



**YWCA Australia**  
**Submission to House of Representatives**  
**Economics Committee**  
**July 2012**

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

YWCA Australia welcomes the opportunity to provide comment on the Australian Charities and Not-for-profits Commission Exposure Draft Bills (**ACNC Bill**).

**About YWCA Australia**

YWCA Australia is the national association of YWCAs in Australia and is part of the World YWCA movement. We are a women-led organisation that achieves positive change by providing advocacy, programs and services for women, families and communities. YWCAs undertake advocacy and deliver services and programs that develop the leadership and collective power of women and girls, support individuals, their families and communities at critical times, and promote gender equality and community strengthening. YWCAs have been providing community services in Australia since the 1880s and our Member Associations range from small to large organisations.

**General principles**

YWCA Australia supports:

- the establishment of the ACNC as an independent and expert regulator
- proportionate, balanced and effective regulation of the sector that supports NFP entities to carry out their vital work in Australian communities.

We have concerns about the rushed and overlapping nature of some of the consultations around the ACNC and the unresolved elements of the reforms, including the governance standards and the reporting framework. It is far from ideal to introduce legislation establishing penalties for non-compliance with unknown standards. Despite these shortcomings, YWCA Australia looks forward to the establishment of the ACNC on 1 October this year.

**Sector submissions**

We note that colleagues have prepared useful submissions and we commend them to you, in particular the submissions from:

- The Australian Council of Social Service (ACOSS)
- The Communities Council for Australia (CCA).

**Objects of the Bill**

Reducing compliance costs and red tape is an important way to enhancing the effectiveness of the sector. Despite many statements by the Australian Government that this is a goal of

the legislation,<sup>1</sup> reducing compliance costs and red tape is currently not an explicit goal of the legislation as drafted. We recommend that reducing compliance costs and red tape faced by the sector is explicitly included as an Object of the Bill.

## Drafting issues

YWCA Australia supports ACOSS's suggestion to replace 'improve' with 'support' in Section 10-5 (Guide to this Act), so that it reads:

*The Commissioner of the ACNC will provide information to help the public understand the work of the not-for-profit sector and to support the transparency and accountability of the sector.*

## Definition of charity (section

We note that section 25-5 (5) (Entitlement to registration) does not refer to a statutory definition of charity. The Explanatory Memorandum sets out that the 'determination of charitable purpose is to be undertaken in accordance with the common law meaning of the term, as affected by the Extension of Charitable Purpose Act 2004 [Subsections 25 5(5) and (6)].'<sup>2</sup> We therefore assume that the Australian Government is no longer planning to introduce a statutory definition of charity, although there has been no announcement to this effect.

We would welcome clarification from the Government on the previously discussed intention to introduce a statutory definition of charity. We repeat YWCA Australia's support for a definition of charity that embraces the following charitable purposes:

- the promotion of equality as set out in the UK Charities Act 2011;
- the advancement of human rights: civil, cultural, economic, social and political; as well as conflict resolution, reconciliation, the promotion of religious or racial harmony, and diversity, as established in the UK Charities Act 2011;
- the provision of social housing;
- the provision of community- based childcare by NFP entities;
- advocating on behalf of those the charity seeks to assist, or lobbying for changes in laws, policies and government decisions that have direct effects on a charity's main/predominant/dominant purpose, are recognised as a charitable purpose. Changes to the definition of charity should ensure that NFPs can provide both service delivery and advocacy to affect both individual and structural change without risking their status as a charity;
- the advancement of citizenship or community development- including the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities - which we would understand to include the role of peak bodies, as clarified in the New South Wales Administrative Tribunal decision which establishes the circumstances when a peak body can be a charity. YWCA Australia

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<sup>1</sup> See *Making it Easier for Charities to Help Those Who Need it*, Assistant Treasurer - Media Release, 10 May 2011, available at <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/077.htm&pageID=003&min=brs&Year=&DocType=0>

<sup>2</sup> Explanatory Memorandum, paragraph 3.29.

supports the principle in the Administrative Tribunal decision that it is the degree of integration and commonality of purpose with its members that determines the charitable status of a peak body; and

- the relief of those in need because of youth, gender, age, ill-health, disability including through the provision of accommodation or care.

## ACNC Register

We welcome the Commissioner being able to remove or withhold information from the register in specified circumstances, for example, where the information is commercially sensitive, inaccurate, or likely to confuse or mislead the public<sup>3</sup>, although we are unsure how 'commercial sensitivity' would be assessed.

As an organisation that works with women and children escaping domestic and family violence, we are also extremely pleased that the Bill provides grounds to exclude information from the ACNC Register if it may endanger public safety<sup>4</sup> and that the Explanatory Memorandum includes the following example:

### Example 4.1

The West Women's Shelter does not publish its address to protect its clients. The ACNC Commissioner may withhold the entity's address from the ACN Register.

However we recommend that the wording "may" be changed to "will" as the addresses of emergency shelters and refuges for women and children escaping violence should never be publicly disclosed by the ACNC.

## Governance standards (section 45-10)

In the absence of provisions on governance standards that the sector will need to comply with, we repeat our previous position that the Government should adopt a principles-based approach to regulation of the sector. We expressed our concern in response to *the Review of not-for-profit governance arrangements consultation paper (Governance Consultation Paper)*<sup>5</sup> that the Paper did not recognise the considerable governance expertise that exists in the sector, and assumed a prescriptive approach to governance that could result in unnecessary complication and interference with existing governance structures. In our view providing high-level guidance as to the key features of governing rules is fundamental to the development of a successful principles-based approach to the production of regulatory guidelines. We are also extremely concerned that the NFP sector doesn't face a higher regulatory burden than other sectors. Regulation must be comparable. The Governance Consultation Paper created concern that governance standards for the sector may actually move beyond current requirements of the *Corporations Act*.

As governance standards are a central element of this reform process, we support ACOSS's recommendation that the governance standards in their current form be included in the

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<sup>3</sup> Section 40-10

<sup>4</sup> Section 40 10(1)(d)

<sup>5</sup> YWCA Australia, *ACNC and NFP Reform Consultation Papers*, January 2012, available at <http://ywca.org.au/sites/ywca.org.au/files/images/YWCA%20Australia%20Response%20to%20the%20NFP%20Sector%20Reform%20consultation%20papers%20final.pdf>

Committee's inquiry. We urge the Committee to look at the work of the Charities Commission of England and Wales as a useful model for the development of a "guidelines" approach to sector regulation.

### **Proportional reporting requirements – revenue thresholds**

We are extremely pleased that an organisation which is a deductible gift recipient (DGR) appears to no longer automatically be considered to be a medium sized entity, regardless of their revenue, as it was under the January 2012 ACNC draft legislation.

### **Further information**

Thank you for the opportunity to provide this submission.

YWCA Australia would welcome the opportunity to engage in further discussion about any of the points raised in this submission.

For further information please contact:

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