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31 August 2012
Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
By email: community.affairs.sen@aph.gov.au

Dear Committee

**RE: Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012
Australian Charities and Not-for-profits Commission Bill 2012
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012**

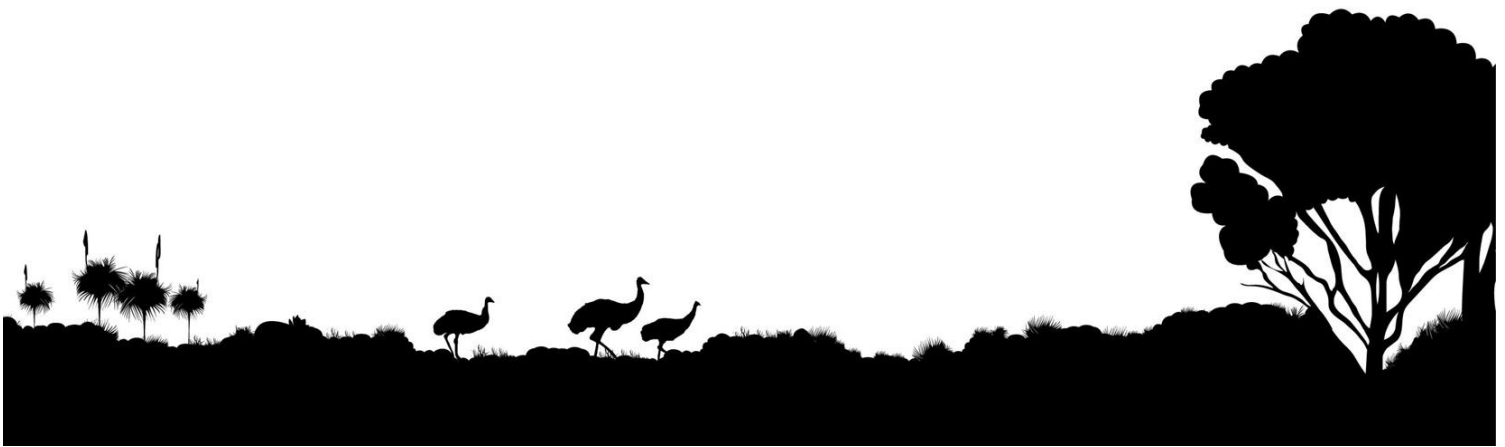
ACF welcomes the opportunity to make this submission on the package.

ACF is a national, community-based environmental organisation that has been a strong voice for the environment for over 40 years, promoting solutions through research, consultation, education and partnerships. We work with the community, business and government to protect, restore and sustain our environment.

ACF has a longstanding interest in the policy setting affecting the Charitable and Not-for-Profit (NFP) Sector and has been a regular contributor to the debate on these issues. The five day timeframe has seriously constrained ACF and many other environment organisations capacity to submit substantive comments on the above Bills.

Summary of submission:

- ACF asks that the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012* in particular not be implemented.
- ACF supports the passage of the *Australian Charities and Not-for-profits Commission Bill 2012* subject to adoption of the measures proposed by the sector to enhance certainty and assure reasonable and meaningful consultation prior to legislating governance standards, and in due course, on the definition of charity.
- ACF is unable to respond on the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012*.



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

The vast majority of not for profit organisations will be unaware of this Bill's presence in the suite of legislation. Tabling this Bill together with the ACNC Bills has, in effect, silenced the voice of environment organisations as it has prevented cloaked the Bills actual purpose. Many organisations will not have assessed the scope and impact of the Bill. By contrast, the ACNC Bills have been more prominently ventilated and promoted to the sector.

If there is a paucity of submissions from environment organisations, it should not be mistaken for acceptance.

In the short time available to consider it, ACF's view is does more than standardise the 'in Australia' provisions. Without further clarification, as it stands, the Bill has the potential to restrict many environmental DGR organisations from being involved occasional international environmental activity, including training, support, education and development.

The new stricter threshold for DGR organisations under the 'in Australia' test together with the proposed amendments at Schedule 1, items 2 and 14, subsections 30-18(7) and 30-280(1) are an unnecessary and unreasonable barrier to the effective delivery of important international environmental support and assistance.

According to the accompanying Explanatory Memorandum:

1.132 Organisations that are specifically listed in other sections of Division 30 must continue to meet the 'in Australia' special conditions...

