



MERCYCARE

Bringing compassion and justice to life

Manager
Philanthropy and Exemptions Unit
Indirect, Philanthropy and Resources Tax Division
Treasury
Langton Crescent
PARKES ACT 2600

By email: nfpreform@treasury.gov.au

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To Whom It May Concern

Submissions in response to Development of Governance Standards Consultation Paper, December 2012

I am writing to you in response to the consultations referred to above.

MercyCare

MercyCare is a leading Catholic provider of hospital, health, aged care, family and community services. We provide services directly to over 25,000 people and impact on the lives of over 100,000 people in the community each year.

MercyCare employs over 1,350 staff and volunteers and delivers services at 20 service locations throughout the Perth metropolitan area.

MercyCare's Aged Care Services assist over 1600 people in the community, 160 residents in the village and 137 residents on the Wembley campus. Residential services include high care, low care and dementia facilities and a retirement village.

Family and Community Services assist over 3,150 individuals, families and communities; and, operate from multiple sites across the Perth metropolitan area and provide a diverse and broad range of services, some of which include: child day care, employment and training, community development, youth and foster care services.

Mercy Hospital Mount Lawley (first opened in 1937 as St Anne's Hospital) is a licensed 244 bed facility that provides acute, overnight hospital and day treatments across a range of clinical specialties. In retaining the history of St Anne's, care begins with babies and families continuing across the ages in the surgical and medical domains to care for the elderly and those with mental health issues. We assist transition back into the community with rehabilitation and restorative services. The hospital provides services to both private and public patients.

General Comments:

The Australian Government acknowledges that a “strong, vibrant and innovative not-for-profit sector is essential to achieving a productive and inclusive Australia. [And,] the sector plays a central role in enriching communities through its social, cultural and environmental contribution and in providing support to the most vulnerable in our community” (<http://www.nationalcompact.gov.au/not-profit-sector/about-not-profit-sector>). The Australian Government also acknowledges that the sector “operates in an unnecessarily complex reporting and regulatory environment” and is committed to enabling the sector “to focus less on paper work and more on innovation and building on current strengths” (<http://www.notforprofit.gov.au/office-not-profit-sector>).

In light of this, a key objective of the ACNC is the reduction of red tape and duplication of administrative processes. As such, it is of grave concern that the proposed Governance Standards and Financial Reporting requirements, not only have the potential to duplicate obligations, but also increase red tape and compliance obligations for many Charities. Concerns are exacerbated by the fact that the definition of charities has not been settled which results in a lack of clarity as to whom the various ACNC related reporting and compliance measures apply to.

Furthermore, a harmonisation of existing Federal and State/Territory NFP regulatory frameworks and how they can then work harmoniously with an ACNC regulatory framework seems a first port of call prior to the imposition of ACNC governance standards and financial reporting obligations. The absence of a framework for harmonisation draws the conclusion that an extended transition period marred by unnecessary additional and duplicative efforts by charities is to entail.

Another fundamental argument put forward for the establishment of the ACNC and associated legislation is the need for the general public to have greater trust and confidence in the sector. There is little evidence that there is, in fact, any lack of confidence or trust in the sector. This puts into question the need for additional reporting and compliance measures through the ACNC.

MercyCare, therefore, is strongly opposed to the introduction of Governance Standards and Financial Reporting requirements until such time as:

- 1. There is evidence of actual reduced regulatory and contractual red tape;**
- 2. An agreed definition of ‘charity’; and**
- 3. A plan for the harmonisation of Federal and State/Territory regulatory frameworks.**

In relation to the consultation process, the time frames for the multitude of submissions sought from the sector is unrealistic and unreasonable. This burden is accentuated for smaller and regional / rural organisations. The approach to these consultations has been piecemeal and without an overarching strategic framework resulting in a lack of confidence in the ability to ensure best outcomes for both the sector and the people it serves. In line with this, communication and engagement with the sector needs to be significantly improved.

Finally, proposals in relation to the penalties and sanctions to be made available to the Commissioner in the Governance Standards are indicative of a potentially heavy handed approach to governance of the sector and a contraindication to the ACNC being established to “help charities understand and meet their obligations through information, guidance, advice and other support” (ACNC power point presentation on NFP Sector Reform, January

2013). Mixed signals and insufficient information lends to a lack of clarity around the extent and approach of the Commissioner to non-compliance and a lack of confidence in and increased concern that the ACNC will operate outside its objectives.

Specific Comments:

Development of Governance Standards Consultation Paper, December 2012

MercyCare supports the intention for the standards to be principles-based in that they specify an outcome needed to be achieved, rather than the means by which it is achieved. This leaves charities to decide how best to meet the minimum standards given their particular circumstances.

Draft governance standard 1: Purposes and NFP character of a charity

Aside from concerns already raised that these standards are being developed prior to finalising a definition for 'charity', this proposed standard is more an eligibility criteria for registration as a charity than a governance standard. The only element of the draft standard of relevance is "(c) comply with its purposes and its character as a not-for-profit entity". In this case, the standard could be considered so broad as to be pointless.

It is notable that the draft standard does not specify what purposes are compliant and what are not (that is, does not specify charitable purposes only).

Further to the proposed standard requiring information relating to purposes to be made available to the public on an ACNC Register, this raises concerns as to the extent of information that will be required to be made available beyond purposes. It is important that certain confidential, private and commercially sensitive information is not made available.

Draft governance standard 2: Accountability to members

Aside from concerns already raised that these standards duplicate already existing regulations, this proposed standard as it is currently drafted is broad enough to enable compliance to reflect the nature and size of the entity and the nature of its members.

Draft governance standard 3: Compliance with Australian laws

There is no argument against the need for entities engaging in conduct in Australia are to comply with Australian laws. However, MercyCare has grave concerns over the legitimacy and transparency of a standard that enables the ACNC to take action based on little other than a 'reasonable belief' that a charity has engaged in an indictable offence. If there is inadequate evidence resulting in a charge, let alone a conviction, upon what evidence will the ACNC choose to justify its actions.

Draft governance standard 4: Responsible management of financial affairs

Aside from concerns already raised that these standards duplicate already existing regulations, this proposed standard as it is currently drafted is broad enough to enable compliance to reflect the nature and size of the entity. It is notable, however, that the proposed standard does not obligate an entity to ensure its financial affairs are managed to a specific end or outcome, for example, in pursuit of its declared purposes only.

Draft governance standard 5: Suitability of responsible entities

It is of grave concern that proposed Standards 5 & 6 move away from being principles-based standards by:

- (a) prescribing not just the standard but also how the standard is to be met; and
- (b) incorporating detailed powers and sanctions by the Commissioner.

Draft governance standard 6: Duties of responsible entities

MercyCare is concerned that draft standard 6 imposes increased obligations on many charities. This goes against the ACNC's objective of reducing red tape.

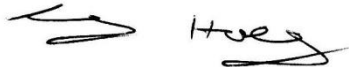
It is of concern that this draft standard imposes responsibilities on registered entities to support responsible entities to fulfil their duties and includes protections for responsible entities. However, there is no equivalent protection for registered entities in the case of responsible entities not meeting their duties or acting outside of their duties.

Conclusion

As a member organisation of Catholic Social Services Australia (CSSA) and Community Employers WA (CEWA), MercyCare endorses the position and statements made by these national bodies in their submissions.

Should you require further information, or clarification on any points that have been made in these submissions, please do not hesitate to contact me.

Yours sincerely



Chris Hall
Chief Executive Officer