



Australian
Diabetes
Council

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Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
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By email: nfpreform@treasury.gov.au

Exposure Draft of the Australian Charities and Not-for-profit Commission Bill 2012

Thank you for the opportunity to comment on the Exposure Draft of the Australian Charities and Not-for-profits Commission Bill 2012 (the **Bill**).

1. Introduction – Australian Diabetes Council

- 1.1 Australian Diabetes Council is the oldest and largest diabetes charity in Australia, with over 128,000 members. We educate, challenge and advocate on behalf of those we represent, including those with and at risk of diabetes, their carers and family members.
- 1.2 We rely heavily on the generosity of a caring community to continue our vital work. Our core business is the management, detection and prevention of diabetes. Diabetes is the sixth highest cause of death by a disease in Australia and is our fastest growing chronic disease. Over 3.5 million Australians have diabetes or pre-diabetes.
- 1.3 Australian Diabetes Council is non-political and receives a small annual grant from State Government. We are primarily self-funded and rely on the support of our members and supporters. With their support, Australian Diabetes Council is able to offer programs and services that make a world of difference to all people living with diabetes in NSW.
- 1.4 Our members include an even representation of both males and females, and have an average age of 65. They include Type 1 (14%), Type 2 (78%) and other categories such as health professional, family member or carer (8%). We are also well represented in regional NSW as well as metropolitan areas.
- 1.5 Our credentialed Diabetes Educators, Accredited Practicing Dietitians and Exercise Physiologists provide our members with support and advice, and we run over 150 courses every year to educate all those affected by diabetes. We also run a Support Network across NSW with over 60 groups operating in local areas to engage local diabetes communities, as well as five Resource Centres across the state.

2. Summary

- 2.1 We acknowledge and support the Government's commitment to the establishment of the Australian Charities and Not-for-profits Commission (ACNC) as the regulator for the sector. We support the establishment of a regulator for the sector to:
- (a) Provide transparency to donors, supporters (including members) and the general public on the work of ADC and charities in general;
 - (b) Aim to reduce and remove ambiguity and duplication of legislation and reporting from both Commonwealth and State Governments affecting charities; and
 - (c) Improve best practice in the sector by moving toward more predictable, and where appropriate, greater uniformity in compliance requirements
- 2.2 We believe that an effective regulator allows our organisation to better focus its resources on carrying out our charitable mission and objectives.
- 2.3 We have reviewed the Bill with a view to commenting on the implications in the context of our organisation's objectives and experience. Our comments in relation to the Bill can be summarised under the following headings:
- (a) The overall objective and tone of the Bill does not convey support for the contribution of the sector to Australian society.
 - (b) Urgency for transitional provisions given the proposed commencement date of 1 July 2012.
 - (c) Reporting requirements.
 - (d) Content of the Australian Charities and Not-for-profits register.
 - (e) Investigation and intervention powers.
 - (f) Definition of responsible persons.
- 2.4 Our comments on the Bill should be read by the Government in the context of our overall support for the Government's not-for-profit reform agenda.

3. Comments

Objective and tone

- 3.1 The objective and the tone of the Bill currently conveys an impression that the sector in general is not acting in the best interests of the Australian community and that funds raised are not being used to meet the purposes/objectives of charities.

- 3.2 We recognise the important role of the regulator to ensure that public trust and confidence is maintained for the sector. However, in our submission that role is secondary to the greater role of enablement and empowerment that the regulator, and indeed the Government plays, for the sector.
- 3.3 Our concern is that if the Bill is interpreted with its current objects, there may be a risk that the obligations set out in the Bill cause its provisions to be limited to interpretations which emphasise short-term goals when considering the operations and activities of a charity as a whole. In our submission, the greater goal is to facilitate the work of the sector, emphasising a longer-term perspective of enabling charities to carry out their objectives. This in turn promotes public trust and confidence in the public.
- 3.4 As a member-based charity, our organisation works to provide assistance for the relief, prevention, control, research and treatment of diabetes. Our activities are directed toward two groups of persons in the community:
- (a) People seeking information of a general nature, including diabetes education material; and
 - (b) People seeking greater information and support to assist them in living with diabetes.
- 3.5 Our organisation requires a regulatory environment that allows us to carry out our activities for the benefit of those people in the broader community. Many of those people become involved in the issues of advocacy, governance and direct input into the programs of our organisation. Our growing membership has made us acutely aware of the need to ensure that our members' donations and other resources are directed toward our objectives with minimal administration costs and maximum efficiency.
- 3.6 Accordingly, our organisation benefits from a regulator which has a primary objective of promoting the broad objectives and efficiencies of charities and not-for-profit organisations: reducing the cost of administration through the facilitation and establishment of an efficient, and simple regulatory environment. Our submission is that the effectiveness of our activities in the context of an enabling environment in turn promotes public trust and confidence.

Transitional provisions

- 3.7 Our organisation is concerned that the transitional provisions have not been drafted. The activities undertaken by our organisation in pursuit of its objectives are extensive and wide-ranging. We are concerned that the new reporting requirements may increase our compliance administration costs, particularly by imposing a burden on our staff to provide new reports, taking them away from the time spent on carrying out our charitable activities.
- 3.8 The size of our organisation's membership means that changes to our internal arrangements can take some time to assess and implement. This process is critical in order to maintain our charitable activities in an efficient manner. We anticipate that our organisation will need to assess the impact of the changes from three perspectives:
- (a) Operational;
 - (b) Resourcing; and

(c) Governance.

