Catholic Social Services
Australia

Catholic Social Services Australia

Submission to the Senate Standing Committee on Community Affairs Inquiry into the Australian Charities and Not-for-profits Commission Bill 2012, Australian Charities and Not-for profits (Consequential and Transitional) Bill 2012; Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012

30 August 2012

Contact: Paul O'Callaghan
Executive Director
Catholic Social Services Australia
PO Box 326, Curtin ACT 2605

Telephone: 02 6285 1366

Table of Contents

Page

Introduction 3
General Comments about the Bills 3
Specific comments 4
Red tape reduction 4
Independence of NFPs 5
Governance standards 5
RECOMMENDATIONS 6
Appendix 1 7
Catholic Social Services Australia Membership at 30 August 2012 7

Introduction

Catholic Social Services Australia (CSSA) is the national peak organisation for Catholic social service agencies in Australia. It is a policy, advocacy and network support organisation for 66 members throughout regional, rural and urban Australia. Those agencies provide services to over one million Australians, employ about 11,000 staff and receive assistance from over 4,000 volunteers. CSSA member agencies deliver over $600 million worth of social services per annum. CSSA also advises Australia's Catholic Bishops on social service issues as required.

CSSA's members (**Appendix 1**) are mission-driven, not-for-profit (NFP) organisations which provide an extensive range of community services. Those services include Community Aged Care, Children's Services, Child Care, Disability Services, Drug and Alcohol Services, Emergency Relief, Employment Services, Family and Relationships Services, Financial Counselling, Foster Care, Gambling Counselling, Housing, Immigration and Refugee Settlement Services, Mental Health Services, Residential Care, School Counselling, Therapy Services, and Youth Services.

CSSA has been a firm advocate for NFP sector reform for many years. This is largely because members of the CSSA network seek to maximise the resources they dedicate to assist disadvantaged and marginalised Australians and thereby reduce the diversion of administrative resources caused by duplicative reporting and unnecessarily complex contracting arrangements.

This submission reflects CSSA's views regarding the Exposure Drafts of the *Australian Charities and Not-for-Profits Commission Bill 2012* (ACNC Bill) and the *Australian Charities and Not-for-Profit (Consequential and Transitional) Bill* tabled in Parliament on 23 August 2012.

General Comments about the Bills

CSSA recognises the complexity of this process for Government and the NFP sector and commends the Government on its engagement with a range of NFP stakeholders during the development of these Bills. The Bills acknowledge the need for the Australian community to have a "sustainable, robust, vibrant and innovative NFP sector" (Objects 15-5 (1) (b)) and set out an accountability framework to the Australian community for the sector. CSSA assesses that, while the Bills go some way towards supporting the sector's sustainability, robustness and independence, some amendments are needed to achieve this key reform objective.

CSSA recognises that these Bills are intended to establish in legislation the purpose, powers and responsibilities of a national regulator, rather than to provide operational guidelines. We also welcome the inclusion in the Objects of the ACNC Bill of red tape reduction and the new reference in the Explanatory Memorandum to "Promoting the reduction of unnecessary regulatory obligations on NFP's". Both of these aspirational statements improve the Bills.

CSSA also wishes to acknowledge other positive changes reflected in the current ACNC Bill 2012 including: the additional procedural fairness requirements that have been included where the ACNC Commissioner exercises particular powers under the legislation; the recasting of directors' liability; the inclusion of a statutory review provision after the legislation has been in operation for 5 years.

Specific comments

Red tape reduction

Based on its consideration of the last two Exposure Drafts of these Bills and consistent with the views expressed to Government by CSSA since mid-2011, we assess that these Bills do not enable the Government's stated purpose to be adequately achieved through these Bills. A central part of that purpose was for the Commonwealth to itself take action to reduce unnecessary red-tape and compliance for the NFP sector.

The CSSA network of agencies continue to note the absence of a commitment to tangible red tape reduction action within the scope of Commonwealth powers. This is in stark contrast with the political impetus taken by the Prime Minister and other Ministers prior to the last election, when NFP sector support was principally sought for NFP reform on these grounds.

