NFPs.

However, without the agreement of state and territory governments to refer their not-for-profit reporting powers to the ACNC and for the ACNC to be the only reporting office, will just see another layer of reporting requirements added onto the NFP sector.

While we applaud the basic premise of the NFP reforms and in particular the establishment of a single regulator, we would like to use this opportunity to restate the comments proffered under cover of our submission dated January 24, 2012 and to comment on specific sections within the Exposure Draft.

Reporting and Governance Requirements

We note that these aspects are to be addressed by way of regulation and that further consultation will be sought with respect to both the governance standards and reporting requirements.

¹ Australian Institute of Health and Welfare, *Cardiovascular Disease Australian Facts 2011*, 2011

In the interim there are several points that we wish to raise in this regard.

Register (sections 40-1 – 40-10)

The Heart Foundation strongly endorses the need for transparency and the value that an online register will bring for the sector and public. However, we are keen that the broader community, in seeking assurances that NFPs are performing effectively and efficiently, can compare 'apples with apples'.

The requirement that all NFP financial reports and any audit or review reports will be added to an online register may allow a 'league table' to be determined. We are also concerned that the ACNC will have the power to publish information about NFPs as they see fit. This could cause confusion for the general public and possibly damage reputations of NFPs.

The ACNC should ensure that there is some way of grouping NFPs that work in similar environments and face, for example, similar fundraising and operational challenges. There should also be an opportunity for organisations to make commentary around figures: for example investment for growth – or investment with a return expected over more than one financial year. This would help mitigate the damage that may be done when unfair comparisons are made between organisations operating in very different environments and circumstances.

The explanatory materials for the Bills do not provide enough information on how concerns like this will be addressed.

Governance standards (section 45-10)

While the Heart Foundation supports the establishment of governance principles that will provide flexibility for the sector, we would like to see that these principles are entrenched in legislation with a public commitment by the Government to the sector to uphold the new standards and arrangements.

Even though the draft legislation seeks to set up the framework for a set of governance standards that will be set out in regulations, these regulations are still yet to be drafted.

Consideration should be given to the detail in the *Corporations Act* when the regulations are drafted as it currently sets out the stringent governance standards that the NFP sector works within and does not put the power and systems into the hands of a single organisation, such as the ACNC.

Because of this stringency, we are concerned about the need for new regulations, however we would like to suggest that instead of new regulations that the ACNC would be better to focus on director education, by funding a body such as the Institute of Company Directors to build the governance capacity of the NFP bodies rather than imposing new heavy rules.

It is difficult for the Heart Foundation to support this legislation as a whole when an important section such as governance has no detail.

Reporting (section 60)

The Heart Foundation strongly supports the development of one single national reporting requirement for the NFP sector.

Currently most Heart Foundation divisions are required to comply with the Corporations Act and lodge annual consolidated Financial Statements to the Australian Securities and Investment Commission (ASIC) and these are required to be prepared in accordance with Australian Accounting Standards. In addition, all divisions are required to report to ASIC changes in national directors (names and personal details) and to review this information

each August and return a report. In addition, the Heart Foundation provides monthly BAS and Group Tax Reports and an annual Imputation Credits Report to the ATO. Those Heart Foundation's that are incorporated associations (Western Australia, Northern Territory and South Australia) face different requirements pursuant to applicable Territory and State legislation.

In addition, fundraising activities are regulated at a State and Territory level, each of which has different reporting requirements. As a national organisation the Heart Foundation must ensure it complies with the requirements of each State and Territory in regard to its fundraising activities. Harmonisation of fundraising and associated legislation would provide significant efficiencies to national charities such as the Heart Foundation.

We are greatly encouraged by the potential efficiencies afforded by subdivision 60-G. This provision allows collective and joint financial and information reporting which potentially allows the Heart Foundation to submit an amalgamated return instead of nine annual returns to ACNC from each of the state and territory division of the organisation.

The potential ramifications of this provision are to be applied however we would seek clarification that the provision would extend to organisations such as the Heart Foundation where 9 separate entities are working together by virtue of a Memorandum of Understanding and those entities are not related entities within the meaning of the Corporations Act.

We would also seek clarification with respect to the intent of section 55-5(2) which deals with the requirement that entities keep "written records that correctly record its operations so as to enable any recognised assessment activity to be carried out in relation to the entity". In absentia of any guidance into the scope of "recognised assessment activity" the potential reach of the provision is of concern.

Directors of charities (section 100)

In terms of the requirements on directors of charities referred to in the legislation, we do have concerns that we believe needs strong consideration.

Upon closer examination of the draft legislation, if passed unamended it would see every director having the same obligations as the organisation that they are associated with and that they would be liable for the actions (or inactions) of the organisation.

Major issues such as compliance costs and recruiting experienced board directors who often serve on NFP boards at no cost are unnecessary burdens for the NFP sector.

We support the position taken by the Institute of Company Directors on the NFP reforms and in particular their position on directors. We endorse their submission to the Committee.

In summary, the Heart Foundation supports reform of the sector and the possibilities that the establishment of the Commission should bring. We do strongly advocate that any changes imposed onto the sector, should be phased to allow NFP organisations to adapt. Many NFPs do not have the resources or the financial means to make immediate changes or implement additional reporting systems, therefore many will need time to adapt.

Although we have commented on a small number of sections from within the Exposure Draft, generally we are concerned overall that there are still too many unknowns and how this will impact on the NFP sector. With the unknowns, and particularly with the corporate governance uncertainty the *Bill* in its current form would create, the Heart Foundation is not yet ready to support the passage of the *Bill* through the Parliament.

We wish you well with your deliberations and would be keen to assist with any inquiries you may have or provide further assistance during the consultations on the draft law and regulations before implementation.

Yours sincerely

A handwritten signature in black ink, appearing to read "Tony Abbott". The signature is written in a cursive, slightly slanted style.

her

Dr Lyn Roberts AM
CEO - National