

27 January 2012

Manager
Philanthropy and Exemptions Unit
Personal & Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

And by email: NFPReform@treasury.gov.au

Dear Sir/Madam

SUBMISSION IN RELATION TO:

- **THE CONSULTATION PAPER: REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS AND**
- **THE EXPOSURE DRAFT - AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION BILL**

Thank you for the opportunity to comment on the above documents, released in December 2011. The extension of the submission period to 27 January 2012 has made it possible for us to provide a response. FamilyCare reiterates concerns we understand are shared by our sector colleagues however in relation to the pace of the reform process and the adequacy of the current approach to engaging the NFP sector. These comments will be expanded below.

About FamilyCare

FamilyCare is a community-based not-for-profit organisation and has been providing services to families and individuals in the Goulburn Valley, Lower Hume and surrounding districts since 1984. FamilyCare's range of activities includes:

- Child and family services;
- A day-stay mother-baby support unit;
- A support program for refugee minors;
- Aged and disability care;
- Support and respite for carers;
- A no-interest loan scheme;
- Men's counselling; and
- Community development and outreach programs.

FamilyCare supports the general thrust of the NFP reform agenda and in particular the establishment of a national regulator. FamilyCare has previously contributed to the discussion surrounding the establishment of the ACNC by:

- Providing a written submission in February 2011 in response to the Treasury's Scoping paper on the establishment of a national NFP regulator; and
- Participating in the Education and Advice Roundtable hosted by the ACNC Taskforce in Canberra on 8 November 2011.

Scope and limitations of this submission:

It is not practical for FamilyCare to provide detailed comments on either the draft Bill or the Governance paper. We are aware of contributions being made by the Melbourne based Public Interest Law Clearing House and Melbourne University's 'Defining, Taxing and Regulating the Not-for-Profit Sector in Australia' Project that will provide a more fulsome analysis. We commend those comments to you and from what we understand to be the position taken by PILCH and Melbourne University and the various concerns they will outline FamilyCare supports and endorses those submissions. In particular, we defer to both PILCH and Melbourne University's expertise in commenting on the technical detail of the proposals.

We would like to add emphasis to the following points, based on our experience and needs as a community-based, not-for-profit provider of services to a predominantly vulnerable and disadvantaged client base.

a) The lack of any information or transparent planning for transitional arrangements:

Both consultation documents refer and commit to the development of appropriate transitional arrangements, to ensure that the proposed regulations work as intended and that not-for-profits are able to understand and meet any changed expectations. The lack of detail, not just on the substance of transitional arrangements but on what is required, why, when and who or what other bodies will be involved in the process, are all problematic. FamilyCare agrees absolutely with Melbourne University's observations that suggest the order and substance of the development process are confused.

As an example of these concerns, the draft Bill does not include governance requirements, deferring to the development of the broad principles explored in the Governance discussion paper. The Governance paper, whilst making reference to several broad principles, explores a specific package of potential regulatory and compliance requirements, apparently at odds with a broad principles based approach. Neither document provides any more than passing reference to the existence of other frameworks that might already be dealing with such issues.

At a practical level, having become aware of and involved in the discussion regarding the ACNC's development, FamilyCare has sought to keep its Board abreast of the process. We have been unable to advise our Board about the detail of the requirements post July 2012.

b) The potential to undermine the stated intention of the reforms, particularly the reduction of 'red-tape':

As noted in a) above, neither consultation document provides any practical detail on how the ACNC development process will interact with current state-based regulations and supervision arrangements. FamilyCare is a provider of services in regional Victoria. We are incorporated in Victoria and our primary funding relationships are with Victorian Government Departments. FamilyCare is required to comply with relevant Victorian and Commonwealth legislation already and that will continue to be the case after 1 July 2012 when the ACNC commences.

Our best guess, based on the detail provided to date about the nature and timing of the process, is that there will be significant areas of regulatory and reporting duplication as a result of the ACNC's commencement in July 2012, that this overlap will continue for an indeterminate period of time and that there will be no additional resources made available to meet the increased expectations. If that assessment is correct, the result would undermine the stated intention to reduce 'red-tape' and provide a more efficient regulatory landscape.

FamilyCare strongly supports a delay in the settlement of governance principles and consequential rules and obligations until after the ACNC commences. We agree with Melbourne University that the Commission itself would be better placed to properly survey the landscape and develop principles and guidance with the benefit of proper stakeholder engagement, including the various state and territory government agencies that fund community service activities around Australia.