In 2008 and 2009, CSSA responded favourably to the Government's early NFP reform initiative, including for the National Compact. This was because CSSA member agencies had identified an unsustainably high level of resource commitment to simply servicing the compliance requirements of Commonwealth and State government agencies. For example, in 2009 we found that 19 member agencies held 620 separate government contracts. Virtually all of those contracts required separate reporting formats, conditions and timetables.

In the Prime Minister's pre-election speech entitled "Strengthening the Non-Profit Sector", a commitment was given that a Gillard Labor Government would significantly streamline tendering and contracting processes for government funded not-for-profit organisations. These actions "will cut red tape" and "allow organisations in the sector to spend more time and money focusing on what they do best". The Statement also referred to achieving greater harmonisation and simplification between Commonwealth, State and Territory Governments.[1]

The "Review of Not-for-Profit Governance arrangements" Consultation Paper released in December 2011 re-iterated in the foreword the primary object in setting up an ACNC as we had understood it from earlier processes:

> "By streamlining and centralising governance arrangements into one framework, and reducing red tape, NFPs will be able to spend less time complying with duplicative or burdensome arrangements and more time helping the community."[2]

As identified above, the dominant theme throughout NFP reform discussions since the ALP pre-election commitment and including in the final report of the Treasury's Scoping Study last year, has been about measures to enhance the sector's capacity. This has especially focussed on reducing red tape and duplication of administrative processes.

Yet, in the course of consultations in the latter half of 2011 and 2012, this theme virtually disappeared. Most recently, the Assistant Treasurer's speech to the Melbourne Law School in July indicated that red tape reduction had become a long term goal for Government. [3] The House of Representatives Standing Committee on Economics appeared to endorse this

---

[1] Julia Gillard (2010): *Strengthening the Non-profit Sector*, August 2010. <http://www.alp.org.au/federalgovernment/news/strengthening-the-non-profit-sector/> [accessed 24 August 2010

[2] "Review of not-for-profit governance arrangements", Consultation Paper, December 2011. P.vii

[3] Bradury, David (2012) Speech to Defining, Tax and Regulating Not-for profits in the 21st Century Conference, Melbourne Law School, Melbourne, 19 July 2012. http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2012/005.htm&pageID=005&min=djba&Year=&DocType=

view in its report (p.iv) stating that reducing red tape " is a long term project, but the Committee is confident that, over time, duplication will be minimised". [4] Over recent months, leaders of the CSSA network have asked why a central part of the Government's commitment to the sector in this reform initiative had been relegated to such a low priority.

Given the Government's commitment to rectify the red tape burden as a priority throughout the period of 2008-10 and its unconstrained capacity to use the current legislative process to provide direction to Commonwealth agencies through these Bills, these Bills fall well short of our expectations. We recommend that the references in the statement of Objects and in the Explanatory Memorandum be supplemented by a statement that tangible action would be taken in the foreseeable future.

An example of tangible action is the recommendation by UnitingCare Australia to amend Section 60-25 of the Bill to insert a clause aimed at reducing some of the red tape surrounding the provision of financially audited statements at the Commonwealth level:

Our concern is that as these Bills currently read, they effectively transfer the start of any tangible red tape reduction process by Commonwealth agencies into the far distance.

Independence of NFPs

CSSA welcomes the statement in the Bill's Objects 15-5 (1)(b) recognising the independence of the NFP sector. However, we believe that specific legislative protection of this independence should also be enshrined to protect NFP independence in the event of future circumstances where "gag clauses' may be initiated in other Commonwealth legislation or contracts with Commonwealth Government bodies. Not only will such a specific statement of protection assist in ensuring an organisation's independence is not challenged due to their policy-related advocacy but it would also strengthen the Bill's objective "to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector" (Division 15-5 (1)(a)).

Governance standards

CSSA recognises the Government's intention to develop specific governance and external conduct standards through regulation based on further consultation with the NFP sector. As advised in CSSA's submission in response to the previous draft Exposure Bill, we believe that it is still necessary to provide clear and specific statements of principle in this Bill and to limit the range of powers to be included in those regulations.

These principles should not inhibit NFP boards from ensuring that their governance structures reflect the entity's mission and objectives. These principles should also recognise that a large number of NFPs already apply governance standards that fully meet the objectives as outlined in Division 45 and Division 50 of the Bill.

