



Joint Submission to:

the Senate Standing Committee on Community Affairs;

and

**the Parliamentary Joint Committee (PJC) on Corporations
and Financial Services.**

Australian Charities and Not-for-profits Commission Bill 2012;

**Australian Charities and Not-for-profits Commission
(Consequential and Transitional) Bill 2012;**

**Tax Laws Amendment (Special Conditions for Not-for-profit
Concessions) Bill 2012.**

August 2012

Introduction

This submission very briefly outlines the CCA response to the Australian Charities and Not-for-profits Commission Bill 2012; Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012; Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012.

This submission is the third submission by CCA in relation to the establishment of the Australian Charities and Not-for-profit Commission (ACNC) and the third in response to the 'In Australia' special conditions Bills. CCA has also been involved in numerous forums and consultation processes as well as giving evidence to the Economics Committee Inquiry into the ACNC Bills. As a consequence, this submission will briefly address the most recent changes in each Bill and the explanatory materials rather than fully canvassing the broader issues. At the same time, CCA would like to emphasise the need to acknowledge the independence and strength of the Australian not-for-profit sector, as has been stated in previous CCA submissions.

It is important to note that this submission has been prepared through a process of consultation with the membership of the CCA (see Appendix 1 list of CCA members) and key organisations in the not-for-profit (NFP) sector. This submission does not over-ride any positions outlined in individual submissions from CCA members.

CCA strongly supports the ACNC Bills on the basis that they provide for the establishment of an independent and responsive regulator for the charities and not-for-profit sector. CCA believes that over time the proposed ACNC will significantly reduce red tape, duplication and compliance costs. The ACNC is not an instant quick fix, but a long term structural change that will become increasingly important over time. It will deliver real benefits to not-for-profit organisations, governments, regulators and the broader community.

The 'In Australia' provisions have now been redrafted in a way that minimises their impact on the broader not-for-profit sector and CCA supports these Bills being passed. It will be important to monitor the extent to which any negative consequences flow from these Bills and, if required, make changes that minimise unintended negative consequences.

The Community Council for Australia

The Community Council for Australia is an independent, non-political, member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the NFP sector in Australia. CCA seeks to change the way governments, communities and the NFP sector relate to one another. This includes establishing a regulatory environment that works for community organisations, not against them.

The mission of CCA is to lead the sector by being an effective voice on common and shared issues affecting the contribution, performance and viability of NFP organisations in Australia, through:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with government, business and the broader Australian community to achieve positive change.

1. The ACNC Establishment Bills

The NFP sector contributes over \$43 billion to GDP per annum, encompasses over 600,000 organisations ranging in size from large to very small, and is estimated to employ over one million staff (or eight per cent of all employees in Australia). These figures only tell a small part of the story. The real value of the NFP sector is in the often unattributed contribution to the quality of life we all experience in Australia. NFPs are at the heart of our communities and are what makes us resilient as a society.

If an NFP wants to hire a local hall at a discounted charitable rate, gain a concession on local rates charges, achieve a reduction in payroll tax, put forward a submission for funding, participate in a government tender process, register a fundraising activity or seek to claim a concession of any kind, the organisation must be able to produce some kind of bona fides, a kind of organisational passport. At present no such document exists. Charities are forced to provide copies of letters from the Australian Taxation Office that define their eligibility for taxation concessions as proof of their charitable status. This situation has proven to be very problematic, costly and counterproductive.

The ACNC will provide the equivalent of a 'charity passport'. It will then be up to governments, the ACNC, and most importantly, the NFP sector to drive the adoption and acceptance of this charities passport. The consequent savings in time, energy, and other resources will be enormous. The flow on reductions in red tape, duplication and compliance costs will translate into better services for the community.

The ACNC Establishment Bills provide the framework, the scope of powers and responsibilities for an independent regulator for the NFP sector. They are not operational guidelines. From the CCA perspective, ensuring the ACNC can do its job as a regulator is the central purpose of the ACNC enabling Bills. CCA believes the Bills as now drafted meet their required objectives. They enable the ACNC to operate as a regulator for the sector determining charitable status, providing a one stop shop portal of information, and establishing a charities passport that can be adopted by governments and other regulators. The Bills also offer a measure of flexibility and responsiveness that will ensure the ACNC is able to adapt to the needs of a very wide range of NFP organisations. CCA is particularly pleased to support the recent changes to the Bills:

- Adding a new clause to the Objects in the legislation to make clear that the ACNC's role includes promoting a reduction in the regulatory burden of a vibrant and independent NFP sector;
- Additional procedural fairness requirements where the ACNC Commissioner exercises particular powers under the legislation;
- Adding a statutory review provision to provide for a review of the legislation after it has been in operation for 5 years;
- A new power to make regulations to protect the privacy of private donors such as those who maintain a private ancillary fund;
- A redrafting of provisions relating to directors' liability, clarifying that a director of an incorporated charity will only be liable under the Act where there is a deliberate act or omission of the director involving dishonesty, gross negligence or recklessness. No criminal offences will now apply to directors of an incorporated charity. This will provide additional assurances for volunteer directors.

CCA now strongly supports the objects of the ACNC Bills and the emphasis on strengthening the NFP sector.

The ACNC Bills have been through an extensive and comprehensive process of consultation and review. They should now be passed so that we can begin to implement a long overdue reform - establishing an independent regulator for the Australian not-for-profit sector.

