WORLD VISION AUSTRALIA

Submission to the Senate inquiries 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

By the:
Parliamentary Joint Committee on Corporations and Financial Services
Senate Community Affairs Legislation Committee

This paper sets out the submission of World Vision Australia (**WVA**) to the Senate inquiries into the:

- the Australian Charities and Not-for-profits Commission Bill 2012 (**ACNC Bill**)
- the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 (**ACNC Consequential Bill**) (collectively **ACNC Bills**)
- explanatory memorandum to the ACNC Bills (**ACNC Explanatory Material**)
- the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 (**Tax Bill**)
- explanatory memorandum to the Tax Bill (**Tax Explanatory Material**)

as tabled in Parliament on 23 August 2012.

This submission primarily addresses matters that are important and relevant to WVA as well as noting other matters of concern to the not-for-profit (**NFP**) sector generally. WVA has been involved in all public consultations in relation to NFP sector reform by providing submissions to Treasury, the ACNC Taskforce and the House of Representatives Standing Committee on Economics (**HREC**) and by appearing before the HREC.

In a number of respects, this submission restates matters addressed in WVA's earlier consultations and submissions, which remain relevant.

The submission is set out in 2 parts:

- Part A – Response to ACNC Bills
- Part B – Response to Tax Bill

Summary

WVA strongly supports NFP sector reform on the understanding that the overarching aim of reform is to facilitate the vibrant operation of the NFP sector.

ACNC Bills

WVA considers this aim will be facilitated by the establishment of a regulator, provided it is clearly and functionally independent of the Australian Taxation Office (**ATO**) and which can operate nationally with appropriate resources and powers to register, guide and educate NFP's and, only where necessary and in a proportionate manner, take action against NFPs. WVA also supports transparency and accountability and believes that the proposed ACNC register and public portal will enhance this.

WVA supports the efforts which have been made to incorporate the concerns raised by the NFP sector in reviewing exposure drafts of the ACNC Bills released between December 2011 and July 2012. WVA particularly supports in principle the list of recommendations made by the Government in the HREC Report on the Exposure Draft of the ACNC Bill and the ACNC Consequential Bill[1]

We submit, however, that the ACNC Bills should be further reworked to better reflect:

- HREC recommendations
- matters key to the overseas aid and development sector
- the overarching aim of the reform as expressed in non-legislative material such as the Final Report: Scope Study for a National Not-for-profit Regulator released by Treasury in April 2011, fact sheets and ACNC Taskforce materials including its Implementation Report.

To this end, we request:

- further changes to the ACNC Bills
- further steps post-enactment

as set out in the detailed response below and Appendix 2 (which sets out specific requested amendments to the ACNC Bills).

Tax Bill

On 12 August 2011 WVA provided a response to the First Exposure Draft of the Bill to Treasury. On 11 May 2012 we provided a response to the Second Exposure Draft of the Bill. A copy of those submissions can be provided if required.

In the short time provided for submissions to the Parliamentary Joint Committee (**PJC**) we have had limited time to consider the full impact of the Bill. Whilst the Bill incorporates amendments to reflect some of the concerns raised by WVA and others in submissions on the First and Second Exposure Drafts, many issues of concern have not been addressed.

[1] House of Representatives Standing Committee on Economics Report on the Exposure Draft of the Australian Charities and Not-for-profits Commission Bills 2012 August 2012, pages xiii to xv.

WVA remains of the view that many of the outstanding issues previously raised should be reflected in the final legislation to ensure that the NFP sector is not disadvantaged and that there is certainty as to the operation of the new law. However, for the purposes of this submission we have focussed on the issues that we anticipate will have the most significant impact on the operation of the NFP sector as a whole, namely, WVA is concerned about two aspects of the Tax Bill:

- the "tracing provisions"
- the definition of "not for profit entity".

More details are set out in Part B of this submission.

Background

WVA is a Christian relief, development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice.

We are part of the World Vision International partnership, which operates in more than 90 countries. We are Australia's largest overseas aid and development organisation, operating primarily to assist overseas communities living in poverty. We are also expanding our development work in Australia with Indigenous communities, working collaboratively with both government and non-government organisations.

We are funded through:

- Public & corporate donations (about 72%)
- Government, multilateral agency and private grants (about 20%)
- Corporate donations of goods and food (about 8%)[2].

As previously submitted to Treasury and the HREC, a fundamental measure of the success of the NFP reforms from WVA's perspective will be the decrease in:

- duplication of effort in reporting to and liaising with regulators and government departments with oversight over NFPs;
- where appropriate, the duplication of laws between existing state and territory legislation; and
- with the enactment of the new legislation at the Commonwealth level, the duplication of laws between state, territory and Commonwealth legislation.

This will require unprecedented co-operation amongst regulators and those government departments with oversight over NFPs. For WVA, as an overseas aid and development organisation which also works with Indigenous Australians, these are:

[2] For further information please refer to our 2011 Annual Report at www.worldvision.com.au

- the Australian Tax Office (**ATO**)(tax benefits and concessions);
- Australian Securities and Investments Commission (**ASIC**) (as WVA is a company limited by guarantee);
- Australian Agency for International Development (**AusAID**) (accredited agency of Commonwealth foreign aid funds);
- Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**) and other Commonwealth, State and Territory government departments (grants for Indigenous development work in Australia);
- Australian Council For International Development (**ACFID**) (peak body for non-government agencies involved in overseas aid and development)[3]; and
- State fundraising regulators[4].

This will take some time to work out, as many aspects of the coordination between regulators and government departments will take place at practical, rather than legislative, levels. In some cases, however, amendments to legislation will be required to achieve the goal that the ACNC be the "one-stop shop" regulator for the sector. We note that through the ACNC Consequential Bill, this process has begun.

Part A – Response to ACNC Bills

1. Allow for submission of any annual report

1.1 WVA endorses recommendation 3 of the HREC but notes that the drafting of clause 10 of Schedule 1 of the ACNC Consequential Bill is not broad enough to permit WVA to submit to the ACNC its annual reporting suite, as only one of the supporting documents is a "report given under an Australian law to an Australian government agency" (the full audited annual statements and accounts prepared for ASIC). The main WVA annual report is prepared for ACFID in compliance with the ACFID Code of Conduct (to which WVA is a signatory).

1.2 WVA therefore requests that clause 10 of Schedule 1of the ACNC Consequential Bill be amended to permit the Commissioner to treat any annual report as an information statement or report under the ACNC Bill. Specific wording is set out in Appendix 2.