There is also a considerable network of relevant compliance requirements at a quasi-regulatory level that often deal directly with issues raised in the ACNC Governance paper. A good example is the various quality standards that apply across community service activities and are subject to regular, detailed external scrutiny. FamilyCare has recently participated in a full external audit of compliance against the Victorian Disability Service Standards. Whilst the provision of specific services is the trigger for a requirement to comply with the standards, the review processes extend well beyond those specific services, considering in detail how an agency is governed. Requirements include:

- Appropriate processes for the selection, induction and ongoing training and development of Board members/Directors;
- How risk is identified and managed;
- Suitable arrangements for delegation of authority and regular reporting and review;
- Prudent and sustainable financial oversight; and
- Effective mechanisms for receiving and responding to complaints and linking this to ongoing strategic planning.

There are a number of standards that apply to community service provision, some overlapping in the same jurisdiction. The Victorian Department of Human Services has recognised the potential for this to produce confusion and inefficiency by embarking on its 'One DHS' policy, which will introduce a more-streamlined compliance and monitoring process from 2012. As already noted the ACNC

documentation makes no reference to this type of development, or the potential for steps of this type to adequately cover appropriate governance expectations.

c) A failure to sufficiently recognise the different motivations between for-profit and charitable/welfare activities:

The summary of core governance principles is not particularly controversial. As already noted the detail of the potential compliance and reporting requirements does not however fit comfortably with a principles-based approach. Of more concern is how the discussion explores the comparisons between for-profit and not-for-profit activities.

Directors or Board members of not-for-profit agencies may share some common obligations with office holders in for-profit entities. In FamilyCare's view however too much is made of exploring the similarities and not enough in acknowledging the key differences. Further, some of the conclusions drawn from the consideration of similarities are in FamilyCare's opinion incorrect.

For example, the Governance paper suggests that not-for-profits not only struggle to properly give voice to the needs of vulnerable and disadvantaged service users they are prevented from doing so because those service users do not share the benefits that accrue to being a shareholder of a for-profit entity. The discussion ignores the reality that small shareholders in large for-profits have no practical voice at all. Similarly, it undervalues the importance of mission, in setting the direction of not-for-profits and ignores requirements for regular, effective stakeholder engagement that are almost universal in funding contracts and quality standards. That is not the same as concluding that not-for-profits are all doing an excellent job of engaging their clients all of the time. FamilyCare knows it could do better and is always trying to do so. But we exist to improve the lives of our clients and communities – not to try and sell them more products or services.

FamilyCare believes these concerns could be addressed through a clearer recognition that the ACNC's primary role is to be a regulator for the not-for-profit sector, not another corporate regulator that happens to supervise entities that are not setting out to make a profit.

d) Undue haste in the development of the ACNC role and activities:

It has taken many years for Australia to reach this point in the reform process where the commencement of a national regulator is imminent. From FamilyCare's perspective, the deadlines referred to in the consultation documents undermine the patient development work to date and seek to go too far too soon.

As an agency we have been fortunate to have had an involvement in the development discussion to a level well beyond that common amongst most regional service providers. That brings with it a responsibility to note that as good as the roundtables and other individual engagements might have been to date, they are not indicative of a broad engagement with the not-for-profit sector. The pace of reform is making it harder for those already involved to participate in a meaningful way. For the vast majority not yet informed about the process, engagement at the development stage is now almost impossible.

The specific needs of regional and rural not-for-profits have not been adequately considered and will not be met by online services alone. The forthcoming briefings are all based in major cities and as far as FamilyCare is aware there is no plan for an expanded process.

Conclusion:

FamilyCare remains supportive of the need for reform and the establishment of a national regulator. We believe the ACNC has the potential to play a significant role in the continuing improvement of not-for-profit activities that could have a profound impact on both the sector and the people who rely upon it for the provision of vital services.

As FamilyCare noted at the Education and Advice roundtable in November 2011 however, a quick straw poll of regional service colleagues confirmed that awareness of and engagement with the reform process is alarmingly low. The Commonwealth can impose a new set of rules and regulations on not-for-profit agencies and it is possible that such an imposition may produce some positive outcomes like decreasing risk or an improvement in financial supervision and reporting. But if the sector is not an active partner in that journey, there is a grave and increasing risk any resultant bureaucracy will act to stifle the innovative and impassioned responses to real problems in local communities that NFP and community welfare providers are known for. That would do great harm to the sector and to social cohesiveness nationally.

Thank you again for the opportunity to comment. Should the Unit require any further information, or clarification of our comments, please do not hesitate to contact me on 03 5831 7000 or via email dtennant@familycare.net.au. We will continue to follow and engage with the process as our resources and service demands permit.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Tennant", written in a cursive style.

David Tennant
Chief Executive Officer