



Australian Government

Department of the Prime Minister and Cabinet

Dr Ian Holland
Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Dr Holland

**INQUIRY INTO THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS
COMMISSION BILL 2012; THE AUSTRALIAN CHARITIES AND NOT-FOR-
PROFITS COMMISSION (CONSEQUENTIAL AND TRANSITIONAL) BILL 2012;
AND THE TAX LAWS AMENDMENT (SPECIAL CONDITIONS FOR NOT-FOR-
PROFIT CONCESSIONS) BILL 2012**

I am pleased to attach a submission to the Standing Committee's inquiry from the Office for the Not-for-Profit Sector which was established in October 2010 within the Department of the Prime Minister and Cabinet, to drive and coordinate the Government's not-for-profit reform agenda.

Australia's not-for-profit sector is large and diverse and plays a crucial role in enriching communities, culturally, socially, economically, environmentally and most importantly, provides assistance and support to the most vulnerable in our community. There are an estimated 600,000 entities in the sector which contribute around \$43 billion Australian economy making it larger than the communications, agriculture or tourism industries.

Please contact Kate Wallace, A/g Assistant Secretary, Social Inclusion Unit and the Office for the Not-For-Profit Sector, on (02) 6271 5734 or email kate.wallace@pmc.gov.au if you require further information from the Office for the Not-for-Profit Sector. I would be happy to provide further evidence to the Committee at a public hearing.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'PR', followed by a long horizontal line.

Paul Ronalds
First Assistant Secretary
Office of Work and Family

29 August 2012

INQUIRY INTO THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION BILLS

The Commonwealth Government is committed to a major reform agenda for the not-for-profit (NFP) sector, which includes the establishment of the Australian Charities and Not-for-profits Commission (ACNC) from 1 October 2012.

This submission from the Office for the Not-for-Profit Sector (the Office) in the Department of the Prime Minister and Cabinet (PM&C) provides an overview of the Government's broader NFP reform agenda and the work to date with states and territories to implement it.

The Committee is asked to note that the ACNC is one part of this broader agenda to improve the relationship that governments have with the sector and to deliver significant reductions in red tape and regulatory burden for the sector. Further detail is provided in the Office's submission to the House of Representatives' Standing Committee on Economics (House Committee) ([Attachment A](#)).

Role of the Office for the NFP Sector

In 2010, the Government established the Office within PM&C for an initial period of three years to:

- drive and coordinate the NFP reform agenda within Government;
- implement the National Compact;
- chair the Interdepartmental Committee on NFP Reform (IDC) to ensure a whole-of-Government approach to implementing the reforms;
- provide secretariat support to the Not-For-Profit Sector Reform Council (Reform Council) and associated working groups; and
- develop whole-of-Government volunteering, social investment and philanthropy policy.

The Government's Not-for-profit Reform Agenda

Following repeated calls from the NFP sector for regulatory reform, the Government committed to a major reform agenda to strengthen the sector, broadly reflecting the recommendations of the Productivity Commission's 2010 Report, *Contribution of the Not-for-Profit Sector* (PC Report). The PC Report was the fifth significant review calling for regulatory and taxation reform of the sector since 1995.

The Government's NFP reform agenda has three broad aims:

1. *Improve the way Government and the NFP sector work together*
 - Implement the National Compact
 - Streamline funding arrangements

2. Streamline and simplify regulation

- Establish the ACNC
- Regulatory reform
- Tax reform

3. Promote the long-term sustainability of the NFP sector

- Volunteering, philanthropy and social investment
- Workforce planning
- Measurement of the sector

Achievements to date in implementing the reforms are summarised in the publication at [Attachment B: *Strength, Innovation and Growth: The future of Australia's not-for-profit sector, July 2012.*](#)

This work builds on collaboration over a number of years between the Commonwealth, states and territories on national reforms for the NFP sector, including the successful implementation of a National Standard Chart of Accounts from 1 July 2011 and progress in considering a national approach to fundraising regulation.