[3] AusAID requires accredited agencies to be members of ACFID and comply with the ACFID Code of Conduct through contractual provisions in head agreements.

[4] There is only one territory regulator: ACT. WVA is exempt from the operation of the *Charitable Collections Act 2003* (ACT), as it is an accredited agency of AusAID.

2. Clarify purpose of registration (more than taxation)

2.1 WVA's preferred position is that NFP reforms should not be driven by tax considerations and that the ACNC will "cover the field" of NFP regulation. We note, however, that the voluntary nature of registration and constitutional issues will leave gaps in the Commissioner's ability to do this.

2.2 Key aspects of the Bill rely on the Commonwealth's taxation powers for their constitutional legitimacy. This includes the "gateway" registration provisions which have an express object of being a prerequisite for access to tax concessions.

2.3 WVA submits that registration with the national regulator should primarily be considered a "badge of honour" that demonstrates an entity's legitimacy and provides a level of quality assurance to the public[5]; it should not be primarily linked to access to tax concessions. To this end WVA recommends removing the italicised sub-headings in clause 20-5 of the ACNC Bill.

3. Remove "contributions" core concept

3.1 "Contribution" to a registered entity is defined in clause 205-40 of the ACNC Bill to be "the provision of money, property or any other benefit to the entity, and includes:

(a) the provision by an individual of his or her time or reputation to the entity;

(b) the provision by a government of tax concessions or other forms of government support to the entity."

3.2 The core concept "contributions" is used in three places in the ACNC Bill:

(a) It is a matter the Commissioner must consider under clause 35-10(5)(2)(c) – a key provision (as set out in paragraph 4 below)

(b) It is part of the objects of Division 45 (Governance Standards) that registered entities use their resources (including "contributions") effectively and efficiently (clause 45-5(1)(b))

(c) Proper application of "contributions" to the purpose of the entity is a matter that a registered entity must consider in determining whether a contravention or non-compliance is significant and therefore should be notified to the ACNC (clause 65-5(3)(b)).

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[5] In support of this we note, for example, the personal view of preeminent charity law practitioner John Emerson (Partner, Freehills) expressed during his presentation at the Melbourne Law School conference "Defining, Taxing and Regulating Not-for-Profits in the 21st Century" on 20 July 2012. Mr Emerson said that many of the entities he had advised over the years in relation to applying for deductible gift recipient status were looking for a "stamp of approval" - being more interested in having "regulatory endorsement" than in being able to offer tax deductibility to donors.

3.3 Given this use in the ACNC Bill, we cannot see the need for such a concept, as the same purposes can be achieved through simple reference to the proper application of an entity's assets and resources and a consideration of the best interests of its beneficiaries.

3.4 Furthermore, reference to income tax concessions being a government "contribution" to the NFP sector represents a fundamental shift in the traditional understanding of government's right to tax charities. As a matter of social policy, historically, charitable activities have been viewed as properly outside the ambit of income taxation[6]. Therefore, the current view that government "contributes" to the sector though the granting of income tax concessions is flawed; the income was not to be taxed in the first place.

3.5 Finally, we note the confusion created by use of "contribution" in a different sense in Subdivision 180E of the ACNC Bill (Right of indemnity and contribution).

3.6 WVA therefore requests the following changes to the ACNC Bill:

(a) remove the "contribution" core concept in clause 205-40

(b) remove reference to "contribution" in other clauses as set out in Appendix 2 and paragraph 4 below.

4. Amend clause 35-10(2) – matters the Commissioner must consider

4.1 WVA notes that although clause 35-10 is headed "revocation of registration", clause 35-10(2) is a key clause listing matters the Commissioner must consider not only in making a decision to revoke registration but also in deciding whether to:

(a) Issue a show cause notice before revoking registration (clause 35-15(3))

(b) Give a warning and the content of the warning (clause 80-5(3))

(c) Give a direction and the content of the direction (clause 85-5(2))

(d) Vary a direction and the content of the variation (clause 85-20(2))

(e) Revoke a direction (clause 85-20(4))

(f) Issue a show cause notice before suspending a responsible entity (clause 100-10(6))

(g) Suspend a responsible entity, when the suspension starts and ends, or whether to change the time the suspension ends (clause 100-10(9))

(h) Issue a show cause notice before removing a responsible entity (clause 100-15(5))

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[6] See, for example .Michael Gousmett's historical analysis "The Charitable Purposes Exemptions from Income Tax: From Pitt to Pemsel 1798 - 1891)" University of Canterbury (2009)

(i) Remove a responsible entity (clause 100-15(6)).

4.2 Given its importance, WVA requests three further changes to clause 35-10(2), as set out specifically in Appendix 2:

(a) Redraft (c) to refer to an entity's assets and resources rather than to "contributions" for the reasons explained in paragraph 3 above.

(b) Recast (f) to refer more broadly to beneficiaries of registered entities to clarify the position of overseas aid and development organisations, as the wording is unnecessarily restrictive. For example, to be accredited with AusAID, overseas aid and development organisations cannot engage in "welfare" and in engaging in development work, often do not have "members of the community that receive direct benefits".

(c) Include a new paragraph (g) requiring the Commissioner consider any response from the entity before making a relevant decision. This is discussed in paragraph 12.8 below.

5. Clarify Commissioner's dealings with information on the Register

5.1 WVA notes the inclusion of changes to Division 40 of the ACNC Bill to enhance the Commissioner's discretion to add and remove information from the Register, as recommended by the HREC (recommendation 8). WVA requests two further changes, as set out specifically in Appendix 2:

(a) Amend clause 40-5(1) to clarify that the Commissioner may include the information listed

(b) Amend clause 40-10 to clarify that the Commissioner must not include (or must remove certain information) where set out in regulation and after 5 years in the absence of public interest to retain.

6. Remove or amend external conduct standards and counter-terrorism provisions

6.1 WVA has consistently argued that Division 50 should be removed from the ACNC Bill, as we do not see any gap in regulation that needs to be remedied. In this regard, we do not accept the findings of the HREC. Our detailed submissions on this point are set out in Appendix 1 and can be summarised as follows:

(a) WVA agrees that the risk of terrorism financing should be managed through Government regulation.

(b) WVA agrees that clause 25-5(3)(d) of the proposed legislation is an appropriate precondition of registration, but submits that clause 25-5(3)(b) (and Division 50 as a whole) are not necessary.

(c) The risk is of terrorism financing is low probability in the NFP sector (although potentially high impact).

(d) The risk is already sufficiently managed by existing laws which apply to all sectors administered by the Attorney General (though AusTrac, etc).

