



**Submission to the House of Representatives
Standing Committee on Economics**

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

20 July 2012

Introduction

This submission provides a brief outline of Mission Australia's response to the Exposure Draft Bills establishing the Australian Charities and Not-for-profit Commission (ACNC).

Mission Australia welcomes this opportunity to consolidate our previous submissions and to provide input into this inquiry by the House of Representatives Economics Committee. We have limited our comments to certain key aspects of the legislation that have direct relevance to Mission Australia's governance and operations.

Mission Australia is on record supporting the principles established in the ACNC Bills on the basis that they provide for the establishment of an independent and responsive regulator for the charities and not-for-profit sector. Mission Australia considers the Draft ACNC legislation to be a generally balanced approach to enhancing the independence and effectiveness of the sector. However, Mission Australia remains concerned that the bills as drafted are more prescriptive in certain key areas than the Government had foreshadowed, are focussed on compliance by the not-for-profit (NFP) sector and pay too little attention to enabling and strengthening the NFP sector as a whole. Mission Australia believes the draft bills do not reflect sufficient detail on the stated commitment to reducing unnecessary bureaucracy, red tape and duplication.

Overview

Mission Australia considers the Draft ACNC legislation to be a generally balanced approach to enhancing the independence and effectiveness of the sector, while also providing a framework to enable NFPs to meet obligations to donors, contracted partners, members and clients. We consider the proposed staged implementation of the ACNC to be appropriate and support the Government's commitment to appropriate transitional arrangements to allow NFPs sufficient time to make changes under the evolving regulatory framework. We welcome the foreshadowed consultation processes with the NFP sector but request greater clarity of commitment to resource and value the advisory processes.

The principles enshrined in the ACNC Draft bills that Mission Australia is pleased to express its support for include:

'One-stop shop'

Mission Australia supports the establishment of the ACNC as a 'one-stop' regulatory shop. In particular, we believe implementation of a "report-once, use-often" general reporting framework for charities has the capacity to reduce the complex and duplicative reporting requirements NFPs currently face.

We would like to see more detail on the Commonwealth's intention to work with the states and territories on a national regulatory framework. We believe a progressive national approach to rationalise overlapping legislation and remove the duplicative reporting requirements for NFPs will in time strengthen the sector and remove inefficiencies.

Reporting and auditing

Mission Australia believes that NFP entities should provide information for reporting purposes, proportional to the size of the entity, risk factors and level of sector and government assistance. We support the ACNC ability to exercise discretion to treat an entity as small, medium or large in any given year based on revenue and history. However, we believe that discretion could be more widely interpreted than just revenue or other financial events.

Given, for example, the financial risks and complexities involved in the provision of social and affordable housing, we would support specific governance and reporting requirements for housing associations. At the same time we argue that there should not be duplication between the national housing regulator and the ACNC on audit and reporting requirements and that a memorandum of understanding between the two bodies should be negotiated and perhaps included as a schedule to the Act.

With regard to special purpose reporting, Mission Australia would ask the Government to clarify in what circumstances special purposes reports may be required from an NFP entity, as well as the likely circumstances in which the Commissioner may require a registered entity to provide additional information in their information statement or financial report.

Areas of concern

Mission Australia's previously expressed support for the Exposure Draft ACNC legislation was given on the proviso that the proposed structures, governance rules and reporting requirements for the ACNC are focussed on strengthening the sector. As a company limited by guarantee with robust governance structures we do not wish to see additional regulatory burdens other than those currently operating under ASIC requirements.

