The Smith Family's submission to the Senate Community Affairs Legislation Committee re the Australian Charities and Not-for-profits Commission Bills 2012

August 2012

Contact person:
Anne Hampshire
Head, Research and Advocacy
Level 9, 117 Clarence St
Sydney NSW 2000
Ph: 02 9085 7249
Email: anne.hampshire@thesmithfamily.com.au

Background on The Smith Family

The Smith Family is a national, independent charity committed to increasing the educational participation and achievement of Australian children and young people in need. It is a company limited by guarantee and operates in every state and territory. It has Public Benevolent Institution and Deductible Gift Recipient status, and is an Income Tax Exempt Charity.

The process to establish the ACNC

As with many other non-government organisations, The Smith Family has been actively involved in discussions regarding the establishment of the Australian Charities and Not-For-Profits Commission over a prolonged period of time. This has included numerous submissions as part of the public policy processes regarding its establishment, and most recently an appearance before the House of Representatives Standing Committee on Economics' Inquiry into the draft Bill. More importantly, the work to establish the ACNC is built on a decade long period of review and numerous inquiries urging changes to some of the arrangements of the sector. The *ACNC Bill 2012* is the end result of years of work involving many government, non-government and corporate organisations and individuals.

Key principles to underpin reform

Over the course of the ACNC's development, The Smith Family has consistently argued that fundamental to reforms in the NFP sector should be the complementary principles of:

1. Transparency and public accountability.
2. Certainty, consistency and workable compliance regimes.
   and
3. Maximising the contribution of the charities and not-for-profit sector to the Australian community.

We have also argued that some of the current arrangements for the sector are far from ideal. In particular, the ATO's dual role as determiner of charitable status and collector of government revenue is problematic. The sector also currently experiences the burden of multiple compliance, reporting and regulatory requirements, and these do not necessarily provide the type of transparency that would strengthen the sector.

The Smith Family has particularly welcomed the preamble and objectives for the ACNC contained in the legislation, with their emphasis on the role of the Commission being to:

- Maintain, protect and enhance public trust and confidence in the Australian NFP sector
  and
- Support and sustain a robust, vibrant, independent and innovative Australian NFP sector.

Evolution of the Bill and the work of the ACNC

Over the course of the ACNC's development, including through the different versions of the legislation governing its establishment and through the way the ACNC's Implementation Taskforce has worked with the sector, The Smith Family has seen an important evolution of thinking regarding the ACNC. Key objects of the Bill have been refined, including the recent addition of a new object regarding the reduction of red tape in response to the House of Representatives Inquiry mentioned above.

Importantly, the report of the House of Representatives Inquiry also clarified the intent of the draft Bill regarding personal liability on directors, an area which had previously created a level of concern for some. The revised Bill included the Inquiry's recommendations regarding this matter.

A step in the process

While the Bill provides only the legislative framework for the ACNC, and much of the detail of how it will operate is still being worked through, the legislation marks an important step in the establishment of the Commission.

The Smith Family is cognisant that achieving these objects won't happen overnight, but we believe there is merit in:

- separating the role of regulator and revenue collector
- providing a one stop shop for NFPs for reporting, compliance and regulation, initially at the Commonwealth level, and ideally over time, at the State/Territory level
- supporting through an educational role, the development of what is a highly diverse sector and
- having a credible source of information on charities available for public use.

Time to progress the establishment of the ACNC

Given the numerous inquiries into the not-for-profit sector over the last decade, the number of review processes regarding the establishment of the ACNC which have occurred over the last 12 months or more and the clear refinement of the legislation which has occurred as a result of those processes, The Smith Family believes it is now appropriate that the legislation to establish the ACNC proceed. The Smith Family would welcome the passing of this legislation and the establishment of the Commission.

In conclusion, following years of reviews and multiple recommendations, and in light of the less than ideal circumstances governing the sector, The Smith Family believes it is now time to move forward with the establishment of the ACNC. While the Bill is not perfect, it will enable the ACNC to begin to achieve what is now a long overdue reform. The approach and the work to date of the Implementation Taskforce provide some level of confidence in how the important early phases of the Commission will proceed. Ongoing engagement of the sector will be important to the evolution of the Commission and its long term success.