(e) There is no case for additional and separate regulation of the NFP sector through the ACNC Bill and external conduct standards in particular.

(f) The ACNC will not have (and does not need to have) the capability to independently address this risk either at the point of registration of an entity or in reviewing an entity's registration or general compliance with the proposed legislation.

(g) Given that registration with the ACNC is voluntary, NFP entities engaging in such activities can simply choose not to register therefore would not be caught by the proposed legislation in any event.

6.2 In the alternative, however, should Division 50 remain, we submit that the clause 50-10(2)(c) be amended to only reflect existing Australian and international requirements so as to not place an additional burden on overseas aid and development organisations which goes beyond current requirements.

6.3 Currently, the *Charter of United Nations Act 1945* allows a defence to a breach of the prohibitions against providing resources to terrorist where the organisation "took reasonable precautions, and exercised due diligence"[7] to avoid contravening the anti-terrorism provisions. The ACFID Code of Conduct which applies to every international aid and development organisation accredited with AusAID reflects this position, requiring members to "make every reasonable effort to ensure that funds or resources disbursed to partners or third parties are applied lawfully, in accordance with the promise to the donor, for a proper purpose and with proper controls and risk management in place"[8]. AusAID also has guidelines on the issue which are applicable to organisations which receive grant funding from it.

6.4 WVA requests that clause 50-10(2)(c) be amended by replacing the word "ensuring" with "addressing" as set out specifically in Appendix 2.

6.5 WVA also requests that there be timely and careful consultation with the aid and development sector before the introduction of any external conduct standards.

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[7] See sections 20(3E)(b), 21(2E) and 27(7) of the *Charter of United Nations Act 1945*.

[8] ACFID Code of Conduct section B.2.3

7. **Amend suspension and removal of responsible entity provisions**

7.1 WVA notes the inclusion of notification of the registered entity where the Commissioner is considering suspending or removing a responsible entity. WVA submits that the same rights of notification and appeal should be given to both the responsible entity and the registered entity in these circumstances and requests amendments to clauses 100-10 and 100-15 of the ACNC Bill to reflect this (as set out specifically in Appendix 2).

8. **Redefine "director" and "company"**

8.1 WVA notes that Division 180 of the ACNC Bill has been significantly redrafted to address concerns raised by the NFP sector.

8.2 It is, however, still confusing to read given the retention of counterintuitive definitions, which no longer appear relevant given the redraft of Division 180:

(a) "company" is still defined to include both bodies corporate and unincorporated associations or bodies of persons; and

(b) "director" is still defined to include people in relevant positions in both types of "company" (as per clause 205-10 and the definition of "director" in clause 300-5 of the Bill).

8.3 We suggest that it would be more appropriate to use such terms in ways that are closer to their ordinary meaning and request that relevant provisions of the ACNC Bill be redrafted to achieve this.

9. **Further consider objections, reviews and appeals provisions**

9.1 The Bill contains objection, review and appeals provisions based on those contained in Part IVC of the *Taxation Administration Act 1953 (Cth)*.

9.2 WVA suggests that further consideration should be given to whether the proposed process is appropriate to the Commissioner's decisions. For instance, the process is more prescriptive and limiting than might be the case with other administrative law remedies and, by requiring parties to adhere to an objection process, prevents dissatisfied entities from taking action before an independent forum for matters where time might be of the essence. For example (as noted below in paragraph 12.8(c)(ii)) a decision to revoke an entity's registration is likely to have an immediate and deleterious effect on the entity but the entity may be prevented from taking that matter before an independent forum such as the Administrative Appeals Tribunal or Federal Court for up to 120 days pending the objection process.

9.3 Similarly, where the Commissioner issues a direction under Division 85, it is likely that the direction will expire (or at least require review) before an entity has been able to pursue appropriate independent avenues of recourse.

9.4 It might also be the case that other concerned parties wish to take action, even though a more directly-affected party does not or is not able to do so. For example, the directors or members of an entity may wish to make objections or seek reviews or appeals on a decision to revoke the entity's registration where the entity's own access to resources is limited. Similarly, an entity may wish to challenge the suspension or removal of one of its responsible persons. While such parties may have standing under general administrative law principles, the proposed provisions in the Bill would not allow for this (other than to allow interested parties to join reviews or appeals).

9.5 Under the *Taxation Administration Act 1953 (Cth)* the Commissioner of Taxation's decisions are often presumed be valid, notwithstanding a defect in their making. WVA does not consider such an approach to be appropriate in the context of the NFP sector, particularly having regard to the way the Commissioner's powers have been formulated as broad-ranging powers (often constrained only by the matters that the Commissioner is required to have regard to before making a decision). This is an example of why it may not be appropriate to base the objection, review and appeal processes on those contained in the tax legislation.

9.6 Other factors which justify a Part IVC process in tax cases but which are not necessarily applicable in the NFP context include the following:

(a) Given the pervasiveness of tax law, the likely volume of tax cases requires methods for dealing with dissatisfied taxpayers outside the context of a tribunal or court. The proposed legislation is unlikely to give rise to anywhere near that volume of reviewable decisions.

(b) The imperative of continued revenue for the functions of Government explains not only the process *Taxation Administration Act 1953 (Cth)* but also factors such as shifting the burden of proof and allowing decisions to take effect, notwithstanding reviews or appeals. In our view, there is no similar imperative in relation to the Commissioner's functions.

10. **Amend and further consider record keeping requirements and penalties**

10.1 WVA notes that the record keeping requirements continue to be vague and uncertain and place a considerable compliance burden on registered entities. The drafting of the obligation in clause 55-5(1) of the ACNC Bill is particularly unclear given paragraph (b) and the final wording are both about what the requirement to keep records is intended to "enable".

10.2 The appropriateness of such vague obligations being the subject of a strict liability offence is highly questionable; strict liability offences are the antithesis of proportional regulation.

10.3 In addition, if a time limitation is introduced on the Commissioner's ability to retrospectively revoke an entity's registration (as suggested below in paragraph 12.9) this should be reflected in the time period for retention of records.

10.4 WVA submits that the strict liability reference be removed as set out in Appendix 2 and that the penalty for non-compliance be reconsidered in the context of a review of the appropriateness of Part 7.3 generally.

10.5 While WVA appreciates that further changes have been incorporated into Part 7.3 to clarify application of penalties, we still question the necessity for a penalty regime at all in the context of the NFP sector where the vast majority of organizations seek to "do the right thing" and will be empowered to do so by the ACNC's focus on education of the sector.

