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Committee Secretary

Standing Committee on Economics

PO Box 6021

Parliament House

CANBERRA ACT 2600

Via email: [economics.reps@aph.gov.au](mailto:economics.reps@aph.gov.au)

<b>Address</b>	The Conservation Centre Level 1, 157 Franklin Street Adelaide SA 5000
<b>Phone</b>	(08) 8223 5155
<b>Fax</b>	(08) 8232 4782
<b>Email</b>	<a href="mailto:general@conservationsa.org.au">general@conservationsa.org.au</a>
<b>Web</b>	<a href="http://www.conservationsa.org.au">www.conservationsa.org.au</a>
<b>ABN</b>	22 020 026 644

**Re: Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills**

Please find attached a submission from the Conservation Council of SA to the above inquiry.

We would be happy to provide a further oral submission or provide further information if the Committee wishes.

Yours, Sincerely

Tim Kelly  
Executive Officer

Greg Ogle  
Executive Committee

**Submission to House of Representatives Standing Committee on Economics’  
Inquiry into the Australian Charities and Not-for-profits Commission  
Exposure Draft Bills**

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## Introduction

The Conservation Council of South Australia (CCSA) is a peak body representing over 50 member groups whose main purpose is conservation and protection of the environment. Combined, these groups represent over 60,000 South Australians. CCSA is an independent, non-profit and strictly non-party political organisation that runs environment programs, researches and advocates in relation to environmental challenges and solutions, and educates and engages people about what they can do to help.

The establishment of the Australian Charities and Not-for-profits Commission and the regulatory regime proposed in the Exposure Draft is relevant to the Conservation Council and the environment movement generally as the protection of the environment is a charitable purpose in law and many environment groups (including CCSA) enjoy tax charity concessions and in some cases, tax deductibility for donations made to them. Many environment groups also receive government or private grants which require tax charity status. All those groups would therefore be required to be registered with the ACNC and would come under the regulation of the proposed Act.

The Conservation Council supports the establishment of a national body which can support charities and provide a one-stop shop for charity regulation. The proposed ACNC and the regulatory regime outlined in the Exposure Draft represents a significant step in regulation with the potential to reduce unnecessary regulation and duplication and help build a robust sector. We thank the Committee for the opportunity to comment on these Exposure Drafts and trust the parliament will be able to make the changes necessary to deliver a regulator and a regulatory regime which meets the aspirations of the government, the environment movement and the charitable sector more broadly.

The Conservation Council has read a draft submission by the National Roundtable of Nonprofit Organisations and supports the arguments put forward by the Roundtable. In this submission, we seek to raise additional points which are particularly relevant to environmental movement and the organisations we represent.

## Framework and Objectives of the Act

The Conservation Council notes the process behind getting the Exposure Drafts to their current iteration, and welcomes some significant changes since earlier drafts. However, to some extent the current Exposure Draft still bears the hallmark of earlier drafting which framed the bill very much as a legal compliance document, rather being about the establishment of a body which can also support the not-for-profit sector.

People are drawn to environmental groups from a passion and commitment to protect the environment, and while this ensures that there is a generally high level of public trust in environment groups, it does not necessarily mean there will always be the requisite knowledge, skills and resources to run the best organisational models. Support from the ACNC for the promotion of the not-for-profit sector generally, for volunteering, and for governance training and leadership development, as well as assistance in compliance with all legal requirements would be valuable for many environment organisations. This, plus the reduction or removal of regulatory duplication and

unnecessary compliance burdens would ensure that environmental groups can maintain maximum focus on their environmental purpose.

Accordingly, CCSA supports the objective at s15-5(1)(b) in the Exposure Draft “to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector”. However, we note that the way this is to be achieved, as set out in s15-5(2), is very narrowly interpreted around establishing a regulatory system, rather than the more proactive support functions noted above.

**We therefore recommend** that the way the objectives of the Act are to be achieved (at s15-5(2)) and the functions of the ACNC (at s110-10) be broadened to include:

- Assisting the development of the capacity of the not-for-profit sector to fulfil its role in delivering vital services and benefits to communities throughout Australia;
- Support for volunteering, good governance and leadership in the not-for-profit sector; and
- Reduction of red-tape and regulatory duplication faced by not-for-profit entities.