This Section of the Bill still has a strong emphasis on standardisation and uniform governance requirements for NFPs. This contradicts one of the objects of the Bill, Division 15 (1)(b) to "support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector". CSSA is concerned that this Section of the Bill does not adequately reflect the diversity of effective and accountable organisational arrangements

[4] House Standing Committee on Economics (2012) Report into the Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills. Tabled 15 August 2012. http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=economics/nonprofit/report.htm

already in place. CSSA member boards are concerned at the potential for potentially adverse results if this Division is applied.

The CSSA network includes agencies with a range of complex structures and governance arrangements. All fully meet existing Commonwealth and State/Territory governance and accountability requirements. CSSA recommends that the Bill more adequately reflect the legitimate nature of diverse NFP arrangements.

RECOMMENDATIONS

CSSA recommends that:

a) these Bills include a reference to a Government commitment to initiate specific red-tape reduction within Commonwealth agencies, with a focus on contract-making and agreements, reporting and acquittal processes.

b) Section 60-25 of the ACNC Bill be amended, as proposed in the UnitingCare Australia submission to this Inquiry, to insert the clause:

   (2) Where a registered entity is required to provide an annual financial statement to the ACNC, that entity will no longer be required to provide a financial audited statement for any individual grant or grants provided by an Australian Government Agency unless the Australian Government Agency has reason to suspect fraud in relation to the use of the grant money.

c) the ACNC Bill include a specific reference to protect NFP independence from actions by the Commonwealth to restrict or limit its funding for an NFP agency based on policy-related advocacy.

d) Division 15 (1)(b) more adequately reflect the legitimate nature of diverse NFP arrangements.

Appendix 1

Catholic Social Services Australia Membership at 30 August 2012

BoysTown
Bridgeworks Employment and Training
Catholic Community Services
Catherine House Inc.
CatholicCare Hunter-Manning
CatholicCare Canberra & Goulburn
CatholicCare Melbourne
CatholicCare NT
CatholicCare Social Services - Diocese of Parramatta
CatholicCare Sydney
Catholicare Wollongong
Catholic Marriage Education Services (Perth)
Catholic Society for Marriage Education
Centacare Ballina (St Francis Xavier's Parish)
Centacare Bathurst
Centacare Brisbane
Centacare Catholic Diocese of Ballarat Inc
Centacare Catholic Family Services Adelaide
Centacare Catholic Family Services Broken Bay
Centacare Catholic Family Services Country SA
Centacare Catholic Family Services Townsville
Centacare South West NSW
Centacare Cairns
Centacare Geraldton
Centacare Gippsland (Sale)
Centacare Kimberley
Centacare New England North West
Centacare Port Macquarie
Centacare Rockhampton
Centacare Sandhurst (Bendigo)
Centacare Tasmania
Centacare Toowoomba
Centacare Wilcannia-Forbes
Centrecare Inc. Perth
Conference of Leaders of Religious Institutes in NSW
Daughters of Charity of St Vincent de Paul

Catholic Social Services Australia Membership at 30 August 2012

Dunlea Centre, Australia's Original Boys' Town
Good Grief
Jesuit Social Services
MacKillop Family Services
Marist Youth Care
Marriage Education Program Inc.
MaroniteCare
Mary Aikenhead Ministries
Marymead Child and Family Centre
MercyCare
North West Queensland Indigenous Catholic Social Services
Mercy Family Services (Qld)
Personal Advocacy Services
Rosemount Good Shepherd Youth & Family Services
Sacred Heart Mission St Kilda
Sisters of Charity of Australia
Sisters of Mercy Brisbane CLT
Institute of Sisters of Mercy of Australia and Papua New Guinea
Sisters of Mercy Parramatta
Sisters of Saint Joseph of the Sacred Heart NSW CLT
Mary Mackillop Care SA Ltd - Ain Karim
Sisters of the Good Samaritan
South Australia Province of the Sisters of St Joseph
St Anthony's Family Care
St Francis Social Services
St John of God Health Care - Social Outreach and Advocacy
St Josephs Cowper Inc
St Michael's Family Centre Limited
St Patrick's Community Support Centre (Fremantle)
Sts Peter & Paul Centacare