Despite this progress, more remains to be done. The PC Report identified that the current regulatory framework applying to NFP entities across Australia imposes a considerable compliance burden on NFPs, particularly those operating across multiple jurisdictions. The regulatory environment is characterised by uncoordinated regimes at the Commonwealth and state/territory levels. Disparate reporting and other requirements add complexity and cost.

The ACNC represents a key mechanism to reduce red tape and compliance burdens for the sector. It will be an independent, dedicated regulator that understands the sector and its needs and is in keeping with the recommendations of the PC Report for a one-stop shop for Commonwealth regulation and harmonised, simplified regulatory and taxation arrangements with states and territories.

Sector support for regulatory reform

NFP sector submissions to various reviews have consistently called for regulatory reform. Submissions to the most recent House Committee inquiry clearly reiterate support for a dedicated national regulator that can focus on the particular needs of the sector. As noted in the House Committee's report, 'the sector supports the Bills and is committed to cooperating with the Government to bring about effective, workable legislation that will benefit the sector and, in turn, the wider community.'¹

¹ House of Representatives' Standing Committee on Economics' report on the Australian Charities and Not-for-Profits Commission Exposure Draft Bills. August 2012. Paragraph 1.25, page 8.

The NFP Reform Council, which reflects a broad cross-section of the sector, has worked closely with Government on implementation of the reform agenda. It remains strongly supportive of a national regulatory regime.

We believe that the amendments made to the ACNC Bills and the accompanying Explanatory Memoranda as a result of the recommendations of the House Committee and discussions with sector representatives, have substantially addressed most of the concerns expressed by the sector on the previous exposure drafts. It is also important to recognise the role that the ACNC will play in providing education, guidance and support to help charities comply with their obligations.

The Government's decision to delay implementation of the financial reporting and governance frameworks to 1 July 2013 means that for the first year, the ACNC is effectively a registrar rather than a regulator. In addition, the ACNC Commissioner has been given a transitional power for three years to treat a report provided to another Commonwealth agency as meeting the ACNC's reporting requirements. This will make it easier for charities to transition to the new arrangements and be appropriately supported in doing so.

Intergovernmental collaboration

Work with states and territories to minimise the administrative and regulatory burden faced by the NFP sector began in 2008 under the COAG Business Regulation and Competition Working Group (BRCWG), as part of COAG's microeconomic reform agenda. This work resulted in national implementation of a Standard Chart of Accounts from 1 July 2011. The BRCWG also considered the feasibility of harmonisation of charitable (non-gaming) fundraising regulation.

In April 2012, COAG endorsed the terms of reference and work plan for a new NFP Reform Working Group (NRWG) and tasked this group with reviewing, developing and recommending NFP regulatory reform options to COAG, through the Standing Council on Federal Financial Relations (SCFFR). The fundraising regulatory reform work now continues under the auspices of the SCFFR to facilitate more effective linkages with the broader NFP reform agenda.

Through the NRWG, jurisdictions are:

- progressing further work towards a nationally consistent approach to fundraising regulation;
- considering approaches to harmonise the test for determining non-charitable activities of charities;
- reviewing the legal, governance and reporting regulation for the NFP sector; and
- considering national recognition of a statutory definition of charity.

More recently, Senior Officials met out-of-session to discuss legislative and regulatory changes required to reduce or avoid regulatory duplication in light of the introduction of the

ACNC Bills. A significant number of the amendments made to the ACNC Bills before their introduction into Parliament were based on these discussions with states and territories.