11. Remove special purpose reporting requirements

11.1 WVA questions the purpose of Subdivision 60-E of the ACNC Bill which allows the Commissioner to request special purpose reports from entities or classes of entities. Although a note to clause 60-70 of the ACNC Bill and an example in the ACNC Explanatory Material provides that this could be used if there is reason to believe that a registered entity has contravened the Act, the use of such reports is not actually limited in this way.

11.2 The Commissioner already has powers to determine the approved form for information statements and extensive information gathering powers in Part 4-1 of the ACNC Bill. We therefore question why these additional powers are required, particularly for individual entities. Further, there is an inconsistency between the contents of financial reports being determined by the Government under regulations and the Commissioner having full discretion to determine the contents of the special purpose reports or additional reporting requirements under the ACNC Bill.

11.3 WVA submits that Subdivision 60-E of the ACNC Bill be removed.

12. Further consider application of revocation provisions

12.1 WVA notes that there have been considerable improvements made to the provisions for dealing with revocation of registration but submits that further consideration is required post enactment.

12.2 As presently drafted, Division 35 of the ACNC Bill allows the Commissioner to revoke registration based on his or her "reasonable belief" of certain conditions being met, regardless of whether they are in fact met. WVA has several concerns about this:

(a) Although there is a list of matters the Commissioner must take into account in determining whether to revoke registration, these do not provide sufficient comfort that the power to revoke registration will only be used as a last resort measure (as stated in the ACNC Explanatory Material) as the listed matters are only required to be taken into account, not satisfied.

(b) Revocations are also most likely to take effect prior to an entity having had the opportunity to challenge the revocation under the objection mechanism.

(c) In basing the revocation power on the Commissioner's "reasonable belief", it is not clear whether an entity objecting to a revocation decision must demonstrate that no reasonable belief was formed or that the Commissioner's actual belief was not reasonable. WVA suggests that the first approach is more appropriate.

12.3 Revocation of registration is likely to have a serious effect on an entity as it may expose the entity to significant tax and other liabilities at the same time as removing access to funding sources (including funds which may be needed to challenge an incorrect determination of the Commissioner).

12.4 It is also important for public trust and confidence in the sector that the effects on the public of the Commissioner's decisions are made clear, for example, where an entity's registration is revoked and it loses its deductible gift recipient status retrospectively or temporarily pending the outcome of an appeal or review process.

12.5 While revocation may be intended to be a last resort in the majority of cases, the Commonwealth's limited constitutional powers underpinning the enforcement provisions and their resultant framing to essentially cover only "federally regulated entities" may mean that most other methods of enforcing compliance are not available against non-federally regulated entities. Revocation is therefore likely to form a core part of the enforcement mechanisms against such entities.

12.6 It is therefore imperative that proper safeguards, including appropriate access to procedural fairness, are built into the revocation process to ensure it is only used where absolutely necessary. It is not sufficient that this power be subject to broad administrative discretion and limited recourse rights. WVA considers that the proposed revocation provisions still fail to provide such safeguards.

12.7 We also note that no other registration regime has such onerous outcomes as de-registration for failure to comply with governance standards. WVA cannot see a rationale for such an outcome, especially in the NFP sector where it is well-accepted that non-compliance is usually a matter of ignorance or under resourcing.

12.8 WVA submits that the ACNC Bill should include the following:

(a) A requirement that the Commissioner consider any response from the entity before making a decision to revoke registration. The entity's response is not currently amongst the factors required to be considered by the Commissioner in making a decision to revoke (see clause 35-10(2) of the ACNC Bill). We have requested in paragraph 4.2(c) above that this be inserted before the ACNC Bill is enacted.

(b) A requirement that the Commissioner set out in writing (and in detail) to the entity the grounds for any revocation decision.

(c) Revocation should not take effect until all avenues of appeal or review which an entity wishes and is able to take have been exhausted, unless there is a clear and demonstrated public interest in the decision taking effect earlier. It cannot be assumed that the Commissioner will always make a correct decision. Although they are not WVA's preferred position, there are also several alternatives that could be considered, including the following:

(i) Revocation only takes effect once an objection decision has been made or the time has passed for lodging an objection (which would represent the Commissioner's final consideration of the revocation decision).

(ii) An entity whose registration has been revoked not be limited to taking action under the objection, review and appeal processes (which may take longer and be more restrictive than alternative processes). It is noted, for instance, that the proposed objection process allows the Commissioner at least 120 days to consider an objection before an entity can take further action.

(iii) Require the Commissioner to seek approval of the Court before revoking the registration of an entity, and therefore bear the burden of proving that the relevant circumstances allowing revocation exist in relation to the entity.

12.9 Further consideration should also be given to whether there is a clear need for retrospective revocation (that is, applying to a period prior to the entity being notified of a decision to revoke its registration) and the effects of the revocation on a member of a public who intends to claim a deduction for a donation made during the period. The circumstances in which revocation can be retrospective should be much more limited. Additionally, the retrospectivity should be limited in time to, for instance, no more than 2 years, in order to increase certainty for registered entities and donors whilst still allowing the Commissioner an appropriate period for review.

12.10 The giving of false and misleading information in an application for registration should not be a standalone ground, as this allows the Commissioner to revoke registration in circumstances where

the entity otherwise remains fully entitled to be registered and where the "offence" may be the result of oversight or mistake.

12.11 If revocation is to take effect prior to an entity's rights to objection, appeal or review being exhausted, reinstatement of registration should be automatic and retrospective if it is ultimately determined that the revocation decision was wrong. In particular, clause 25-5 of the ACNC Bill and the accompanying note (which suggests that re-registration does not rescind an earlier revocation) should be reconsidered.

12.12 Ensuring that the Commissioner's powers of revocation are properly targeted and that rights of charities are properly protected is especially important in those instances where the Commissioner is not able to use his or her other enforcement powers (that is, for non-federally regulated entities). In those instances, the power of revocation may be the Commissioner's only possible course of action, rather than a last resort.

13. Further consider application of enforcement powers

13.1 Gaps in the Commonwealth's powers to regulate NFPs are also highlighted in Part 4-2 of the ACNC Bill where many of the ACNC's proposed enforcement powers are expressed to apply only to "federally regulated entities" (or where there is a breach of external conduct standards). This includes the ACNC's powers to give warnings, give directions, accept undertakings, seek injunctions and suspend or remove "responsible entities". While WVA has continuing concerns about the need for these powers, the scope of their application also gives rise to issues.