1.136 In addition, entities on the Register of Environmental Organisations, which the Secretary to the Environment Department authorises as being exempt from the 'in Australia' special conditions, may also undertake overseas activities. This reflects the need for a number of environmental organisations to operate more broadly in order to affect change that will be of benefit to the Australian public. However, in order to ensure the integrity of the deductible gift recipient regime, an exemption from the 'in Australia' conditions will be limited to certain entities listed on the register.

Organisations listed by name (ACF) and organisations on the Register of Environment Organisations that hold both tax concession and DGR status will need to consider what is meant, under Schedule 1, items 2 and 14, subsections 30-18(7) and 30-280(1).

Little comfort can be drawn from subsection 30-18(7) ~ which requires an environment organisation that wants to continue incidental international activity, to apply to the Environment Secretary ~ given that the decision maker's reference points will be found in yet-to-be-provided regulation (subsection 30-19 (1)).

The Explanatory Memorandum gives an indication [see EM 1.138] of factors that an organisation needs to be able to demonstrate, such as %a genuine need to conduct its activities overseas in order to further its purposes+ and a requirement that %to uphold the high reputation of Australia and its not-for-profit sector.+ These possible factors are potentially subjective, vague and uncertain. Until draft Regulations exist no organisation can reasonably evaluate the extent of the impact.

Organisations must be given more time so they can consider their activities and to consider a transfer to section 30-18 (5) for listing as an organisation under the category of international affairs

The timeframe for circulation of any further draft could be together with the NFP Sector Tax Concession Working Group¹ report when it is submitted to Government (expected by Dec 2012). This would allow organisations to consider and make submissions on the Bill in the context of other possible measures. The timeframe must be more accessible and realistic to achieve real public consultation with those most affected.

In the absence of proper consultation and draft supporting regulations, the Bill should not be implemented.

¹ Convened to examine taxation concessions for NFPs in early 2012.

2. Australian Charities and Not-for-profits Commission Bill 2012

ACF endorses the concerns expressed in earlier submissions, including the submission made by the Conservation Council of SA requesting a review of the thresholds for reporting. ACF also refers to and endorses the submission made by PILCH Connect in its submission on the Exposure Draft Bills in July this year.²

Whilst we acknowledge the response and amendments implemented as a result of submissions made to the Standing Committee in July 2012, ACF has concerns with some aspects of the legislative approach.

There is a lack of certainty associated with governance standards and the reporting obligations. Others in the charitable share these concerns. ACF requests that the introduction of the governance standards when released be done so through a clear and well-published process that requires consultation and a realistic opportunity for submissions from the sector prior to enactment.

Despite the amendments relating to procedural fairness in the ACNC's enforcement powers these powers remain a potential source of uncertainty, particularly in relation to the potential for a charitable organisation to have its charitable status revoked in the future. ACF's primary preference is on record as being the retention of the common law, rather than a legislated definition of 'charity', and given that the Bills contemplate a legislative definition, the absence of that proposed draft definition of 'charity' remains a serious omission in this consultative process. Without a definition of 'charity' the full potential for any arbitrary exercise by the ACNC of its powers to revoke 'charitable' status on the basis of a narrower interpretation than that afforded by common law remains real. It remains unclear whether or not the Bills currently go far enough to address those concerns and ACF's view remains that 'charity' ought to be defined by reference to common law.

The absence of support from some States and Territories is of real concern. The potential for ongoing duplication for environmental charities that are incorporated associations in the absence of express support from the States and Territories is very real. Furthermore, there is insufficient clarity regarding the application of governance standards and consistency between the proposed governance standards to be established under the Bill and the standards expressed in State and Territory Associations Incorporation Acts. Nor is there clarity as to which provisions should prevail in the event of conflict.

ACF has however, expressed its support for the establishment of the ACNC. It has engaged regularly with the wider charitable community and with opportunities to interact with the ACNC to express its concerns. It continues its support for the establishment of the ACNC subject to the adoption of measures recommended in this submission.

Thank you for the opportunity to provide comments on the ongoing consideration of the above Bills.

Yours faithfully,



Sari Baird
General Counsel

² PILCH Connect Submission to the House Standing Committee on Economics: Enquiry into the Australian Charities and Not-for-Profits Commission Exposure Draft Bills 20 July 2012.

³ ACF Submission on Consultation Paper into a Definition of Charity (December 2011) page 2 item 2.