**Further, we suggest** that the Preamble be changed to better reflect the base of the not-for-profit sector and the broader objectives of the Act, and to be clear that it is not *just* the establishment of a regulatory system that will promote good governance, accountability and transparency for not-for-profit entities. We recommend that the last three paragraphs of the Preamble be changed to read (changes marked in italics):

The not-for-profit sector is funded by donations from members of the public, *commercial and other fundraising activities*, and by tax concessions, grants, *fee-for-service contracts* and other support from Australian governments.

It is important that a national regulatory system *supports the role of the not-for-profit sector and* promotes good governance, accountability and transparency for not-for-profit entities *in order* to maintain, protect and enhance public trust and confidence in the not-for-profit sector.

It is therefore necessary to establish a Commissioner of the Australian Charities and Not-for-profits Commission in order to *support and* focus on the not-for-profit sector, and in order to recognise and respond to the diversity and uniqueness of the sector.

## Size of Organisations

The environment movement is perhaps different from many of the other charitable sectors and organisations who have informed the debate on the ACNC because there are a large number of small environmental organisations who have few or no professional staff, few assets and operate at a very local level. Of the Conservation Council’s 50 members, only about a quarter employ any staff, and 37 have less than 100 members. Even the largest environment organisations in South Australia are still relatively small by comparison with the large faith-based charities in the community services sector, let alone not-for-profit organisations and other entities in different sectors.

This is important because it is vital that the work of many of these groups, which is often done by local volunteers who come together simply to protect or restore a local environment, or address a particular environmental concern, is supported and facilitated and not burdened by regulation which is out of proportion to their size, operation and the governance risks involved. Many of these groups do not operate beyond state borders, are based in community where their activities are known to the public and to those who are likely to give money, and are fairly informal and shoestring operations. These groups may not benefit from many of the regulatory streamlining and reduction of duplication promised by the ACNC, but may simply experience registration and reporting to the ACNC as a further burden.

In this context, we are concerned that the consultation process in relation to the ACNC will (naturally) have been dominated by larger organisations who have the resources to engage, but smaller organisations who will be effected may not have had a strong voice in this process.

Accordingly, **we recommend** that the Committee consider the impact of the proposed legislation on small and volunteer run groups and also examine the range of submissions received and the other input into the drafting process to determine whether the voice and concerns of small organisations have been adequately represented.

One of the concerns raised by looking at the size of organisations is the reporting requirements (and potentially the administrative burden of complying with Governance Standards under the proposed Act). Part of this is about the regulations and standards, which will be discussed below, but part is about the thresholds of responsibilities imposed by the definition in the Exposure Draft in relation to the size of organisation. The definition at s205-25 sets very low thresholds and will result in regulatory burdens out of all proportion to the size of many environmental (and other) charities.

The proposed threshold of \$1m revenue for a large registered entity would mean that an organisation which employs about 6-8 staff with modest overheads and costs may be considered a large organisation. We do not believe this reflects community understandings of what constitutes a “large organisation”, and that the community would not expect the same level of regulation and oversight of an organisation with 6 staff as it would for an organisation with hundreds of staff and a turnover of tens of millions of dollars. We also note that in the commercial sphere, the industry support body, Small to Medium Enterprise Australia Ltd, defines a small organisation as having a turnover of under \$600,000 and fewer than 5 employees, while their medium business category starts at \$2.5m annual turnover and over 15 employees.<sup>1</sup> These figures are more than double the thresholds proposed in the Exposure Draft.

**We therefore recommend** that the size thresholds in s205-25 of the Exposure Draft be increased to better reflect the reality of the organisational scale and to bring them into line with community and commercial understandings. We would suggest that a small organisation be one with revenue below \$500,000p.a. (which is the threshold for a prescribed association in the South Australian *Associations Incorporation Act*). The threshold for a large organisation should be at least \$5m p.a.

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<sup>1</sup> <http://www.smea.com.au/images/SMEA%20Partnership%20Form%202011.pdf>

## Governance Standards

The Exposure Draft of the Act allows for the establishment of Governance Standards (Division 45) and External Conduct Standards (Division 50). These appear to be a set of standards applying to all charities which, if breached, could lead to loss of registration and therefore tax concessions. The problem is that we do not know what the standards are as they are to be enacted later as Regulations under the Act. While the governance standards may be quite sensible base level standards that all environment groups would hold themselves to, they may not be. A number of environmental groups have had experience in the recent past of government and tax office attempts to limit the scope of their activities, or to impose burdensome reporting requirements in grants. Accordingly, we are understandably concerned as to the content of these Governance Standards and External Conduct Standards. It is not just that the Conservation Council can not comment on the Exposure Draft as it relates to the standards, it is unfair to be asked to make any definitive comment on the Exposure Draft as a whole when we do not know the content of a key part of the regime which will potentially impact on environment groups.