Jurisdictions have agreed on a number of pieces of work going forward, including:

- developing a detailed jurisdiction and sector-specific consultation regulatory impact assessment (RIA). The RIA will involve consideration of regulatory duplication that applies to charitable entities across jurisdictions with a focus on regulatory duplication that may initially arise from the introduction of a new general reporting framework and general governance framework under the Commonwealth's ACNC legislation. This will include areas of regulatory duplication between the ACNC and state/territory incorporated associations' acts and regulatory implications for unincorporated associations and charitable trusts. It will also include consideration of a possible delegation of powers from the ACNC to state/territory regulators (and vice versa). The RIA will be provided to COAG at the end of 2012 for consideration and approval to release it for public comment. COAG's agreement will also be sought to the NRWG producing a final report on the results of the RIA focusing on options to reduce or avoid regulatory duplication and achieve the most effective regulatory outcome.
- the Commonwealth working collaboratively with jurisdictions on its draft regulations on financial reporting and governance standards, through the NRWG, by mid-September 2012. The Commonwealth has undertaken not to finalise these regulations until after a final report on the results of the RIA is provided to COAG, expected to occur in February-March 2013.
- developing a nationally consistent approach to charitable fundraising legislation. COAG's Charitable Fundraising Working Group (CFWG) is currently considering options for reform and an options paper will be released in September 2012 for states and territories to consider.
- involvement of jurisdictions in the development of the ACNC Charity Passport. State/territory regulators engage regularly with the ACNC through a sub-group of the NRWG to consider practical ways to work together.

All jurisdictions have committed to continuing their engagement through the COAG NRWG. As indicated above, collaboration on practical ways to reduce regulatory duplication will also continue through a sub-group consisting of the ACNC and state and territory regulators. In addition, PM&C will continue to engage with officials from First Minister's portfolios on significant developments.

Consultation on the NFP reform agenda

The Government has engaged closely with the sector on the implementation of the reforms. Advice from the NFP Reform Council has also been instrumental in guiding the progress of the reform agenda.

A number of mechanisms have facilitated opportunities for the sector to engage directly on the reforms, including with relevant Ministers. These include:

- presentations by members of the Reform Council and senior executive from the Office at over 50 conferences and other events;
- websites for the [Office for the Not-for-Profit Sector](#) and [the National Compact](#), which have received approximately 37,000 and 15,500 unique visitors respectively since July 2011 when the websites were established;
- regular targeted consultations with the Reform Council, the Charities Consultative Committee, the Clubs Consultative Forum and other sector representatives;
- national consultations by the ACNC Taskforce in early 2012 in all capital cities and Townsville. More consultations are planned for October 2012;
- a joint roundtable in March 2012 with sector representatives, co-chaired by the Assistant Treasurer and the Minister for Social Inclusion; and
- attendance by Ministers at Reform Council meetings.

Formal consultation on the ACNC Bills began in January 2011 with a scoping study followed by public consultation on the ACNC exposure draft in December 2011, targeted consultation on the second exposure draft, and an inquiry by the House Committee over the Winter Parliamentary recess. In total, there have been over 340 formal submissions made through these consultations.

The Government's decisions to extend the commencement of the ACNC from 1 July to 1 October 2012 and the staged approach to the introduction of the governance and financial reporting frameworks have provided more time for genuine consultation with the sector and other stakeholders.

Reducing red tape

The ACNC will play a significant role in the reduction of red tape and regulatory burden. However, it is important to note that measures to reduce red tape for the NFP sector go beyond the ACNC. In accordance with the principles of the National Compact, a significant amount of work is going forward to reduce reporting and compliance burdens for organisations funded by the Commonwealth Government to deliver services on its behalf.

The Department of Finance and Deregulation (Finance) developed and rolled out simplified contracting arrangements for Commonwealth procurement in 2011. It is estimated that more than 70% of Commonwealth departments have so far adopted these arrangements.

Finance has also developed a grant agreement template for departments to use for low risk grants. The template is currently being piloted by two agencies, and discussions are taking place with senior executive across the Commonwealth for more departments to participate in pilots. The pilots will help to refine the template. It is expected to be launched across the Commonwealth in early 2013.

The Not-for-Profit Reform Agenda

The Government committed to a reform agenda to strengthen the NFP sector, broadly reflecting the recommendations of the Productivity Commission's 2010 Research Report, *Contribution of the Not-for-Profit Sector* (PC Report). The PC Report was the fifth significant review calling for regulatory and taxation reform of the sector since 1995.

