MYER
FAMILY COMPANY

24 January 2012

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

Dear Sir/Madam,

Australian Charities & Not-for-profits Commission Bill 2012

We refer to Treasury's December 2011 release of an exposure draft of legislation to establish the Australian Charities and Not-for-profits Commission ("ACNC"). Please find attached The Myer Family Company's ("MFCo") submission relating to this exposure draft. MFCo is a multi-family office providing a range of services to families, philanthropic foundations and not-for-profits ("NFPs").

Since 2004 MFCo has established over 60 Private Ancillary Funds ("PAFs") which grant considerable funds to NFPs across Australia. Our role working with these PAFs also includes grant research and administrative functions and working closely with NFPs to inform and implement strategic giving programs. We also provide investment advice to many NFPs throughout the country.

The key focus of our submission is retaining the privacy of PAFs. The introduction of PAFs in 2001 has arguably had a greater positive impact on this country's small philanthropic sector than any other measure in our history. If PAFs do not remain private in nature it is likely that their growth, and that of the philanthropic sector, will significantly diminish, to the detriment of the community. A significant number of existing founders of PAFs that we have spoken to are appalled at the breach of trust relating to the possibility that family foundations that were established within rules stating that they would be private, would now suddenly become public in nature. Many would simply wind up.

PAFs are already subject to detailed supervision via the PAF Return, including audited financial accounts, provided to the Australian Taxation Office ("ATO"). They should not now be subject to another layer of disclosure.

The Commissioner of the ACNC is to maintain an ACNC Register. Division 100-20 of the ACNC Bill allows the Commissioner to withhold information from the Register. For the reasons outlined below, we strongly recommend that all information relating to PAFs be withheld from the Register and that PAFs report to the ACNC in a similar fashion to their

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existing reporting to the ATO, as stipulated in the PAF Guidelines. PAFs could choose to be public.

Do we not live in a society where we wish to encourage great traditions of family philanthropy and to provide an avenue for increasing private investment in the NFP sector, thereby maximising the long term benefits to the community from philanthropy?

If you would like to discuss this submission please contact me on (03) 9207 3065.

Yours faithfully,

Peter Winneke
Head of Philanthropic Services

ACNC BILL - EXPOSURE DRAFT, DECEMBER 2011

SUBMISSION BY THE MYER FAMILY COMPANY – January 2012

Introduction
As discussed in our February 2011 submission to Treasury relating to the *Scoping study for a national not-for-profit regulator,* the NFP sector makes a significant contribution to Australia's GDP and employment. The NFP and philanthropic sectors are inextricably linked with one relying on the creation of the other as another source of revenue and in some cases further assistance in programmatic design and implementation.

We believe national regulation of the NFP sector, taking into account the needs, requirements and vast differences of NFPs, can be successful in further growing and professionalising the sector. We agree that improved NFP regulation should promote a strong and sustainable sector underpinning strong philanthropic engagement in the community. The most important goal of national regulation should be to remove the current duplication while streamlining requirements to provide consistency and minimise compliance costs.

The key focus of this submission is retaining the privacy of PAFs.

ACNC can assist grow confidence in the NFP sector
A key role of the ACNC can be to grow public confidence in the NFP sector. Increased public, donor and volunteer confidence not only grows the NFP sector but also those sectors developed to support it, such as the philanthropic sector. The philanthropic sector in Australia remains very small but has the capacity for extensive growth in the coming years.

We need to build a culture of giving in Australia
It is a myth that Australians are generous. Whilst a relatively high percentage of Australians have traditionally volunteered each year *("Insights from the National Survey of Volunteering Issues 2011": Volunteering Australia)*, information relating to financial donations paints a far bleaker picture. Analysis from the ATO ("*ATO Taxation Statistics 2008/09"* – the latest available*)*, indicates that in 2008/09:

- Australians gave only 0.36% of their income to deductible gift recipients ("DGRs");
- 62% of tax paying Australians made no gifts to DGRs; and
- Of the 6,395 Australians who earnt over $1 million, 37% made no gift to DGRs.

We need to build a culture of giving in this country, in order to build the organisational capacity of our primarily grossly under-capitalised NFPs in order that they can serve the community and achieve their mission.

