

20 January 2012

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

Dear Sir/Madam

**SUBMISSION: EXPOSURE DRAFT – AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION BILL**

Campbell Page Limited (Campbell Page) is a not-for-profit organisation<sup>1</sup> committed to helping disadvantaged Australians combat poverty through employment, community services and philanthropic activity. Last year we helped over 91,000 Australian's including some of the hardest to help and hardest to reach. We provide an increasing range of services each year including delivering government funded community, disability, employment and training services across 100 locations in Australia. We are about helping people stabilise their lives and pursue opportunities through community services, training and ultimately stable employment.

Improving corporate governance and administration to make it easier to deliver more services for people most in need is wholeheartedly supported by Campbell Page. That's why we welcome and support strengthening and streamlining governance arrangements for the NFP sector.

At Campbell Page our **purpose** is getting Australia working – we believe work is central to a healthy and resilient society. We work closely with the Australian government through, for example, Job Services Australia but our community work extends well beyond this. Examples include, but are not limited to Youth Centres, crisis accommodation, drug and alcohol counselling, keeping at risk young people in education and a suite of Indigenous services.

In these challenging economic times Australia has areas of great prosperity as well as real social disadvantage. Our **mission**, regardless of the challenges, is to wage war on poverty. We are committed to creating the conditions to achieve personal independence by enabling people to:

- Overcome personal challenges to work readiness
- Complete their education
- Gain workplace skills
- Find and keep a job

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<sup>1</sup> CPL is an endorsed Public Benevolent Institution by the Australian Taxation Office and holds Deductible Gift Recipient status.

Public policy outcomes which genuinely remove duplication or burdensome arrangements and free up resources to help those most in need are supported by Campbell Page.

The establishment of the Australian Charities and Not-for-profits Commission (ACNC) and thorough consultation with the NFP sector is to be commended.

This submission outlines in broad constructive terms our feedback, support and, where appropriate, concerns with the detailed development of new governance arrangements for the NFP sector.

As one of Australia's larger secular NFPs, we understand the need for robust governance. Over the last 25 years we have grown from a volunteer based youth service to a national NFP organisation with assets in excess of \$20 million, annual revenues exceeding \$70 million, and more than 500 employees. This growth has required the highest standards of governance, accountability and transparency.

Campbell Page would welcome the opportunity to engage with the Treasury and Australian government through targeted confidential consultations on the draft law as outlined in the *Review of Not-for-Profit Governance Arrangements Consultation Paper* (December 2011). We strongly believe public and community resources and funds require the most robust standard of care.

Getting the balance right in making NFP governance more robust as well as more streamlined is not without challenges. Campbell Page has had to grapple with many of these issues over the last 25 years.

We make the following submission in light of that experience, in support of the principles and intentions of the review, and in a sincere effort to avoid adding extra overlap or additional bureaucracy to a sector Australians rely on every day for assistance.

For further information please contact me on email: [dale.cleaver@campbellpage.org.au](mailto:dale.cleaver@campbellpage.org.au) or mobile: 0417 156 047, or Xavier Crimmins (after 7 February 2012) on email: [Xavier.crimmins@campbellpage.org.au](mailto:Xavier.crimmins@campbellpage.org.au) or mobile 0418 256 047.

Yours sincerely

Dale Cleaver  
Acting Chief Executive Officer  
On behalf of Xavier Crimmins, Chief Executive Officer

## **Campbell Page Submission:**

### **EXPOSURE DRAFT – AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION BILL**

Campbell Page supports establishing a national NFP regulator with one legislative instrument. There is a clear need to avoid further layers of bureaucracy for the NFP sector. Existing multiple legislative requirements (federal and state) need to be replaced - not duplicated - by uniform national legislation. Further, the harmonisation of all legislation governing NFPs, including but not limited to, the Corporations Act 2001 with the Australian Charities and Not-for-profits Commission Bill needs to occur to ensure those companies incorporated under it are not burdened by duplicated legislative requirements.

Duplication of legislative requirements will result in increased administration costs funnelling funds away from those most in need in our communities.

We comment broadly upon each Chapter discussed in the Explanatory Materials of the proposed legislation.

#### **Chapter 1 - Background**

We agree that there is a strong desire and need to harmonise the many legislative instruments that govern the NFP industry and provide the industry with a ‘one-stop shop’ for Commonwealth regulation.

The background fairly represents the existing ‘state of play’ in the NFP sector. We support the sector as a whole providing the public with easily accessible information on the activities of NFP entities.

As Campbell Page has grown in size and scope of services we have sought to improve the provision of information. Our website gives detailed information on our history, our current activities, our current Board and Executive members, as well as providing for public scrutiny our Annual Report including audited financial statements.

Having grown from a community based and volunteer supported drop in centre in regional NSW we know how hard the first steps can be to get started and meet multiple layers of regulatory compliance. For smaller and newly established NFPs which may be considered to be lacking in transparency, further support and guidance through the ACNC rather than mandatory rules or sanctions would be beneficial. Campbell Page would be happy to assist the ACNC and start up NFPs in this regard

#### **Chapter 2 - Registration**

We support the centralisation of registration of all NFPs supported by a single government body as defined by the proposed legislation.

### **Chapter 3 – Reporting and auditing**

We broadly support the ‘report once’ approach proposed in the legislation. Our current financial reports (including the Directors’ Report) which are prepared for our Annual Report under the Corporations Act would meet the financial reporting requirements of the proposed legislation.