Broad aims of the reform agenda

1. *Improve the way Government and the NFP sector work together*
 - Implement the National Compact
 - Streamline funding arrangements
2. *Streamline and simplify regulation*
 - Establish the ACNC
 - Regulatory reform
 - Tax reform
3. *Promote the long-term sustainability of the NFP sector*
 - Volunteering, philanthropy and social investment
 - Workforce planning
 - Measurement of the sector

Structures to progress reform

Given the scope of the NFP reform agenda, the Office was established within the Department in October 2010 for an initial period of three years, to drive and coordinate the reform agenda. Appropriate structures have been put in place to progress reforms across government, with the engagement of the sector. These structures include:

- *Not-For-Profit Sector Reform Council*
The Not-for-Profit Sector Reform Council (the Reform Council) provides advice from the sector to Government on the implementation of the reform agenda. The Reform Council's Terms of Reference and membership are attached.

- *Interdepartmental Committee on NFP Reform*
In recognition of the range of elements of the reform agenda, the IDC was established in February 2011, to assist the Office in their role of driving and coordinating the reform agenda within government. The IDC brings together key agencies working on the reform agenda to discuss the implementation of government commitments. The IDC is currently progressing work in a range of areas including, measurement and information, non-financial performance reporting, grant funding agreements and reducing duplication.
- *Compact Advocates*
The Compact Advocates are deputy secretary level officials tasked with implementing the National Compact within their department's practices and are a key mechanism to ensure that the shared vision, purpose and principles of the Compact are adopted across Government.
- *ACNC Implementation Taskforce*
To support the introduction of the ACNC, an Implementation Taskforce was established from 1 July 2011 within Treasury. The ACNC Taskforce oversees the implementation of the ACNC, including the development of the general reporting framework and the public information portal.

Progress to date

1. *Improve the way Government and the NFP sector work together*

The National Compact

- After extensive consultation with the NFP sector, the Government launched the National Compact: *working together* in March 2010, committing all the Commonwealth portfolios to the Compact's shared vision, purpose and principles. The Compact is a framework for how the Commonwealth and the NFP sector will work together to improve social, civic, economic and environmental outcomes.
- To embed the principles of the National Compact, Compact Advocates have been appointed within all *Financial Management and Accountability Act 1997* (FMA) agencies with responsibility for supporting their agency's contribution to whole-of-Government processes to reduce red tape, streamline reporting requirements and implement priority actions under the National Compact. Advocates are at the deputy secretary level and their contact details are available at www.nationalcompact.gov.au.
- The Reform Council and the Government are working together to develop a Consultation Code. The Code will sit under the National Compact and provide a framework for how Government engages with the sector.

Streamline funding arrangements

- To streamline procurement contracting the Department of Finance and Deregulation (Finance) has introduced a simplified contract suite of documents for low-risk, low value procurements (under \$80,000). We are advised that over 70 per cent of FMA agencies are now using this documentation.
- Finance is now developing a model grant funding agreement template for low-risk grants. The Reform Council has been closely engaged in the development of the template. This template and associated documentation is currently being piloted by PM&C for grants under the Volunteer Management Program and the Attorney-General's Department is piloting the template on the Grants to Australian Organisations Program.
- The Office is also working with Finance and other FMA agencies to examine ways to streamline non-financial reporting requirements in grant funding agreements, ensuring that this work takes into account broader whole-of-Government work such as the Commonwealth Financial Accountability Review.

Streamlining reporting

- A number of activities are underway to balance the Government's need for reliable data that supports policy objectives with the desire to reduce the reporting burden and free up resources to deliver services. The ACNC will improve regulation and reporting, in particular through a 'report once, use often' general reporting framework for charities. It is proposed that a *Charity Passport* will enable Commonwealth agencies to access basic information about charities that has been validated by the ACNC which fits with the 'report-once, use-often' principle.