Positive impact of PAFs on philanthropic sector
PAFs were introduced in 2001 and have arguably had the greatest positive impact on the growth of the philanthropic sector than any other measure in our history. It is the growth of PAFs that has been driving the growth of the small philanthropic sector in this country. The number of PAFs increased rapidly until 2008, by which time approximately 750 PAFs had been established, with an aggregate corpus of approximately $1.9 billion. In the last three years the number of PAFs being established has diminished. Recent statistics on PAF numbers have not been released by the ATO, but we understand there are now approximately 900 PAFs in existence i.e. less than 50 PAFs are currently being established each year.

Obviously the Global Financial Crisis and subsequent economic issues have had a negative impact on the establishment of philanthropic family foundations. However, from our experience we believe the most significant adverse impact on the establishment of PAFs since 2008, and thus the growth of the philanthropic sector, was the release in December 2008 of Treasury's Discussion Paper, "*Improving the Integrity of Prescribed Private Funds"*. Treasury included two suggestions in this paper:

1. an annual distribution rate of 15% of the value of the fund (effectively abolishing the perpetuity of PAFs); and
2. contact details of PAFs be provided to the public (effectively abolishing the privacy of PAFs).

If you refer to the numerous submissions that stakeholders lodged at the time, you will see that there was an overwhelming negative response to both the above issues. Subsequent to consultation with the sector in early 2009, to Treasury's credit, the perpetuity (via a 5% annual distribution rate) and privacy of PAFs was retained. However, given the initial lack of consultation with the philanthropic sector by Treasury relating to this paper, and Treasury's apparent lack of understanding of the philanthropic sector indicated by the above two suggestions, there remains a significant fear within families that the perpetuity and privacy of PAFs would again be targeted by Treasury.

In order to provide confidence to the future and integrity of PAFs, families need to be reassured about the long term privacy of PAFs.

PAFs currently have significant accountability

PAFs currently have significant accountability, and probably more than any other charitable entity in the country. They have a standard Trust Deed, must adhere to tight PAF Guidelines, must document their investment strategy and must lodge a detailed PAF Return each year with the ATO, which includes a set of audited financial statements. The audit includes compliance with the PAF Guidelines.

We believe the collecting of information such as that contained in the PAF Return across all charitable trusts, so as to provide clear aggregate sector figures, will contribute to transparency and increase levels of trust and confidence in the philanthropic sector. However, like PAFs, we believe that individual, or identifying information, should not be made publicly available.

Adverse impact on PAFs of losing privacy

If PAFs do not remain private in nature it is likely that their growth, and that of the philanthropic sector, will significantly diminish, to the detriment of the community. A significant number of existing founders of PAFs that we have spoken to are appalled at the breach of trust relating to the possibility that family foundations that they established within rules stating that they would be private, would now suddenly become public in nature. Many would simply be wound up.

The vast majority of our clients have advised that they would not have established a PAF if it was not private in nature. If privacy was not an issue they would have established a Public Ancillary Fund.

If PAFs are required to publicly provide their contact details they would be inundated with requests for funds. There are approximately 25,000 DGRs in Australia. Notwithstanding that a proportion of these may be ineligible to receive gifts from a PAF, once a list of PAF addresses is made publicly available, many of these DGRs would likely write to each PAF seeking funding. This would place impossible administrative burdens on PAFs.

Further, this is unlikely to increase the amount of gifts to NFPs. The majority of PAFs have chosen focus areas that they are passionate about supporting. Founders interested in assisting homeless people will not fund an arts project simply because they receive an unsolicited request for funds for that arts project. It is just as likely to have the opposite effect. The result will be a windfall for Australia Post and a waste of resources for the community sector; targeting PAFs whilst having no understanding of their giving priorities. These concerns would also be relevant to all other charitable trusts that currently choose to not receive unsolicited applications, or maintain privacy around their contact details.

To minimise costs, very few PAFs employ staff, with funding research often undertaken by family trustees. Many PAFs would have to consider employing staff (or consultants) to handle the immense number of funding requests they would receive, thereby significantly increasing the cost of managing the PAF and reducing the amount available for distribution to the community.