We understand that there is to be further consultation in relation to the Governance Standards. **We welcome this consultation**, but again note our concerns about the size of organisations involved and hope that there can be particular attention paid to ensure that any governance standards do not unnecessarily burden small, volunteer run organisations.

**The Conservation Council therefore recommends** that, to ensure transparency and trust in the adoption of the proposed legislation, the Act should place some guidelines or parameters on the Governance Standards, for instance, that any Governance Standards:

- Shall be in proportion to the size of the organisation and the level of financial, organisational and reputational risk;
- Shall preserve the independence of not-for-profit entities and shall not prevent or constrain by regulation a not-for-profit entity from carrying out of any lawful activity in pursuit of its purpose;
- Shall, where possible, not duplicate any regulatory requirement already in place.

## Duplication

While many environment groups would welcome the regulatory simplicity possible through a national “one-stop-shop” and a “report-once, use-often” process, there remains a major problem in that at this stage state regulation will continue to apply. At least in the short term, this means that the ACNC regulation and reporting will be in addition to existing state regulation. Thus, for instance, as a prescribed Association under the South Australian *Associations Incorporation Act*, the Conservation Council will have to lodge annual reports with the South Australian Consumer and Business Services, and with the ACNC. Failure to do so, or to do so on time, could lead to penalties at both state and federal level.

Clearly, at least initially, the ACNC will add rather than reduce duplication and regulatory burden. This is one reason why we have recommended above that a reduction of red-tape and regulatory duplication be incorporated as a key objective and function of the ACNC. In addition though, **we recommend** that the Committee consider transitional provisions to minimise duplication, for instance by removing the reporting requirements from small and medium organisations where they

still have to report to state authorities, or removing penalties where an organisation has already been penalized under state law for the same offence.

The Conservation Council also notes the concern raised in the submission of the National Roundtable of Nonprofit Associations in relation to the duplication and confusion associated with application for environment groups for Deductible Gift Recipient status. We hope that this confusion and duplication can be sorted out prior to the Bill being introduced into the parliament.

## Conclusion and Summary of Recommendations

As noted at the beginning of this submission, the Conservation Council supports the establishment of a national body which can support charities and provide a one-stop shop for charity regulation. We recognise the potential of the proposed ACNC as a key step in this process, but have raised issues under four broad headings which we believe need to be addressed to fulfil the promise of the ACNC. The recommendations are as follows:

### Framework and Objective of the Act

1. The way the objectives of the Act are to be achieved (at s15-5(2)) and the functions of the ACNC (at s110-10) should be broadened to include:
  - Assisting the development of the capacity of the not-for-profit sector to fulfil its role in delivering vital services and benefits to communities throughout Australia;
  - Support for volunteering, good governance and leadership in the not-for-profit sector; and
  - Reduction of red-tape and regulatory duplication faced by not-for-profit entities.
2. The Preamble should be changed to better reflect the base of the not-for-profit sector and the broader objectives of the Act, and to be clear that it is not *just* the establishment of a regulatory system that will promote good governance, accountability and transparency for not-for-profit entities (suggested wording is provided).

### Size of Organisations

3. The Committee should consider the impact of the proposed legislation on small and volunteer run groups and also examine the range of submissions received and the other input into the drafting process to determine whether the voice and concerns of small organisations have been adequately represented.
4. The size thresholds in s205-25 of the Exposure Draft should be increased to better reflect the reality of the organisational scale and to bring them into line with community and commercial understandings. We would suggest that a small organisation be one with revenue below \$500,000p.a. (which is the threshold for a prescribed association in the South Australian *Associations Incorporation Act*). The threshold for a large organisation should be at least \$5m p.a.

## **Governance Standards**

5. The Act should place some guidelines or parameters on the Governance Standards, for instance, that any Governance Standards:
  - Shall be in proportion to the size of the organisation and the level of financial, organisational and reputational risk;
  - Shall preserve the independence of not-for-profit entities and shall not prevent or constrain by regulation a not-for-profit entity from carrying out of any lawful activity in pursuit of its purpose;
  - Shall, where possible, not duplicate any regulatory requirement already in place.

## **Duplication**

The Committee should consider transitional provisions to minimise duplication, for instance by removing the reporting requirements from small and medium organisations where they still have to report to state authorities, or removing penalties where an organisation has already been penalized