The 'in Australia' Special Conditions for Not-for-profit Concessions

It is important to note that most overseas aid organisations in Australia operate within a well-established regulatory framework and the vast majority of these organisations are engaged in outstanding work through their international development activities. The proposed 'in Australia' special conditions Bill is really targeted at those who undertake some overseas activities, but operate as an Australian charity or DGR organisation.

CCA has made two submissions and had numerous consultations with Treasury and other policy makers about the purpose and nature of the 'in Australia' Bill. While the first draft of the proposed Bill created some concerns about a number of issues, these issues appear to have been largely addressed in the final drafting of the new 'in Australia' Bill.

There are some in the NFP sector who are still nervous about whether their occasional international activities might place in jeopardy their status as DGR organisations in Australia. While their concerns have been answered in consultations with the Treasury and others, CCA is keen to see that the impact of this Bill is closely monitored.

In most cases, there are major benefits for Australia and for the broader global community when Australian not-for-profit organisations engage in international activities. In areas like education, sport, arts and culture, welfare and health, touring Australians can not only make a valuable international contribution, but also enrich Australian skills, culture and lifestyle.

It is important to avoid any negative impact on the not-for-profit organisations that seek to enrich Australian life through international engagement.

CCA therefore supports the clear statement that arts and other organisations can engage in international activities and retain their charitable and DGR status in Australia provided these activities are incidental.

CCA also strongly supports the endorsement of 'designated international touring organisations' such as the Sydney Dance Company being excluded from the 'in Australia' provisions as long as they spend 75% of their time on activities in Australia. Consideration should be given to expanding the groups eligible to be listed as designated international touring organisations (e.g. Circus Oz, Bangara).

Conclusion

As noted in the introduction, CCA has been actively involved in numerous consultations and provided a number of submissions in relation to the ACNC Establishment and 'in Australia' Bills. CCA supports the most recent changes to these Bills.

CCA believes that the ACNC Establishment Bills should be passed to enable implementation of a long overdue reform that will deliver real benefits to not-for-profit organisations, governments, regulators and the broader community.

CCA supports the changes to the 'in Australia' Bills. Provided there is close monitoring to ensure no negative impacts on legitimate not-for-profit organisations seeking to enrich Australia through their international activities, CCA supports these Bills being passed.

Current Membership – Community Council for Australia (August 2012)

Appendix 1

1. Aboriginal Employment Strategy Ltd – Danny Lester
2. Access Community Group – Samantha Hill
3. Alcohol and other Drugs Council of Australia – David Templeman
4. Alcohol Tobacco and Other Drugs Association ACT – Carrie Fowlie
5. Associations Forum Pty Ltd – John Peacock
6. Australian Charities Fund – Edward Kerr
7. Australian Council For International Development – Marc Purcell
8. Australian Indigenous Leadership Centre – Rachele Towart
9. Australian Institute of Superannuation Trustees – Fiona Reynolds
10. Australian Major Performing Arts Group – Bethwyn Serow
11. Catholic Social Services Australia – Paul O’Callaghan
12. Church Communities Australia – Chris Voll
13. Connecting Up Australia – Doug Jacquier
14. Consumers Health Forum of Australia – Carol Bennett
- 15. Drug-Arm Australia – Dr Dennis Young (CCA Board Director)**
16. Foundation for Alcohol Research and Education – Michael Thorn
17. Fundraising Institute of Australia – Rob Edwards
18. Good Start Childcare – Julia Davison
- 19. Good Beginnings Australia – Jayne Meyer Tucker (CCA Board Director)**
- 20. HammondCare – Stephen Judd (CCA Board Director)**
21. HETA Incorporated – Sue Lea
22. Hillsong Church – George Aghajanian
23. Illawarra Retirement Trust – Nieves Murray
24. Lifeline Australia – Dr Maggie Jamieson
25. Maroba Lodge Ltd – Viv Allanson
26. Melbourne City Mission – Rev Ric Holland
27. Mental Health Council of Australia – Frank Quinlan
- 28. Mission Australia – Toby Hall (CCA Board Director)**
- 29. Musica Viva Australia – Mary Jo Capps (CCA Board Director)**
30. Opportunity International Australia – Rob Dunn
31. Philanthropy Australia – Deborah Seifert
32. Principals Australia – Jim Davies
33. ProBono Australia – Karen Mahlab
- 34. RSPCA Australia – Heather Neil (CCA Board Director)**
35. St John Ambulance Australia – Peter Lecornu
36. Social Ventures Australia – Michael Traill
- 37. Surf Life Saving Australia – Brett Williamson (CCA Board Director)**
38. The ANZCA Foundation – Ian Higgins
- 39. The Benevolent Society – Anne Hollonds (CCA Board Director)**
- 40. The Big Issue – Steven Persson (CCA Board Director)**
41. The Centre for Social Impact – Peter Shergold
- 42. The Smith Family – Dr Lisa O’Brien (CCA Board Director)**
43. The Ted Noffs Foundation – Wesley Noffs
44. Volunteering Australia Inc. – Cary Pedicini
- 45. Wesley Mission – Rev. Keith Garner (CCA Board Director)**
46. WorkVentures Ltd – Arsenio Alegre
- 47. World Vision Australia – Rev. Tim Costello (CCA Chair of Board)**
48. YMCA Australia – Ron Mell
49. Youth Off The Streets – Fr Chris Riley
50. YWCA Australia - Dr Caroline Lambert