Mission Australia's main concerns about the ACNC draft bills that we are asking the House Economics Committee to address include:

- There is a focus on powers, penalties and prescriptive regulation throughout the establishment Bills that is not sufficiently well balanced by a commitment to enable the not-for-profit sector, to reduce duplication of reporting and to provide public confidence in the sector;
- The ACNC should be fully independent of Treasury and the Australian Taxation Office, otherwise the stated purpose of having a new and independent regulatory body for the NFP sector may well be forgotten. While some improvement has been made in this area, there remains room for further improvement;
- Even a large organisation like Mission Australia has struggled to get across the pace, breadth and complexity of changes -- it may be very hard for smaller organisations to understand the implications and respond in the timeframes outlined in the draft legislation; and
- Much of the ACNC framework is necessary and reasonable. However, given that much of the detail remains unstated and is still to be decided by regulations to the

Act, the success of the Government's approach, which we support, will hinge upon the nature of the consultation and engagement with the NFP sector: a genuine process of broad consultation and proper use of the advisory mechanisms will yield good results that will meet the needs of the sector and the broader Australian community. Mission Australia would have concerns if the Government failed to properly commit to and resource this consultation process.

- Statutory definition of charity. Mission Australia had hoped for the definition of charity to be defined in the statute and to, as closely as possible, reflect the current state of common law definitions. We remain disappointed that this has not been included in the draft Bill. One specific concern is that housing associations may not be sufficiently covered by law and that the delivery of some forms of housing assistance may result in loss of taxation benefits. As a provider of housing services through *Mission Australia Housing Ltd* and a strong mission to provide housing for those most vulnerable, we still face concerns that some aspects of development could result in loss of charitable status. For example, social housing when delivered through integrated redevelopments, for example, could result in great social outcomes for those most disadvantaged, but a severe and unintended financial penalty if charitable status is lost because some of the housing delivered is sold to the private market.

New regulatory environment

Mission Australia supports the principles-based approach to governance for the NFP sector proportionate to size and risk as canvassed in the 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 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;
- Proportionality – in governance standards, reporting requirements and expectations;
- Reduction in red tape, not increase – although we accept in the short-term red tape may increase; and
- A statutory definition of charity (see comments above).

Background

Mission Australia is a community service organization that has been transforming the lives of Australians in need for more than 150 years. Today our 550 community and employment services help more than 300,000 Australians a year get back on their feet.

Mission Australia previously welcomed the Government's acknowledgement, in the Final Report of the Scoping Study for a National Not-for-profit Regulator, of a preference for a principles based over a prescriptive approach to governance. We believe this reflects the diversity of the sector, and that most NFPs already have adequate governance procedures. We agree with the Government on the importance of the proposed role of the ACNC role in assisting smaller NFP entities move to best practice models of good governance which are appropriate and proportionate to their size.

Mission Australia is a not-for-profit public company limited by guarantee. The Mission Australia Board endorses the Corporate Governance Principles and Recommendations where appropriate, established by the Australian Stock Exchange (ASX) Corporate Governance Council. While Mission Australia has no obligation to adopt these principles, as a leading NFP we are committed to good governance principles and practice.

In 2011, Mission Australia's high standard of reporting and public accountability was recognised with a PwC Transparency Award, which recognises the quality and transparency of reporting in the not-for-profit sector.

Mission Australia's Board [Governance Charter](#) closely reflects the key governance guidance principles made available by the Charity Commission of England and Wales. The Charter sets out the role of the Board as providing "strategic guidance" for Mission Australia and "effective oversight of management". Under the Charter the Board is "the guardian of the founding purposes for which Mission Australia was established and is accountable to members for pursuit of that purpose and the performance of the Mission Australia Group". In this regard the emphasis is on a stewardship and oversight role for directors with "responsible individual's" including key management personnel in the organisation.

Conclusion

In conclusion, Mission Australia supports government regulation of the NFP sector that enables and strengthens not-for-profit organizations, reduces red tape and duplication, is proportionate, and builds public confidence in the sector. Mission Australia supports much of the regulatory framework enshrined in the Draft Bills for the establishment of the Australian Charities and Not-for-profit Commission. However, there are some elements of draft ACNC establishment bills that could be improved upon in the interests of the NFP sector and broader Australian community.

Submitted by Mission Australia to the House Economics Committee on 20 July 2012 by email to economics.reps@aph.gov.au