13.2 A core part of the definition of "federally regulated entity" in clause 205-15 of the ACNC Bill is that the entity be a constitutional corporation, being a financial corporation or trading corporation within the meaning of clause 51(xx) of the Australian Constitution. The scope of the Commonwealth's corporations power remains unclear and essentially requires an examination of a corporation's activities and purposes to determine whether it has a sufficiently substantial focus on trading or financial activities. Arguments have been made that the corporations power is limited to commercial organisations, not charitable bodies. There is, therefore, uncertainty about the extent to which the enforcement powers will be able to be used by the Commissioner at all.

13.3 In any event, it is unlikely that the Commissioner will be able to use these powers in relation to a large proportion of registered entities, for example, those which are unincorporated or those incorporated under State laws.

13.4 As some registered entities will fall within the Commissioner's powers and others not, this will continue the patchwork nature of regulation of the NFP sector currently in place. This is not a desirable outcome for the reforms.

13.5 We submit, therefore, that Part 4-2 of the ACNC Bill be considered further post enactment.

14. Further consider extent and tone of enforcement powers

14.1 WVA appreciates the efforts that have been made to better target the ACNC's proposed enforcement powers and the changes made to the ACNC Explanatory Material.

14.2 WVA also appreciates the non-legislative material that has been produced by the ACNC Taskforce, including its Implementation Report, which explains the approach the regulator intends to take in practice. However, the legislation itself should still be drafted in a way that reflects those aims and intentions and is consistent with the regulator's intended practical approach to implementation.

14.3 WVA considers that the tone and structure of the enforcement powers continue to suggest a heavy-handed approach weighted against the interests of registered entities and responsible entities. Further efforts should be made to ensure that the powers are better targeted, fairer, not used to inappropriately interfere with an organisation's legitimate operations and do not impose undue costs on an entity in taking action against the ACNC.

14.4 In particular, WVA considers that:

(a) Placing the burden of proof in resisting any enforcement actions by the Commissioner on the entity is, in principle, neither "light-touch" nor proportionate regulation. As drafted, the ACNC Bill allows the Commissioner to exercise enforcement powers and then permits a dissatisfied entity to take action to complain, including bearing the burden of proving that the power should not have been exercised or should have been exercised differently. The case for this reversal of the burden of proof is not made out. Further, the burden of proof is not applied in a coherent manner throughout Part 4-2 of the ACNC Bill. For instance, the positioning of the suspension and removal powers at the end of Part 4-2 suggests that it is the most onerous and dramatic of the powers given to the Commissioner under that Part. Yet, unlike the preceding provisions in relation to injunctions which depend on an application for Court orders, the Commissioner may exercise those powers and the responsible entity bears the burden of proving that the Commissioner should not have done so. This is unnecessarily and inappropriately heavy-handed.

(b) In contrast, in most instances, under the *Corporations Act 2001 (Cth),* ASIC must seek a court order before a director can be disqualified from managing a corporation. WVA suggests this is a more appropriate model and can see no case for why a different approach should be taken in respect of registered NFP entities. The Commissioner could retain a power to temporarily suspend responsible entities where necessary to do so and pending court approval of removal action.

(c) A significantly shorter time period should be placed on directions before the Commissioner is required to reconsider the direction or take other action. WVA reiterates its concern that 12 months is too long and that a better model might be provided by ASIC's powers to give directions which have effect for up to 21 days, after which non-compliance must be adjudicated by a court. This would better achieve the purpose of directions as short-term measure.

(d) Some examples in the ACNC Explanatory Material suggest that directions could be used in ways that allow the Commissioner to inappropriately interfere in a registered entity's operations. For instance, Example 9.13 suggests that the Commissioner could give a direction that an entity not change its governing rules in a way that would render it ineligible for registration. As registration is voluntary this would not appropriate. Instead, the Commissioner should notify the entity of the likely effect of its actions so that the entity can decide for itself whether to proceed. It is also noted that, contrary to the suggestion in the example, a "duty to notify" obligation would not have arisen in the circumstances described because, as currently drafted, a duty only arises after a change has been made.

14.5 Furthermore, information generated by the Commissioner (such as warnings, directions, revocations of registration and reports of investigations) has the potential to inappropriately prejudice the public standing of registered entities. Consequently, WVA considers that such information should not be published on the ACNC register at all until all avenues of appeal and review have been exhausted. Alternatively, the Bill should provide that such information not be published at least until an entity has been given an appropriate opportunity to respond and the response (if any) should be published at the same time as the original information. The Commissioner should be required to remove such material where the information is ultimately determined to be incorrect and to publish a corrective statement.

14.6 WVA submits therefore that the enactment of Part 4-2 of the ACNC Bill should be carefully reconsidered post-enactment.

15. Consider other methods to assist and educate NFPs

15.1 WVA maintains that an important element of the ACNC's role in relation to the sector is to educate and assist NFPs to cultivate and maintain good governance practices and compliance. Although the ACNC Bill now contains some appropriate limitations on the ACNC's powers compared to the first exposure draft, broad and potentially onerous powers of enforcement remain a central element of the ACNC Bill. On the other hand, the ACNC's educational and assistance functions are provided for in clause 110-10 of the ACNC Bill.

15.2 WVA requests that further consideration be given to measures which could provide express mechanisms for assistance and educational measures which are less draconian and more cost-effective and facilitative than the proposed powers. These measures could include:

(a) the issue of binding public and private rulings (on a similar basis to the ATO); and

(b) the making of class order exemptions (on a similar basis to the ASIC).

Part B – Response on Tax Bill

16. Tracing provisions in proposed sub-sections 30-18(3) and 50-50(4) of the Tax Bill

16.1 The Tax Bill contains provisions to preclude:

(a) deductible gift recipient (**DGR**) status if a relevant entity (**Payer Entity**) provides money, property or benefit (collectively **Benefits**) to an entity that is not a DGR (**Recipient Entity**) and Recipient Entity or another entity uses that Benefit outside Australia (proposed sub-section 30-18(3) *Income Tax Assessment Act 1997* (**ITAA**); and

(b) income tax exempt (**ITE**) status if a Payer Entity provides a Benefit to an entity that is not ITE and that recipient entity or another entity uses the Benefit outside Australia (proposed sub-section 50-50 ITAA).

16.2 These provisions require entities to trace how Benefits they provide are used. Further, it penalises the Payer Entity if the Recipient Entity does not use the Benefit in a manner previously advised. This a burden that the NFP sector will find difficult to comply with and will ultimately lead to difficulty in providing Benefits to entities that are not DGRs or ITE.

