



Consumers
Health Forum
of Australia

**Submission to the Treasury on the Exposure Draft *Australian Charities
and Not-for-profits Commission Bill 2012***

January 2012

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Introduction

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide comments to the Treasury on the Exposure Draft *Australian Charities and Not-for-profits Commission Bill 2012*.

CHF is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF is a not-for-profit (NFP) organisation, as are many of our members, and we therefore have a strong interest in NFP sector reform. Many CHF members are also registered charities. CHF is also a signatory to the National Compact between the Australian Government and the NFP sector, and a member of the Community Council for Australia (CCA).

CHF has provided input to numerous Treasury consultation processes on NFP sector reform, and contemporaneously to this submission will provide a submission on the *Review of not-for-profit governance arrangements*. CHF will also provide a submission in February 2012 in response to the Discussion Paper on the *Australian Charities and Not-for-profits Commission: Implementation Design*.

Comments on selected aspects of the Exposure Draft legislation are provided below.

Arrangements for NFP organisations which are not registered charities

The Exposure Draft legislation and supporting materials state that the Australian Charities and Not-for-profits Commission (ACNC) will be initially responsible only for regulating charities. As a NFP organisation which is not currently a registered charity, CHF would welcome greater clarity on the proposed transitional arrangements for NFP organisations which are not charities, as well as certainty about whether the ACNC's role will expand to include the regulation of these bodies, and the likely timeframe.

The language in the supporting materials to the Exposure Draft legislation is ambiguous about the future expansion of the ACNC's role beyond charitable organisations. The Explanatory Memorandum states:

In the long term it is hoped the role of the ACNC will expand to include responsibility for the regulation of all NFP entities which access tax concessions or other Australian government benefits, regardless of their legal form.

The 'Overview' Factsheet states that '*It is envisaged*' that the ACNC's role will expand; while the 'Registration' Factsheet states that '*In the future the Australian Government will consider expanding the range of NFP entities the ACNC will register*'. Similarly, the ACNC Taskforce's Discussion Paper, *Australian Charities and Not-for-profits Commission: Implementation design*, states:

In time, the ACNC may have regulatory responsibilities for other NFP entities (namely those that are not charities). Consideration is still being given to when, and in which order, other categories of NFPs are to be brought within the responsibilities of the ACNC.

These statements suggest a lack of certainty about when, and indeed whether, the ACNC's role will expand. However, the 'Transitional Issues' Factsheet states that *'The ACNC's scope will expand to cover other NFP entities over time. Those timeframes are still to be determined, but are not expected to start before 1 July 2014'*.

Without certainty about when, and if, the ACNC's role is likely to expand to include non-charitable NFP entities, it is difficult for these organisations to comment on the implications of the legislation.

Regulation of companies limited by guarantee

The documents accompanying the Exposure Draft legislation also raise questions about the proposed regulatory arrangements for not-for-profit entities that are also companies limited by guarantee. The documents indicate that companies limited by guarantee will continue to be incorporated by the Australian Securities and Investment Commission, but ongoing regulatory functions relating to an organisation's status as a registered entity will shift to the ACNC.

These changed arrangements will, presumably, require consequential amendments to the *Corporations Act 2001*. It is of concern, therefore, that the consequential amendments will not be the subject of a separate consultation process. The 'Consequential Amendments' factsheet argues that these amendments *'tend to be very technical in nature'* and that this is the reason they will not be subject to additional public consultation. However, given the potential impact on reporting and governance requirements for NFP entities that are currently subject to the *Corporations Act 2001*, CHF argues that it is important for these entities to have the opportunity to comment on these amendments, or to have access to more detail on how these arrangements will work in practice. It is unclear, for example, whether entities will have to alter their Constitutions, if their current Constitutions reference the *Corporations Act*.

Transitional arrangements

CHF notes that the legislation relating to Transitional Provisions is yet to be drafted. While the 'Transitional Issues' factsheet states that *'appropriate transitional arrangements will be in place to allow entities plenty of time to adjust'*, further information about transitional provisions would be welcome, particularly as the Government does not intend to undertake further public consultation on the sections of the legislation that have not yet been drafted.

CHF also seeks clarification on the transitional arrangements for organisations that are incorporated under State or Territory legislation, given that the Commonwealth is still in the process of negotiating with the States and Territories on the development of a national regulatory framework. Further detail on proposed transitional arrangements following the introduction of a statutory definition of charity would also be welcome.

Record-keeping requirements

CHF notes that the Exposure Draft legislation, as currently drafted, contains inconsistencies around record-keeping and reporting requirements. Section 50-5, clause (4), of the Exposure Draft legislation states that registered entities must retain records for five years after the transactions, operations or acts covered by the records are completed. However, Section 55-80 states that the Commissioner may make a determination that a registered entity must prepare a '*report in addition to any other statement or report the registered entity is required to prepare*', and that this report can be in respect of a past period as long as the determination is made '*no later than six years after the end of that period*'. This discrepancy could be problematic. Further confusion is created by section 55-50, which requires that the registered entity's auditor must retain all audit or review working papers for a period of seven years, in line with section 307B of the *Corporations Act 2001*.

CHF argues that greater consistency in record-keeping requirements would be beneficial, and that appropriate amendments must be made to either the reporting or record-keeping sections of the legislation so that registered entities will not be required to report on periods for which records are not required to be kept.

CHF also seeks further detail on the circumstances in which the Commissioner could exercise his/her powers to determine that an additional report is required, as per section 55-80 of the legislation.

Conclusion

CHF supports regulatory reform in the NFP sector, and welcomes the opportunity to comment on the Exposure Draft *Australian Charities and Not-for-profits Commission Bill 2012*. However, the Exposure Draft legislation raises a number of questions, particularly about the proposed expansion of the ACNC's role to cover all NFPs, and about the arrangements for companies limited by guarantee. Inconsistencies in record-keeping and reporting requirements are also of concern.

It is difficult to comment on the likely impact of the legislation when several sections remain undrafted, and there will be no further public consultations on these sections. Provision of further detail on transitional arrangements would be welcome, including clarity about when, or whether, the regulation of NFP entities which are not charities will be included in the scope of the ACNC.

CHF and its members look forward to ongoing involvement in the reform of the not-for-profit sector.



The Consumers Health Forum of Australia (CHF) is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF does this by:

1. advocating for appropriate and equitable healthcare
2. undertaking consumer-based research and developing a strong consumer knowledge base
3. identifying key issues in safety and quality of health services for consumers
4. raising the health literacy of consumers, health professionals and stakeholders
5. providing a strong national voice for health consumers and supporting consumer participation in health policy and program decision making

CHF values:

- our members' knowledge, experience and involvement
- development of an integrated healthcare system that values the consumer experience
- prevention and early intervention
- collaborative integrated healthcare
- working in partnership

CHF member organisations reach millions of Australian health consumers across a wide range of health interests and health system experiences. CHF policy is developed through consultation with members, ensuring that CHF maintains a broad, representative, health consumer perspective.

CHF is committed to being an active advocate in the ongoing development of Australian health policy and practice.