National Standard Chart of Accounts

- From 1 July 2011, all jurisdictions including the Commonwealth, have accepted financial information from government-funded NFP organisations based on a National Standard Chart of Accounts (NSCOA). The NSCOA, is voluntary for NFP organisations improves consistency in financial reporting by NFP organisations to funding agencies and departments.
- The NSCOA provides a common approach to the capture of accounting information by community organisations for use by the NFPs, government agencies and other interested parties. It is a tool designed primarily for small to medium NFPs which typically do not have an accounting department or a sophisticated accounting system.
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2. Streamline and simplify regulation

Australian Charities and Not-for-Profits Commission

The 2011-12 Budget allocated \$53.6 million over four years for the establishment of the ACNC and related structural changes required to the Australian Taxation Office (ATO). The ACNC will:

- provide a central point for the registration of Australian charities;
- determine charitable status and public benevolent institution status;
- implement a 'report-once use-often' general reporting framework;
- collect reporting information from charities to build a public information portal over time for use by the Australian community; and
- provide education and guidance to the sector and the general public to promote compliance and transparency.

Consultation on the ACNC Bill

The ACNC Bill has undergone a significant consultation process with the sector. Treasury has carried out targeted consultation on the ACNC Bill through the Reform Council, the ATO's Charities Consultative Committee and the Clubs Consultative Forum, and more broadly through public consultation. The ACNC Taskforce also held face-to-face consultations on a general governance framework, financial reporting framework, the public information portal and the provision of education to the sector in all capital cities and Townsville. These consultations were supported by a joint roundtable with the sector hosted by Assistant Treasurer, the Hon David Bradbury MP and the Minister for Social Inclusion, the Hon Mark Butler MP, with sector representatives in March 2012.

The two-staged approach to implementation announced by the Government on 17 May 2012 will provide additional time for the sector, and state and territory governments to be consulted on the governance standards and the financial reporting framework. The sector has supported this approach and they have also indicated support for the ACNC to commence operations from October 2012. The sector has consistently stressed the need for a charity regulator, independent of the ATO, to streamline reporting and untangle the complex reporting requirements imposed by the Commonwealth, states and territories when operating across several jurisdictions.

Regulatory reform

- **Companies limited by guarantee**

The Government also announced in the 2011-12 Budget that it will undertake a review of the company limited by guarantee structure. This will help determine whether there are any barriers for NFP organisations using this structure.

- **Fundraising**

A significant challenge for the NFP sector is navigating the complex and inconsistent requirements under fundraising legislation across jurisdictions. The Government is working with states and territories, through COAG, towards agreeing a nationally consistent approach to fundraising regulation. The Assistant Treasurer released a discussion paper on charitable fundraising regulation reform for public comment on 12 February 2012 and closed on 5 April 2012.

- **Statutory definition of ‘charity’**

From 1 July 2013, the Government will introduce a statutory definition of ‘charity’ to clarify 400 years of complex common law, align the definition with the values of modern society and reduce administrative costs for NFPs. The definition will be based on the recommendations of previous reviews and inquiries, most notably the 2001 Report of the *Inquiry into the Definition of Charities and Related Organisations*. The definition will also take into account recent judicial developments such as the *Aid/Watch* decision which established the principle that an institution that otherwise has a charitable purpose will be considered ‘charitable’ notwithstanding that it has “political objects” and carries out political activities.

Work with states and territories

- In announcing funding for the ACNC in the 2011-12 Budget, the Government noted that regulation of the charitable sector for Commonwealth purposes was a first step to getting the Commonwealth's house in order. However, it confirmed that the Commonwealth would continue working with the states and territories through COAG in order to achieve the most effective national regulation for the NFP sector.
- This work is going forward through the COAG NFP Reform Working Group, which reports to COAG through the Standing Council on Federal Financial Relations, and is chaired by the Commonwealth Treasury. The Office is an observer on this Working Group.
- COAG has tasked the Working Group with reviewing, developing and recommending NFP regulatory reform options to COAG including:

- considering the adoption or application of a Commonwealth definition of 'charity';
- a nationally consistent approach to fundraising regulation;
- reviewing legal, governance and reporting regulation for the NFP sector; and
- considering approaches to harmonise the test for determining non-charitable activities of charities.

