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Dear Secretary

***Inquiry into 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***

Thank you for your invitation of 24 August 2012 to provide a submission to the Inquiry considering the establishment of the Australian Charities and Not-for-profits Commission (ACNC). Having consulted with the Catholic hospital and aged care network that on any given day care for one in ten Australians in a hospital or aged care bed, and who provide nursing or personal care for many thousands more Australians in their own homes, I am now able to provide comment on the first two *Bills* being considered by the Inquiry. CHA offers no comment on the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*.

In summary, Catholic Health Australia (CHA) supports the establishment of a Commonwealth body able to manage a single national registration and reporting process for not-for-profit organisations which can also focus on building capacity of the not-for-profit sector. To the extent that the first two *Bills* being considered by this Inquiry support this aim, we are able to indicate in principle support for the establishment of the ACNC. This support is consistent with that offered by the Catholic Church, detailed in the submission of the Australian Catholic Bishops Conference to this Inquiry that CHA associates itself with.

We are not able to support the passage of the first two *Bills* through the Parliament in their current form, and certainly see no need for the *Bills* to be rushed into law. Rather, just as the *Bills* have been improved and refined as a consequence of consultation to date, so too should further work be carried out to improve the *Bills* before they are put for vote. To this end, CHA proposes five specific amendments seeking improvement to the first two *Bills*. Specifically, CHA proposes:

1. **National harmonisation of not-for-profit registration and reporting;** by way of a new provision being added to the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012* requiring the Commissioner to seek and account for efforts to establish a single national registration and reporting regime for all not-for-profit organisations by way of referral of State powers relating to associations to the Commonwealth, or by States agreeing for the ACNC to act on their behalf in the management of association registration and reporting;

2. **Implementation of the ‘Charities Passport’;** by way of amendment to *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012*, Schedule 1, Part 4, Division 10(1) to ensure the Commissioner “will” rather than “may” treat information provided to other agencies of the Commonwealth as satisfying the requirement for lodging information statements.
3. **Determination of proposed governance standards;** by way of amendment to the *Australian Charities and Not-for-profits Commission Bill 2012*, Chapter 3, Part 3-1, Division 45 to state the governance standards, and the specific removal of Division 45-10(2)(b).
4. **Definition be given to meaning of public trust and confidence;** by way of insertion of a definition at *Australian Charities and Not-for-profits Commission Bill 2012*, Chapter 8, Part 8-2, Division 300.
5. **Recognise the multiple sources of organisational funding;** by way of insertion of “fee-for-service, surpluses from commercial activities, returns on investments, and loans” to *Australian Charities and Not-for-profits Commission Bill 2012*, Chapter 1, Part 1-1, Division 5.

### **National harmonisation of not-for-profit registration and reporting**

Parts of the not-for-profit community have been seeking the establishment of a national charity agency in part to oversee the creation of a single registration and reporting arrangement for all not-for-profit bodies. The establishment of the ACNC is a step towards this worthwhile aim. In the absence of agreement from all States to participate in the working of the ACNC, the passage of the first two *Bills* being considered by this Inquiry will result in State associations who wish to access the benefits of ACNC registration needing to undertake new reporting to the Commonwealth. This additional reporting burden is modest, but also a duplication of an obligation already owed to a State. It is therefore an increase in red tape.

Many Catholic aged care organisations, and a small number of Catholic hospitals, are registered State associations. These entities will face a new, if modest and manageable, reporting obligation. No obvious new benefit arises as a consequence of this new reporting obligation.

Ideally, the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012* would be drafted so as to require the Commissioner to seek and account for efforts to establish a single national registration and reporting regime for all not-for-profit entities. Such a regime formed part of the original purpose for the ACNC, and such a regime is consistent with Commonwealth Government policy. CHA therefore argues the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012* be amended to reflect this original purpose and government policy intent.

### **Implementation of the ‘Charities Passport’**

Catholic hospitals and aged care services are already highly regulated. They provide financial reports, funding acquittals, quality reports, and service planning reports to a range of State, Territory, and Commonwealth Government agencies. Catholic Public hospitals are publicly scrutinised by way of the *MyHospital* website, and Catholic private hospitals are in the process of similarly being assessed through this same website. Catholic aged care services are subject to review and public sanction by the Commonwealth Department of Health and Ageing. The establishment of the ACNC should not

result in information already provided to the Commonwealth needing to be submitted additionally to the new regulator.