3.9 We welcome the commitment of the Government to press forward the not-for-profit reform agenda, however we submit that the pace at which transitions take place need to take into account the changes which may be required by organisations such as ours in the sector, which directly have an impact on members of the public whom we serve.

Reporting requirements

3.10 Our organisation carries out a broad range of activities in furtherance of our objects. These activities include the provision of products and services delivered through agency arrangements with the Commonwealth Government and which are entirely funded by the Government. These arrangements impose significant periodic reporting requirements. We envisage that this is not uncommon in the charitable sector.

3.11 In order to reduce duplication of reporting, we suggest that the Bill make provision for the nullification of reporting provisions in contracts with Commonwealth Government agencies where the Bill already imposes an obligation on the organisation to report to the ACNC. This will ensure that the Bill's objective to minimise regulatory duplication and simplify government interactions is carried out.

3.12 Alternatively, the Bill could empower the ACNC to allow for specific, tailored reporting obligations for certain entities, and in particular entities holding Government contracts. This would also reduce the burden of reporting duplication on charitable organisations.

Content of the Australian Charities and Not-for-profits register

3.13 We welcome the establishment of an Australian Charities and Not-for-profits register (**Register**) to facilitate the availability of information to the public.

3.14 The work of our organisation is often carried out in collaboration and partnership with other similar or more specialised charitable organisations. At the same time, there are other charitable organisations in the Australian community which have very similar objects and activities as our organisation. There are often several charities working with very similar objects, purposes and activities, but different emphases or target areas.

3.15 In order to address this diversity, and also to ensure that the public is able to better distinguish between organisations, we suggest the inclusion of the following in the Register set out in section 100-10 of the Bill:

(a) The organisation's purposes, objects and activities; and

(b) Where the organisation operates, including the address of its premises where it operates.

3.16 In relation to the proposal to include warnings (if any) issued by the Commissioner on the Register, we understand that the publication of warnings and other regulatory action is important in order to create transparency and to warn the public in relation to previous actions. However, it is important to

understand that even if an organisation has regulatory action taken against it, several factors may subsequently take place including:

- (a) Organisational and structural changes to address the subject of such a warning, ensuring that the subject of the action does not occur again; and
- (b) Emergence of new information revealing that the warning was inaccurate or even unfounded.

3.17 Accordingly, we would suggest that any communication, subsequent responses to and from the ACNC also be included to ensure that an accurate view is available. This will be more likely to ensure that transparency is afforded and balanced against unnecessary reputational risk, which has a higher effect on charitable organisations.

Revocation, Investigation and Intervention powers

3.18 The powers given to the ACNC as set out in the Bill do not appear to allow a charity the right to be heard in respect of responding to the circumstances or allegations that have lead to the grounds for revocation, investigation and intervention.

3.19 The charitable services provided by our organisation have garnered it a strong reputation to be upheld. Our name is also carried in the community by our large membership base and extensive support network. Accordingly, our organisation takes any suggestion of improper conduct very seriously.

3.20 In order to ensure that a charity is not exposed to unreasonable and unnecessary reputational risks, the Bill should make provision for the opportunity to be notified and heard before any decision is made in respect of revocation, warnings and directions.

3.21 We are also concerned by the power given to the ACNC to make directions to advance the objects and purposes of our organisation if it considers that financial management is improper or unsound. The decisions made by a charity are made in the context of a range of factors to which the ACNC may not be aware. If the regulator were to exercise such a power, there may be detrimental long-term implications in the provision of charitable services and ultimate charitable aims.

3.22 We would suggest that a more appropriate course would be to empower the ACNC to only allow the organisation to apply its assets in a limited manner consistent with its objects. Exercising such a power would be consistent with an objective to support and further the work of the sector as submitted above.

3.23 We look forward to reviewing the review and appeals procedures, since the current powers given to the ACNC are very broad.

Responsible Persons

3.24 The current definition of 'responsible persons' found in section 210-15 appears very broad.

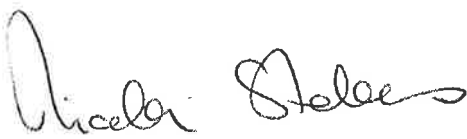
3.25 For example, fundraising activities have a significant bearing on our organisation's financial standing. Our fundraising staff may still fall within the definition of 'responsible persons' for the purpose of the

Bill, since their roles have a significant effect on the financial standing of the organisation. This would impose a disproportionately onerous level of responsibility upon these staff members and managers.

- 3.26 Our organisation also comprises a network of regional offices, as well as an extensive regional support network comprised entirely by volunteers. We rely on the generosity of volunteers who give of their time and expertise in furtherance of our charitable objects. The complexity and breadth of the definition may tend to be disconcerting for potential or existing volunteers given the onerous level of responsibility that they would assume. This would be detrimental to our organisation's activities, since finding suitable, qualified and dedicated volunteers is often difficult.
- 3.27 To address this issue, we suggest that the definition be redrafted in such a way as to refer to the office holders of the organisation under our constitution.

We are grateful for the opportunity to participate in the ongoing Not-for-profit sector reforms. We would be pleased to discuss any aspect of our submission in more detail with Treasury.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicola Stokes', with a stylized flourish at the end.

Nicola A Stokes
Chief Executive Officer
Australian Diabetes Council