By reference to the Australian Charities and Not-for-profits Commission: Implementation design discussion paper, it is clear there are additional reporting requirements not included in the Corporations Act 2001.

Requiring additional disclosure appears to contradict the purpose of streamlining reporting requirements (ie: answering of questions such as ‘What are your main objectives of your charities for the next 12 months?’) as well as reprocessing the financial statement in another summary table unrelated to the Annual Report requirements.

At this time our Annual report discusses what we believe pertinent to the upcoming year whilst allowing us flexibility should we need to change these plans. It is not clear from the legislation whether we will now be measured on any and all statements made in the Activities Statement.

We agree that accounts for organisations of our size require auditing in accordance with the Corporations Act 2001.

### **Chapter 4 - Governance**

The nature of governance as defined in this legislation is purposely ‘written widely’ and ‘is broad enough to cover both express and implied individuals with responsibility’. We adhere to the Carver governance model whereby, in brief, the Board of Directors empower the Chief Executive Officer to implement their directions. Under the proposed definition of ‘responsible individual’ it is unclear whether any individual that meets the broad definition would, in addition to the Directors, be required to sign some form of declaration considered to be under their control. Greater clarity in defining ‘responsible individual’ for the purposes of the ACNC legislation would be appropriate.

We recommend a tighter definition or legislation ensuring only the individuals responsible be required to sign declarations.

### **Chapter 5 – Australian Charities and Not-for-profits register**

We support the central register proposed by the legislation on the basis that it is fully integrated with the information currently held by the Australian Securities and Investments Commission (ASIC).

Campbell Page currently provides (through our website) the qualifications of all key responsible individuals (as we understand responsibility lies – we do not necessarily believe our understanding meets the ‘broad’ definitions outlined in the legislation).

## **Chapter 6 – Education, compliance and enforcement**

The proposed ACNC powers of entry and investigation are wide and extensive as are the powers to remove responsible individuals. In our opinion, the extent of these powers exceeds the level required for good monitoring.

We do not believe these powers are wholly consistent with ‘those available to other regulators under Commonwealth laws’, for example the Australian Taxation Office does not have the power to remove responsible individuals of charities.

It would be unfortunate for the ACNC to reach beyond the current regulatory framework only to create an additional regulatory burden for the NFP sector.

Should the Commonwealth pursue an extension of ACNC powers into this area, the industry should be appraised of the statutory thresholds required before the Commissioner uses any enforcement powers. Further, we recommend that the industry be appraised of its rights to challenge any warrant granted to the ACNC representatives.

We acknowledge that Division 143-A “Suspension and removal of corporate responsible individuals” is yet to be drafted and as such we are unable to adequately give an opinion on this issue other than as noted.

Campbell Page would welcome further discussion on this matter.

## **Chapter 7 – Reviews and appeals**

We understand this Explanatory Materials Chapter will refer to Chapter 2, Part 2-1, Division 10, Section 10-35: Review of refusal of registration and Subdivisions 10-C – Revoking registration, Section 10-60: Review of revocation of registration.

We note that this section will be reviewed and amended when the appeal provisions are drafted. It would be more appropriate to comment fully upon this area of the proposed legislation at that time.

## **Chapter 8 - Secrecy**

Openness and transparency is important along with appropriate confidentiality. We support the provisions drafted in relation to the protection of commercially sensitive information. However, we are concerned there is no legislation that allows for an organisation to challenge the ACNC in any proposed or actual disclosure such as is available under the provisions of the Freedom of Information Act.

We recommend that an organisation should be availed of the opportunity to defend its right to protect such information in an appropriate manner.

### **Chapter 9 – The Commission and the Advisory Board**

We support the establishment of a central regulator of all NFPs such as is envisaged with the ACNC including its Advisory Board.

We strongly support the establishment of a sole government body responsible for registration and the determination of charitable status as to be defined. We strongly support the reduction in the need to report to multiple bodies in multiple formats.

### **Chapter 10 – Miscellaneous**

We are concerned with the currently drafted ‘Approved forms’ as released in the Australian Charities and Not-for-profits Commission: Implementation design discussion paper.

There are additional reporting requirements that go beyond the already robust requirements of the Corporations Act 2001. This appears to contradict the purpose of streamlining reporting requirements by requiring additional disclosure (ie: answering of questions such as ‘What are your main objectives of your charities for the next 12 months?’) as well as reprocessing the financial statement in another summary table unrelated to the Annual Report requirements.

### **Chapter 11 – Penalties**

We note the drafted legislation refers to various penalty rates and this section of the Explanatory Material is yet to be drafted. We will comment upon this area of the legislation at that time.

### **Chapter 12 – Consequential amendments**

We note this section of the Explanatory Material is yet to be drafted. We will comment upon this area of the legislation at that time should there be consequential amendments.

### **Chapter 13 – Transitional provisions**

We note this section of the Explanatory Material is yet to be drafted. We will be interested in commenting upon the transitional provisions and the administrative and financial impact they will have upon our organisation and the fulfilment of our purpose.

## **Chapter 14 – Regulation impact statement**

We note this section of the Explanatory Material is yet to be drafted. We will be interested in commenting upon the ‘Regulation impact statement’ and how it accords with our analysis of the administrative and financial impact upon our organisation and the fulfilment of our purpose through the enacting of this legislation.

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