16.3 Provisions such as these are impractical and will detrimentally affect our capacity (and the capacity of the NFP sector generally) to help the most needy. In particular, the proposed amendments create an unnecessary additional fetter on the discretion of organisations to determine how best to apply funds to achieve the purpose or objects for which they were established. The proposed legislation will place a 'straight jacket' on an organisation's capacity to respond flexibly to its particular operating environments and contexts. This is contrary to the recommendations contained in the Productivity Commission's 2010 Research Report into the Contribution of the Not-For-Profit Sector (http://www.pc.gov.au/projects/study/not-for-profit/report).

16.4 The provisions are ambiguous, impractical and simply add another layer of costs that reduce the capacity to help the needy. It will be too difficult to comply with and will be burdensome for taxpayers and the ATO.

16.5 If there is a concern that the purpose of the ITAA is being circumvented by Benefits being provided to entities in Australia which then transfer the amounts to an offshore entity, the provisions should specifically identify and target this. As currently drafted, the provisions are too broad and burdensome.

16.6 Our understanding of the intended operation of proposed sub-section 30-18(3) of the Tax Bill is that in determining whether a DGR Payer Entity pursues its purposes and operates solely in Australia, you need to take into account the use of any Benefits the Payer Entity gives to a non-DGR Recipient Entity. Several concerns:

(a) There is no discussion as to what is expected in terms of tracing funds. How does the Payer Entity make sure how funds are used?

(b) What is meant by the use of the phrase "(or any other entity)". This suggests having to trace through where the gift goes. How far?

(c) There is nothing in the Bill to indicate what happens if, despite the best efforts by a donor to satisfy itself re the use of funds, it is subsequently determined that they were used in a manner considered to be inappropriate? Is DGR status lost on a "go forward" basis? Is it lost on a retrospective basis? If so, do all donors need to be advised of same and amend their returns?

16.7 We have the same concerns about the proposed sub-section 50-50(4) of the Tax Bill which we note is is not as draconian as proposed sub-section 30-18(3) in that the test is applied on the basis of "principally' being in Australia rather than 'solely' being in Australia. However, it remains complex and suffers from the disadvantages noted above, in that it is ambiguous, impractical and simply adds another layer of costs that reduce the capacity to help the needy.

16.8 The conclusion at paragraph 1.77 of the Tax Explanatory Material that this requirement should present no greater an obligation on entities than already exists under charity law and the existing ATO endorsement framework is incorrect. It imposes a requirement to trace funds that does not currently exist.

16.9 WVA is of the view that DGRs and ITE entities should be given the discretion to use their funds in any way that is consistent with their stated objects and purposes. These impediments are not necessary. However, if it is thought necessary to include a form of limitation on Benefits being diverted to off-shore purposes, that should be specifically dealt with. In particular, the provisions should:

(a) identify that particular mischief

(b) state that the Payer Entity can rely upon a statement from the Recipient Entity that the Benefits are not to be applied off-shore unless there is a reason not to believe that statement to be accurate on the date that it is given

(c) reduce the test in relation to DGRs to a principal test (as per the ITE test).

We can provide suggested drafting if this would be of assistance.

17. **Definition of "not for profit entity"**

17.1 Our view is that the proposed definition of "not-for-profit entity" in the proposed sub-section 995-1(1)(a) of the Tax Bill is too narrow. To be a "not for profit entity", the entity must not be carried on for the profit or gain of its owners or members while operating or upon winding up. If an organisation has members who fall into the category of beneficiaries that the organisation has been established to assist, this would preclude the organisation from assisting such members.

17.2 A better definition may be that a "not for profit entity" is one whose:

(a) assets and income are applied solely in furtherance of its objects and not distributed directly or indirectly to the owners or members of the organisation except as bona fide benefits in furtherance of its objects, compensation for services rendered or expenses incurred on behalf of the organisation; and

(b) profits are use to carry out its purposes and not distributed as profits to its owners, members or another party.

30 August 2012

World Vision

APPENDIX 1

External Conduct Standards – WVA's submissions consolidated

1. ***Extract from WVA submission to Treasury on Governance Arrangements*** [9]

"7. In our view the issues of malfeasance and corruption and of money laundering and terrorism financing are overplayed as key reasons for a prescriptive governance regime in legislation to establish the Australian Charities and Not for Profit Commission (**ACNC**).

The [*Governance*] Consultation Paper says that "If a large case of fraud were to eventuate ... resources can deplete quickly when individuals lose faith in an entity ... This could cause both volunteers to stop engaging as well as donations to fall"[10]. Two remarks on this:

- The consequences as stated are true and correct. In fact, they are the key (non-legislative) drivers for NFP entities to have good practices in place around financial management, audits and in how donations are deployed. We do not believe that a prescriptive governance regime is necessary in this area.

- The underlying premise of the Consultation paper seems to be that the relationship between NFP entities and "the public" is an unequal relationship where the public is vulnerable, lacks control and requires (regulatory) protection. This is in fact far from the reality in the one sector of the economy where the organisations depend almost entirely on the goodwill of a sophisticated and well educated public. The relationship is far more balanced and NFP entities are naturally compelled to be much more accountable to 'their" public than the Consultation Paper indicates.

Much is made in the Consultation Paper about money laundering and terrorism financing. The Consultation Paper says that "individuals may seek to use NFP entities to launder money or finance terrorism"[11] We are aware that AusTrac is of the view that charitable donations is [sic] a principal method through which terrorism funds are raised in Australia. Yet a recent publication by the Australian Institute of Criminology (the Bicknell paper[12]) while recognising that the NFP sector could be exploited also says that "there is little to suggest that there is substantial misuse of [non-profit organisations] for [money laundering and] terrorism financing".

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[9] WVA Response to the Treasury Consultation Paper on "Review of not-for-profit governance arrangements" dated 27 January 2012, pages 9-10.

[10] Paragraph 56, page 10 of the Consultation Paper.

[11] Paragraph 57 on page 10 of the Consultation Paper

[12] S Bicknell "Misuse of the non-profit sector for money laundering and terrorism financing" (Trends & Issues in Crime and Criminal Justice No 424, September 2011, Australian Institute of Criminology)

The Bicknell paper says that from publicly available evidence, cases are few and that this could "suggest that the prevalence ... is itself low" or conversely, "it could indicate that there are low detection rates". We agree. If the latter, we would suggest that the existing regulators should become more active in monitoring and detection. This is not an area where there is gap in regulation which needs filling in.

There are only two reported incidents in Australia of such money laundering and terrorist financing[13] . Notably:

- In both cases, no NFP entity was in fact used by the offenders. In the Vinayagamoorthy case [14], three individuals were the offenders and they collected and they transferred donations to terrorists in Sri Lanka. In the Goldberg case [15], the offender and his family engaged in money laundering and they opened a bank account in the name of a fictitious charity (one that simply did not even exist).