Taxation reform

The Government is reforming legislation relating to tax concessions applying to the NFP sector. As announced in the 2011-12 Budget, better targeting of NFP tax concessions will ensure valuable tax concessions including income tax, fringe benefits tax, goods and services tax and deductible gift recipient status are targeted only at the activities NFP's undertake to further the purpose for which the concessions are provided. The Government will continue to consult with the NFP sector on the best way to implement these reforms and what guidance will be required.

The Office has been engaging with Treasury, which has lead responsibility for implementing the following taxation reforms, to support the NFP sector and improve its accountability and transparency:

- a new regulatory framework to improve the integrity of public ancillary funds from 1 January 2012;
- a NFP Sector Tax Concession Working Group under the Reform Council to consider whether there are better ways for the Government to deliver the current envelope of support provided to the NFP sector through tax concessions;
- restating and standardising the special conditions for tax concession entities, including the 'in Australia' special conditions, to ensure tax concessions are used for the benefit of Australians; and
- better targeting NFP tax concessions so they are used only for the charitable purposes for which they were granted.

3. Promote the long-term sustainability of the NFP sector

National Volunteering Strategy

- Volunteers make an extraordinary contribution to Australian society and provide much needed support to many NFP organisations. On 30 November 2011, the Government released the National Volunteering Strategy (NVS) to ensure Australia is well placed to encourage and support volunteering into the future.
- The NVS was developed in consultation with the NFP sector and sets out the Government's vision for the next 10 years which includes encouraging, supporting and properly recognising volunteers across the country. Through this strategy, the

Government will acknowledge and celebrate the important contribution of volunteering to social inclusion and community wellbeing.

- In cooperation with the NFP sector and peak bodies that utilise volunteers, the Government is working to develop resources on national workplace and safety laws to help organisations understand and comply with their legal requirements. A Volunteer Workplace Health and Safety Working Group which includes Safe Work Australia, has been established under the Reform Council to oversee the development of practical resources to help volunteer organisations and volunteers understand and comply with their legal requirements under work health and safety laws and other intersecting laws.

Philanthropy

- To better support philanthropy and giving, the Government has implemented changes to public and private ancillary funds which are types of philanthropic foundations. These reforms improve the integrity of ancillary funds to increase public confidence in the philanthropic sector.

Social Investment

- The Government is exploring ways to increase private investment in the NFP sector through philanthropy and innovative social financing. By facilitating the growth of social investment and access to capital markets for NFP organisations, the NFP sector will be better equipped to meet complex social challenges in the short and long term.
- The Australian Parliament's Senate Economics References Committee has conducted an inquiry into mechanisms and options for the development of a capital market for social economy entities and the development of social impact investment markets more generally. The Government has considered the Committee's report which was released in November 2011. The Government's response was released in July 2012 and is available from www.dpmc.gov.au.
- *Social Enterprise Development and Investment Fund*
In order to improve access to finance for social enterprises, the Government provided seed funding to establish the Social Enterprise Development and Investment Fund (SEDIF). Foresters Community Finance and Social Enterprise Finance Australia have been selected as the SEDIF funds managers to offer a range of tailored loans and support to new and established social enterprises. The Government's seed funding has been matched by corporate and private investors, taking the total funds under management to \$32 million.

Workforce Planning

- The Reform Council formed the Future NFP Workforce Working Group to examine current workforce pressures, consider how these could be managed and provide advice to Government.

Measuring the Sector

- The Government has invested \$1.7 million in Australian Bureau of Statistics to produce a Non-Profit Institutions Satellite Account for the 2012-13 financial year to provide an updated picture of the size, value, composition and economic importance of the NFP sector and contribute to the development of community related policies.