To ensure the fulfilment of the Commonwealth Government's "report once, use often" policy intent, the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012*, Schedule 1, Part 4, Division 10(1) should be amended to ensure the Commissioner "will" rather than "may" treat information provided to other agencies of the Commonwealth as satisfying the requirement for lodging information statements. It may be that this proposed amendment would require further inclusions in the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012* to require other Commonwealth Departments to provide information to the ACNC.

### **Determination of proposed governance standards**

In the absence of the *Australian Charities and Not-for-profits Commission Bill 2012*, Chapter 3, Part 3-1, Division 45 detailing proposed governance standards, it is not clear if, how, or why not-for-profit organisations might be required to alter their governance arrangements in order to satisfy as yet undetermined requirements.

In particular, Division 45-10(2)(b) would enable regulation at some future point to prescribe how a registered entity will "act, or not act, in a specified manner." Such a power is too broad, and gives rise to uncertainty about future independence of a not-for-profit organisations being able to determine how, within the boundaries of the law, they might "act, or not act, in a specified manner," free from the inference of a future Commonwealth Government.

Ideally, Division 45 should be amended to articulate the basic governance standards expected of not-for-profit organisations prior to the passage of the *Bill* in order to ensure certainty for current and future governance. The basic standards should be built on a principle that no new burden is created for any Director, Committee member, or Trustee of an existing not-for-profit organisation.

The standards should be developed by way of consultation and included in the *Bill* before it is put to a vote; in the absence of being able to assess the governance standards and the other requirements of the *Bill* in their totality, no conclusion on the benefits or burdens of the *Bill* can confidently be drawn.

### **Meaning of public trust and confidence**

The objects of the *Australian Charities and Not-for-profits Commission Bill 2012* include at Chapter 1, Part 1-2, Division 15 reference to the ACNC's role to "maintain, protect, and enhance public trust and confidence" in not-for-profit organisations. The *Bill* also creates a power for the Commissioner to revoke registration (Chapter 2, Part 2-1, Division 35) of any not-for-profit organisation found to be in breach of the this principle of "public trust and confidence." The *Bill* does not define this principle's meaning.

Trust in not-for-profit organisations currently exists, and it has not previously been a role of government to promote or regulate "trust". If the Commonwealth is to be granted by way of the *Australian Charities and Not-for-profits Commission Bill 2012* a new power to ensure trust, this new power should be properly defined prior to its application. Not to define the power would be to give to the Commonwealth Government unknown authority over organisations which are proudly independent of government control. It would also create uncertainty as to how not-for-profit organisations might be expected to behave, and result in the need for costly litigation in the years

ahead as application is made to the courts to bring legal certainty to the legislative intent of the drafters of the *Bill*.

Ideally, legal meaning of the principle of “public trust and confidence” would be provided in the *Australian Charities and Not-for-profits Commission Bill 2012*, at Chapter 8, Part 8-2, Division 300.

### **Multiple sources of organisational funding**

*The Australian Charities and Not-for-profits Commission Bill 2012*, Chapter 1, Part 1-1, Division 5 states funding for not-for-profit organisations includes “*donations...tax concessions...grants and other support from the Australian Government.*” The Division is not entirely complete.

Fee-for-service payments fund service provision in not-for-profit private hospitals and aged care services. Surpluses from commercial activities such as rental leases of medical rooms to surgeons working in not-for-profit private hospitals fund not-for-profit health service provision. Returns on investment can fund future activities, and loans from residents in residential aged care also help fund capital costs in aged care services.

Whilst the Division does not link a consequence to an organisation being funded by a source not described within the *Bill*, the Division would ideally note that other legitimate sources of funding also enable the work of not-for-profit organisations. Silence on other funding sources might exclude organisation’s from being eligible to register with the ACNC as some future point, if the error in the Division was repeated by it being given meaning in relation to some other or future provision of the *Bill*.

### **Conclusion**

Similarly to the views expressed in the submission of the Australian Catholic Bishops Conference, CHA is able to support in principle the creation of a Commonwealth body able to manage a single national registration and reporting process for not-for-profit organisations which can also focus on building capacity of the not-for-profit sector. Yet CHA does not yet believe the Commonwealth Government’s stated policy intent of reducing red tape for not-for-profit organisations is achieved by the first two of the three *Bills* being considered by this Inquiry. The five specific amendments CHA has proposed would better enable the ACNC to fulfill the Government’s stated policy objective, and meet the expectations of Catholic hospital and aged care services.

I would be happy to offer further explanation of any of the matters discussed within this submission.

Yours sincerely

**Martin Laverty**  
Chief Executive Officer