



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

**RE: AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION
BILL 2012 EXPOSURE DRAFT**

Thank you for the opportunity to comment on this draft.

Asthma Australia

One in ten Australians has asthma – one in nine children, and in 2008, 449 people died from asthma.

Asthma Australia is the recognised national community voice of people with asthma and linked conditions and their carers. It comprises the Asthma Foundations from each Australian state and territory working together on national policy, advocacy and programs and promoting research. Asthma Australia is a national, nongovernment, incorporated body with no political affiliations. Our National Strategic Directions outline our collaborative intent.

Context for comment: Asthma Australia Governance and National Operations

Asthma Australia operates under a federated structure. Each of the eight Foundations is a registered company or incorporated body in its own right as is the national body, which is incorporated under Australian Capital Territory (ACT) legislation. Each of the nine organisations has its own Board with the Asthma Australia Board comprising nominees from each of the eight member Foundations plus independent members, including the President.

In 2009, the National Board resolved to work towards becoming a single national entity to more effectively represent and support people with asthma and linked conditions. This resolve brought into sharp relief the complex regulatory environment in what was already, for the Foundations, a challenging national governance and operational context. Action to simplify this arrangement is supported. The importance of mistaking centralised red tape and ease of government interface for greater simplicity and ease of operational context – and accountability - is noted

This submission

Our comments on the Australian Charities And Not-For-Profits Commission Bill 2012 Exposure Draft are general in nature. We acknowledge that extensive consultation is still to occur and look forward to commenting in detail on the next draft.

General comments

These comments comprise an initial response to the Exposure Draft. They are not in order of priority.

1. The object refers to 'promotion of public trust and confidence in not-for-profit (NFP) entities that provide public benefit'. It is suggested that it is not the role of legislation to promote trust and confidence but rather to, for example, set and enable enforcement of minimum requirements to ensure public accountability. Public confidence might in turn be an outcome of this.
2. 2-10(d) refers to establishment of a point of contact with government for NFPs and the document then outlines a focus on NFP compliance. There is no apparent mediation role for the Office of the Commissioner. We suggest there would be value in developing parallel requirements for government/ departments in dealing with NFPs – not just rules for NFPs; we propose standards and monitoring of government bodies in their work with NFPs and for the Commissioner to have some power in this regard.
3. 4-1 (2) refers to deregistration of an entity where 'public confidence has been undermined' but not what this means/how this would be determined. It is suggested that deregistration should be based on lack of compliance with minimum regulated standards and/or evidence of purposeful avoidance of request to comply with minimum standards. Activity and accountability should be the indicators for (de)registration – not reputation.
4. 4-1 (3) refers to 'other Commonwealth Laws': these should be named.
5. The penalty points system is not clear.
6. Any penalty related to the practice of the auditor should be incurred by the auditor, not the NFP.
7. There appears to be no measure of reason or reasonableness in relation to the Commissioner's power to request (demand) additional reports: this broad parameters for this should be described.
8. Enactment of the powers of the Commissioner will incur a cost to the NFP – this should not cause financial hardship to the NFP.
9. Inspection powers assume the property, materials and people on a site relate to/are directly accountable for the NFP operations. The inspector should have to show due cause and take into account the presence on site, and impact on, volunteers/ vulnerable people. It is not clear whether 'the site' refers only to a physical site: it is suggested that the legislation should be clear about virtual locations and operations.

Asthma Australia supports legislative reform that simplifies and improves governance and accountability – and is not construed by public supporters and donors as government control of what is often valued as an independent and altruistic sector.

We look forward to commenting further when consultation has occurred with states and territories and the draft Bill and Regulations and potential impact of reform can be analysed.

Sincerely



Debra Kay
CEO

Asthma Australia
26 January 2012

CC National President, Mr Terry Evans