Submission to the Parliamentary Joint Committee into the Creation of the ACNC

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Major Statement

Legislation must support the needs of the sector and meet the key policy objectives outlined by the Minister.

Introduction

The Report on the Exposure Draft of the Australian Charities and Not-for-profits Commission Bills 2012 notes the following key objectives of the ACNC:

- Reducing burdensome regulation
- Sustainability of the not for profit and charitable sector
- Establishment of a federal regulator for NFP's and charities that is independent from the ATO

The Report does not demonstrate that the establishment of the ACNC and its activities would meet the key objectives stated. Contrary to the objectives, not-for-profit organisations will now be subject to an additional layer of reporting and regulation in the form of this federal body.

There is also no detail in the Report how its activities would support the sustainability of not-for-profit organisations; instead the increased regulatory burden is likely to stifle creativity.

YouthCARE also notes what appears to be a conflict of interest arrangement between the ACNC and the ATO in its proposed operation.

Key Points

1. Burdensome Regulation

The Report claims that the adoption of the Bill and the establishment of the ACNC will result in significant reduction in reporting and regulation requirements for NFP's and Charities. Although many organisations welcome this objective, the Report does not demonstrate the practical application that will lead to the reduction of red tape. With the exception of companies limited by guarantee, there are no practical examples cited that would give the sector any comfort that such reduction would take place.

As noted in point 1.24 "…there is no doubt they will judge us to be effective by the degree to which we can reduce red tape." Establishing the ACNC without resolving and clearly demonstrating this key issue will undermine and overshadow the other positive aspects of the ACNC framework.

Specifically of concern for incorporated associations is the lack of information regarding the winding back of relevant state and territory legislation in addition to harmonization with reporting to state and federal government agencies which already takes place.

The Report shows a lack of consultation with state and federal departments on the administration of the ACNC reporting requirements and how this would impact on any government department's current arrangements with the sector. It fails to resolve the question of how the proposed ACNC framework will co-exist with overlapping existing legislation.

Many organisations currently have a high level of reporting and compliance cost related to funding from state and federal government agencies. YouthCARE currently submits audited financials to the Department of Employment, Education, and Workplace Relations (DEEWR), the Western Australian Department of Education, and the Department of Commerce, in addition to numerous local government bodies on an annual basis.

With the introduction of the ACNC there would be further duplication and additional reporting burden placed on organisations in contradiction with the Bill's objective.

We understand that there are parallel processes currently occurring to review and address the above issues, and they should be allowed to report their findings before the commencement of the ACNC legislation. Passing the legislation through undue haste in not receiving these reports would, in our opinion, may result in ineffective legislation that does not support the needs of the sector, nor meet the key policy objectives outlined by the Minister.

2. Lack of independence with the ATO

The Report notes and welcomes the importance of separating ATO's role as Revenue Raiser from the Regulator, however this purpose could be seen to be contradicted because the ACNC will be "leveraging off the expertise of the ATO by employing its staff" – point 1.20. The basis of this new arrangement seems to be driven by an expedient cost saving exercise by choosing Option 1 as noted at Point 1.22 of the Report. However from a layman's perspective it may be difficult to have confidence that experts from the ATO will be able to maintain an entirely independent perspective in their work with the ACNC.

Furthermore, choosing Option 1 may have the potential to produce distrust from the sector towards Government as excessive powers are handed to the Regulator who will be able to determine the various aspects of charitable activities without the purview of the parliament. It is our hope that there will be significant consultation with the NFP sector prior to the implementation of regulations which are currently not determined.

3. Directors and Board Members responsibilities

The majority of organisations in the sector are served by volunteers who offer their time and professional expertise to assist community organisations for the benefit of millions of people in this country.

Currently there are reasonable safeguards in place in the sector which are not restrictive to the ongoing participation of volunteers who serve as directors and board members.

YouthCARE notes the concerns raised by the Australian Institute of Company Directors stated in the report at Point 2.107 that the Bill in its current form would place

responsibilities and penalties on not-for-profit and charity board members that would be greater than those found under the Corporations Law.

We are pleased that the Committee has recommended changes as per Recommendation 6.

Any future recommendation should take into account the issues of recruitment and retention of board members/directors and potential insurance cost impacts on organisations.

Recommendations

- Establishment of the ACNC should be supported once legislation fully reflects and supports the key policy objectives outlined by the Minister.
- Resolve and demonstrate in practical terms how red tape will be reduced to help the sector grow.
- Clearly demonstrate how the independence of the ACNC from the ATO will be achieved given the perceived conflict of interest.
- Establish the governance standards and associated obligations, liabilities and offences provisions to ensure that they are appropriate to meet defined objectives, proportional to responsibilities and provide an adequate transition period to implement properly.

Conclusion

The NFO sector is under enormous strain across the country particularly in regional areas. The establishment and operation of the ACNC must reflect fully the policy objectives outlined in the Report for organisations like YouthCARE to remain vibrant, active and innovative.

There seems to be undue haste in establishing the ACNC structure, however given the Governments desire to implement reform in the sector within a short time, it is our hope that the Committee takes note of our recommendations and clarify uncertain aspects of the current legislation.