



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

And

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

And

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

Submission from The Salvation Army Australia

30 August 2012

Inquiry into the Australian Charities and Not-for-profits Commission Bill and associated Bills

The Salvation Army is pleased to continue to contribute to the ongoing inquiries into the Australian Charities and Not-for-profits Commission Bill 2012, the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 (collectively referred to as ‘the Bills’) and the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 (referred to as the ‘In Australia Bill’). The Salvation Army observes the tight timeframes in which the Committee has to hold its inquiry.

About The Salvation Army

The Salvation Army is the most recognised charity in Australia. The Salvation Army’s services are open to all, without discrimination. The foundation of The Salvation Army and its current ethos affirm its religious commitment and its social commitment as equal and indivisible. The Salvation Army describes this as a “holistic mission”.

The Salvation Army is an evangelical part of the universal Christian Church. Its message is based on the Bible and its ministry is motivated by love of God. Its Mission is both spiritual and practical, encompassing the preaching of the Gospel of Jesus Christ and alleviating human suffering and distress without discrimination.

Values of The Salvation Army

The Salvation Army values:

Human dignity	we affirm the worth and capacity of all people
Justice	we promote healthy and whole relationships, and good society
Hope	we work for reconciliation, healing and transformation for all people and creation
Compassion	we feel compelled to stand with and do something about another’s suffering
Community	we build community and meet with God in our encounter with others

Attributes of The Salvation Army

The Salvation Army:

- Is viewed by the community as highly committed, visible and trustworthy;
- provides a seamless approach to welfare and community work with a network of people available to assist those seeking its services;
- is also seen as responding to current social needs with expertise and professionalism. The Salvation Army provides its services without discrimination and supports the most disadvantaged and marginalised in our society;

- introduces life changing approaches as it is committed to changing the lives of people in crisis and not just meeting their immediate needs.

The Salvation Army in Australia is a part of the worldwide Salvation Army church.

Submission

The Salvation Army continues to support the Australian Federal Government's reform process of the not-for-profit (NFP) sector from the standing point the reforms will achieve tangible reductions in the regulatory and compliance costs and burdens to which NFPs are currently being subjected.

The Salvation Army recognises the Federal Government's willingness to listen and respond positively to the feedback received from the NFP sector during development of the Bills. The Salvation Army acknowledges the Bills have addressed some of the NFP sectors concerns however believe that more can be done.

The Salvation Army also has some concerns with the In Australia Bill.

With respect to particular observations for the Committee to consider, The Salvation Army comments as follows:

- The object clause of the Bills has been amended to include an object that specifically requires the promotion of 'the reduction of unnecessary regulatory obligations' and this change is welcomed by The Salvation Army. As in previous representations made during the consultation process, The Salvation Army believes the Bills need to include tangible regulatory obligation reductions for the NFP sector. These tangible reductions can most readily be achieved with the reduction in financial reporting and acquittal obligations of NFP entities. To this end, the Bills should provide specific mechanisms (at a minimum) to ensure that reporting to the ACNC will eradicate further reporting to other Government departments. If this is not possible within the Bills, then at the very least this outcome needs to be included in the Explanatory Memorandum (the EM) to the Bills. In this way the NFP sector can be reassured the ACNC will be delivering tangible reductions in regulatory obligations.
- The In Australia Bill contains the definition of what is a 'not-for-profit entity'. The Salvation Army is concerned with the definition and the additional commentary provided in the EM to the In Australia Bill that relates to the definition.

The definition prohibits not for profit entities from distributing its 'profits or assets to its owners or members (whether in money, property or other benefits)'. The concern of The Salvation Army is the interaction of this definition with the interpretation guidance provided in paragraph 1.109 of the EM to the In Australia Bill.

Paragraph 1.109 states: 'Distribution takes the broader dictionary definition, not the definition defined in the ITAA 97.'

By widening the definition of distribution to the broader dictionary definition, there is a risk an organisation will be in breach of the definition if they provide their charitable services to a 'member' as these services could fall within either the definition of 'property' or 'other benefits' (it is noted intangible property and benefits would be caught in these definitions) of the organisation.

This scenario could be found to apply in the situation of a church congregation where the members of the church are the users of the church 'property' and recipients of the benefits of the organisation on a frequent and regular basis. A second example would relate to an organisation that supports individuals with disabilities, and in this scenario persons with disabilities often become 'members' of the charity they are assisted by. These individuals most likely would access a range of services and benefits of the organisation and in some cases would receive 'assets' of the organisation in the fulfilment of the organisation's objects.

It is possible this is an unintended consequence of the definition, and The Salvation Army recommends appropriate amendments are made to ensure these types of 'distributions' are not prohibited and the Federal Government's intention in this regard is made clearer.

- The Salvation Army recommends subsection 50-50(3) of the In Australia Bill is amended to ensure organisations subject to regulation and registration by the ACNC are not subject to unnecessary duplicated regulation from the Australian Taxation Office (ATO) on identical regulatory matters. The appropriate amendment will be a primary example of how regulatory burdens for the NFP sector can immediately be reduced as a result of the implementation of the ACNC.

Subsection 50-50(3) should be amended to state the ATO will accept these conditions are being met when an organisation maintains its registration with the ACNC. The amendment needs to clearly show the ATO will have no ability to investigate such an organisation in this regard as the ACNC has all necessary powers and responsibilities to ensure these criteria are being maintained. These amendments will ensure the integrity of the 'in Australia' policy is achieved, the authority of the ACNC role in the NFP sector is maintained and the authority of the ATO to monitor organisations not registered and regulated by the ACNC is preserved and enhanced.

- The Salvation Army observes that certain examples contained within the EM to the In Australia Bill (examples 1.8 – 1.12) could be enhanced to more clearly explain both the intention of the law and how the law applies to all organisations included in the different examples. Specifically the issues arise in relation to the lack of clarity of the interaction of

subsection 50-50(5) which permits an organisation to disregard the use of certain amounts when determining if it has met the purpose of operating in Australia.

The EM to the In Australia Bill could be further enhanced if there was a clear example included that outlined the use of subsection 50-50(5). An example, using the organisation included in example 1.8, may be as follows:

'The members of Thoughtful Church hold a non-tax deductible appeal for gifts of money in order to assist a congregation in Africa.

The use of these donated funds in Africa can be disregarded in determining whether Thoughtful Church is meeting the 'in Australia' special conditions.'

The Salvation Army appreciates the opportunity to contribute to the Inquiry and if you have any questions or would like further clarification please do not hesitate to contact me.

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