- In both cases, the offenders were not those who would be practically required to register their operations under the proposed ACNC legislation as they did not access Commonwealth benefits. The Bicknell paper notes that the part of the NFP sector "considered at greatest risk ... were the charities, particularly small, informal unincorporated entities, and organisations which relied on informal methods of funds transfer" [16]. These are entities which would not need to register with the ACNC. How would their 'below the radar' activities be monitored by the ACNC if they would not be required to register with the ACNC?

In our view, criminal offences such as money laundering and terrorism financing are more appropriately regulated under the specific existing legislation dealing with them; not by the introduction of another regulator into the same space."

2. ***Extract from WVA submission on First Exposure Draft of ACNC Bill*** [17]

"5.4 Consider impact of registration not being compulsory

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[13] *R v Vinayagamoorthy & Ors* (Supreme Court of Victoria, March 2010) and *DPP (Cth) v Goldberg* 2001 184 ALR 387.

[14] S Bicknell. note 24

[15] S Bicknell, note 24

[16] S Bicknell, note 23

[17] WVA Response to First Exposure Draft: The Australian Charities and Not-for-profits Commission Bill dated 27 January 2012 p 7

WVA notes that in addition to the current proposed scope of the Bill (to apply at first instance to charities) the voluntary nature of registration will leave gaps in the Commissioner's ability to "cover the field" of basic NFP regulation.

WVA questions the assumption that appears to have been made that the size and significance of this gap in regulation will be small (because most of the NFP sector accesses tax concessions or Commonwealth government benefits).

For example, WVA notes that the two cases of terrorism financing in the NFP sector involved individuals and in one case, a fictitious organisation . In both cases, none of the persons involved accessed Commonwealth government benefits, so would never have be required to apply for registration had this legislation existed at the time. While our view is that this Bill (and indeed tax legislation) is not the appropriate legislative instruments for counteracting terrorism financing schemes, we note that if schemes were to be devised, they would still be off the Commissioner's radar.

3. ***Extracts from WVA submission on Second Exposure Draft of ACNC Bill[18]***

"3. Entitlement to registration – governance and external conduct standards

3.1 Under clause 25-5(3)(b) of the Bill, an entity is only entitled to be registered if it is "in compliance with the governance standards and external conduct standards". There are several difficulties with making this requirement part of the entitlement to register.

3.2 First, the governance standards and external conduct standards have not yet been released for public consultation and no guidance has been given about when these are likely to come into effect. As the standards will not be formulated before the ACNC is established, it should be clarified in the Bill that compliance will not be required until regulations are made.

3.3 Secondly, clause 25-5(3)(b) does not take into account the gravity or significance (or lack thereof) of a non-compliance with the standards. It remains a prima facie risk that even immaterial non- compliance could result in a loss of entitlement to registration. WVA notes that this is inconsistent with a registered entity's duty to notify the ACNC of a "significant" contravention or non-compliance with the standards (sub-clauses 65-5(2)(b) and 65-5(3) of the Bill.)

[18] WVA Response to Second Exposure Draft: The Australian Charities and Not-for-profits Commission Bill dated 22 July2012 pages 5-6 and 10-11

3.4 It is also understood that the standards are likely to be principles-based and therefore inherently open to interpretation and judgement as to whether they are being complied with. This also means there could be uncertainty as to whether an organisation has breached the standards (and therefore has to report this) and whether it is still entitled to be registered at that point.

3.5 WVA believes that the criteria for entitlement to registration need to be clear so that an entity's satisfaction of the criteria can be easily and objectively determined.

3.6 We therefore recommend that the requirement for compliance with governance standards be contained only in Chapter 3 of the Bill ("Responsibilities of registered entities. We comment on the external conduct standards in paragraph 5 further below.

3.7 We also note that no other registration regime has such onerous outcomes as de-registration for failure to comply with governance standards. WVA cannot see a rationale for such an outcome, especially in the NFP sector where it is well-accepted that non-compliance is usually a matter of ignorance or under resourcing."

"5. External conduct standards and counter-terrorism

5.1 The external conduct standards have been introduced into this Bill but were not a part of the first exposure draft, being previously raised only in the context of proposed governance requirements.

5.2 In our view, this Bill (and indeed tax legislation) is not the appropriate legislative instrument for such standards, given that they are designed to address the possibility of terrorism financing schemes. The appropriate place to include such a code is under the *Charter of the United Nations Act 1945* (Cth) or the *Commonwealth Criminal Code*, both of which are administered by the Attorney General, or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)

administered by AUSTRAC (**Counter Terrorism Laws**).

5.3 Including such standards in this legislation leads to the result that not only may an entity be found to be in breach of Counter Terrorism Laws and be subject to the relevant penalties, it could also lose its entitlement to be registered. Duplication of Counter Terrorism Laws could also mean that an entity loses its registration through the Commissioner's action, even if it has not contravened Counter Terrorism Laws. Such a result would not be the case for an entity in any other sector. It is difficult to understand the rationale for subjecting NFP entities to additional penalties in this way or for making the Commissioner an additional regulator in this area.

5.4 In addition, WVA notes that the two instances of terrorism financing in the NFP sector involved individuals and, in one case, a fictitious organisation[5]. In both cases, the persons involved did not access relevant Commonwealth benefits. Hypothetically, it can be safely assumed, therefore, that they would never have chosen to register with the ACNC and that such schemes would be beyond the regulatory reach of the Commissioner in any event.

5.5 We submit therefore that Division 50 should be removed from the Bill."

APPENDIX 2

Summary of World Vision Australia's requested changes to the ACNC Bills

**deletions are denoted by strikethrough in text

**additions are denoted by underline of text

Requested changes:

1. Amend clause 10 of Schedule 1 of the ACNC Consequential Bill to permit WVA to lodge its annual report suite:

   (1) The Commissioner may treat a statement, report or other document ~~given under an Australian law to an Australian government agency (other than the Commissioner)~~ prepared by a registered entity (whether before or after the entity is registered) as being:.."

   (2) In determining whether to treat a statement, report or other document as mentioned in subitem (1), the Commissioner must have regard to the following matters:

   (a) *what access the Commissioner has to the statement, report or other document;*

   (b) *whether the report or other document has been given under an Australian law to an Australian government agency (other than the Commissioner) or to a recognised peak body of the registered entity;*

2. Delete italicized sub-heading references to "tax concessions" and "other concessions" in clause 20-5 of the ACNC Bill and amend subitem (2) to ensure that the object of registration is not just access to tax concessions:

   20 5 Object of this Part

   ~~Tax concessions~~

   (1) This Part provides for the Commissioner to register entities as particular types and subtypes of not for profit entities. It also provides for the Commissioner to revoke the registration of registered entities.