We have seen many examples of foundations outlining their focus areas on a website in order to minimise the receipt of funding applications which are "outside guidelines". Perhaps understandably, in the faint hope of success, applications well outside of guidelines are still regularly received.

If PAFs wish to consult the community or seek unsolicited projects they can do so by advertising a grant round.

If community groups are well managed and doing good work, PAF directors hear of these projects and make appropriate grants.

We are not attempting to reduce the existing accountability of PAFs, nor change the current reporting requirements. We are merely making observations based upon common sense and our significant experience with PAFs and families. The vast majority of our clients wish to give privately. True philanthropy is to give and receive nothing in return; this includes not seeking public adulation.

In the eyes of many major donors, Treasury's above-mentioned 2008 Discussion Paper severely dented the confidence in the future of the PAFs. A risk of PAFs losing their privacy will potentially set the philanthropic sector back decades. Certainty and clarity is now required, otherwise the outcome will be a significant adverse impact on the charitable sector in our country. We are just starting to build a culture of giving in this country. Much of the wealth in Australia has been created in just the last 30 years and the philanthropic sector is very immature; now is not the time to experiment with it.

Other benefits of structured giving through PAFs

Our experience has shown that PAFs are providing families with a structured approach to their community engagement, including the discipline of regular foundation meetings, as well as providing a tool for more personal endeavours such as family engagement. An important part of this engagement is not merely providing monetary gifts but providing time as well. Family members are providing expertise in many forms to community organisations.

The structured approach to giving also improves collaboration amongst NFPs, PAFs and other donors. The structured nature of PAFs (e.g. annual gifts to and from PAFs and formal meetings to consider the implementation of a strategic giving program) has resulted in a considerable increase in collaboration within the philanthropic sector, with like-minded donors working together. This has resulted in a more focussed approach to solving systemic problems in our society.

Many potential founders will take the view that there is little point in establishing a structured approach to their giving if it is to be in the public eye, given that by their nature, PAFs are often family orientated in both values and practice. They would possibly just plan to write personal cheques to their chosen causes on an annual basis. We believe this will be detrimental to the community for the following reasons:

i.) A less strategic approach will be taken to giving as it will potentially be done in an unfocused way, usually just prior to financial year end. This kind of granting can often lack efficiency and analysis and will result in problems in our society being tackled without the forward planning and longevity that structured philanthropy can provide. It is our experience that PAFs often commit to structured giving to particular charities over a number of years, thereby allowing the recipients to undertake longer term projects;

ii.) Less is likely to be gifted to community groups as annual giving will be done on a more ad hoc basis, compared to the structured process of giving via a PAF. With a PAF the capital is committed and can't be retrieved. Annual giving in an ad hoc fashion may be reduced or ceased during difficult times, as currently seen with giving levels decreasing by 10.8% in 2008/09 ("*ATO Taxation Statistics 2008/09")*, resulting in an adverse impact on the long term funding of the hundreds of NFPs currently supported by PAFs; and

iii.) With uncertainty over the future of PAFs, less will be bequeathed to the community via PAFs.

The community sector requires long term funding from donors to provide security to their programs and reduce the inefficiencies caused by senior NFP executives constantly fundraising. Traditionally such long term funding has not been a strength of the philanthropic sector in this country. Generally, founders of PAFs are taking a more strategic approach to their giving and this has included a greater emphasis on long term funding.

If lack of privacy had been applied to the older, major philanthropic family foundations in Australia, many would not be in existence today. The Potter, Fairfax and Myer Foundations of the future, providing significant critical funding to hundreds of community organisations each year, are being established today, as PAFs. We need to protect and encourage this.

Commissioner should withhold PAF information from the Register
The Commissioner of the ACNC is to maintain an ACNC Register. Division 100-20 of the ACNC Bill allows the Commissioner to withhold information from the Register. For the reasons outlined above, we strongly recommend that all information relating to PAFs be withheld from the Register and that PAFs report to the ACNC in a similar fashion to their existing reporting to the ATO, as stipulated in the PAF Guidelines. PAFs could choose to be public.