   (2) Such registration is a prerequisite for an entity to access certain Commonwealth tax concessions. ~~The~~ An object of this Part is to ensure that these tax concessions are available only to entities that are governed and regulated in accordance with this Act.

   ~~Other concessions~~

   (3) Registration under this Act may also be a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.

3. Delete clause 205-40 of the ACNC Bill ("contribution" core concept).

4. Amend clause 35-10 (2)(c) of the ACNC Bill to remove reference to "contribution":

In deciding whether to revoke the registration of an entity the Commissioner must take account of the following matters:

(c) *the desirability of ensuring that ~~contributions (see section 205-40) to~~ assets and resources of the registered entity are applied consistently with the not for profit nature, and the purpose, of the registered entity.*

5. Amend clause 45-5(1)(b) of the ACNC Bill to remove reference to "contribution":

The object of this Division is to give the public (including donors, members and volunteers of registered entities) confidence that registered entities:

(b) *use their assets and resources ~~(including contributions and donations)~~ effectively and efficiently; and*

6. Amend clause 65-5(3)(b) of the ACNC Bill to remove reference to "contribution":

For the purposes of paragraph (2)(b), in determining whether the contravention or non compliance is significant, take account of the following matters:

(a) *the nature, significance and persistence of any contravention or non compliance;*

(b) *the desirability of ensuring that assets and resources of ~~contributions (see section 205-40) to~~ the registered entity are applied consistently with the not for profit nature, and the purpose, of the registered entity;*

7. Amend clause 35-10 (2)(f) of the ACNC Bill to clarify the position of overseas aid and development organisations:

(f) the likely impact on ~~welfare of members of the community (if any) that receive direct benefits from~~ the beneficiaries of the registered entity;

8. Insert new paragraph (g) into clause 35-10(2) (and renumber current (g) as (h)) of the ACNC Bill to ensure that the Commissioner considers any response from an entity before making a relevant decision:

(g) any response to a show cause notice received from an entity;

9. Amend clause 40-5(1) of the ACNC Bill to clarify that the Commissioner may include the information listed:

The Commissioner is to maintain a register (known as the Australian Charities and Not for profits Register) in which the Commissioner, subject to section 40-10(1) below, may include~~s~~ the following information:

10. Amend clause 40-10 of the ACNC Bill to clarify that the Commissioner must not include (or must remove certain information) where set out in regulation and after 5 years in the absence of public interest to retain:

40 10 Commissioner ~~may~~ to withhold or remove certain information from Register...

(4) The Commissioner ~~may~~ must remove information mentioned in paragraph 40 5(1)(f) from the Register where ~~if~~:

(a) the information has been on the Register for more than 5 years unless ; ~~and~~

~~(b)~~ the Commissioner considers that the public interest ~~does not~~ requires the information to be retained on the Register.

11. Delete Division 50 of the ACNC Bill (External Conduct Standards).

12. In the alternative to 11 above, amend clause 50-10(2)(c) of the ACNC Bill to reflect existing Australian and international requirements:

(2) Without limiting the scope of subsection (1), those standards may require a registered entity to:

(a) ensure that its governing rules provide for a specified matter; or

(b) act, or not act, in a specified manner; or

(c) establish and maintain processes for the purpose of addressing ~~ensuring~~ specified matters.

13. Amend clauses 100-10 and 100-15 of the ACNC Bill so that both the responsible entity and registered entity are properly notified and able to appeal where the Commissioner wished to suspend or remove a responsible entity of a registered entity:

10-10 (3) If the Commissioner decides to suspend a responsible entity under subsection (1), the Commissioner must give to the responsible entity and the registered entity a written notice:

(a) setting out the decision; and

(b) giving the reasons for the decision; and

(c) setting out the time the suspension ends.

Suspension—show cause notice

(4) Before suspending a responsible entity, the Commissioner must give a written notice (a show cause notice) to the responsible entity and the registered entity.

(5) The show cause notice must:

(a) state the grounds on which the Commissioner proposes to suspend the responsible entity; and

(b) invite the responsible entity and the registered entity to give the Commissioner, within 28 days after the day the notice is given, a written statement showing cause why the Commissioner should not suspend the responsible entity.

(6) Subsections (4) and (5) do not apply if the Commissioner believes, on reasonable grounds and taking into account the matters mentioned in subsection 35 10(2), that it would be appropriate for the Commissioner to suspend the responsible entity without giving a show cause notice to the responsible entity and the registered entity.

10-15 (2) If the Commissioner decides to remove a responsible entity under this section, the Commissioner must give to the responsible entity and the registered entity a written notice:

(a) setting out the decision; and

(b) giving the reasons for the decision.

Removal—show cause notice

(3) Before removing a responsible entity, the Commissioner must give a written notice (a show cause notice) to the responsible entity and the registered entity.

(4) The show cause notice must:

(a) state the grounds on which the Commissioner proposes to remove the responsible entity; and

(b) invite the responsible entity and the registered entity to give the Commissioner, within 28 days after the day the notice is given, a written statement showing cause why the Commissioner should not remove the responsible entity.

(5) Subsections (3) and (4) do not apply if the Commissioner believes, on reasonable grounds and taking into account the matters mentioned in subsection 35 10(2), that it would be appropriate for the Commissioner to remove the responsible entity without giving a show cause notice to the responsible entity and the registered entity.

Matters Commissioner must take into account

(6) In deciding whether to remove any of the responsible entities, the Commissioner must take account of the matters mentioned in subsection 35 10(2).

Review of decisions under this section

(7) A responsible entity or a registered entity that is dissatisfied with a decision to remove the responsible entity under this section may object against the decision in the manner set out in Part 7 2.

14. Amend all relevant provisions of the ACNC Bill to remove reference to "directors" and

"companies" in the case of entities which are not "companies" or "directors" as those terms are commonly understood and defined under the *Corporations Act.*

15. Delete clause 55-5(7) which imposes a strict liability offence on registered entities (Record Keeping).

16. Delete subdivision 60-E (Special Purpose Reports).

Requested next steps after enactment of ACNC Bills:

17. Further consider scope and operation of revocation and enforcement powers.

18. Further consider appropriateness and scope of penalties.

19. Further consider review and appeal provisions.

20. Further consider mechanisms to assist educational measures.