



20 July 2012

Committee Secretary
Standing Committee on Economics
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Dear Sir/Madam

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

CPA Australia welcomes the opportunity to make a submission to the Committee's Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills. CPA Australia is one of the world's largest accounting bodies and represents the diverse interests of more than 139,000 members in finance, accounting and business in 114 countries throughout the world. We are committed to making CPA Australia the global professional accountancy designation for strategic business leaders. We make this submission on behalf of our members and in the broader public interest.

CPA Australia acknowledges the important role that charities play in Australia and we support the establishment of the ACNC to oversee the sector. We believe this approach is best able to reduce the burden of compliance cost for charities without compromising the requirement for accountability. The magnitude of the effect on charitable entities of the proposed legislation and regulations is likely to vary. We believe it is important that charitable entities have certainty about the law, regulations and their responsibilities and obligations (including the responsibilities and obligations of those charged with governance); otherwise, some charities may find it difficult to implement any new practices necessary to enable them to lodge the financial report with the ACNC. That said, we continue to support the requirements that a charitable entity lodge with the ACNC an annual information statement and the subsequent uploading of the statement.

Given this absence of certainty we believe a further delay to the commencement date of the legislation to require charitable entities to lodge their financial report with the ACNC should be considered. We suggest the Committee access and consider data about the sector including information about the current reporting obligations of charities that will have obligations to lodge financial reports with the ACNC; and their number. With data of this type, the Committee should be better placed to determine the difficulties confronting charities and whether or not the level of difficulty is amplified because of a lack of certainty. A possible alternative approach, in place of a delay for all, is to develop different transitional requirements that would apply until the legislation and regulations are complete.¹ However, the alternative approach illustrated in our example is problematic as charities that are unincorporated associations or incorporated associations of some jurisdictions do not currently have externally imposed obligations to report. Hence, comparability would be affected as some charities would lodge with the

¹ For example, charities that are public companies limited by guarantee would be required to lodge their financial report with the ACNC in accordance with the requirements of the proposed legislation and regulations; and charities that are incorporated associations would lodge with the ACNC the report they are required to lodge with their incorporated associations regulator and that lodged report is on the public record.

ACNC only an annual information statement while others would lodge an annual information statement and financial report.

Our comments are limited to some parts of the Exposure Draft: Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 and the Explanatory Materials (see Attachment). If you require further information about our submission please contact Dr Mark Shying Senior Policy Adviser – External Reporting at CPA Australia via email at mark.shying@cpaaustralia.com.au.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'AMalley'.

Alex Malley FCPA
Chief Executive Officer

Australian Charities and Not-for-profits Commission Bill 2012		
	Paragraph	CPA Australia comments
Division 45 Governance Standards	45-5	This paragraph states that 'the object of this Division is to give the public (including donors, members and volunteers of registered entities) confidence that registered entities achieve' the four states objectives. We believe that the achievement of these objectives should be the object of this Division and one of the consequences of that would be public confidence.
Division 60 Reporting	60-5 and 60-10	We believe charities may have a higher level of public interest than some entities that are not. Any higher level of public interest may be a consequence of the nature of some of the activities common to some charities such as public fundraising activities. We note that all charities including basic religious charities will be required to provide an annual information statement that will be made publicly available. In addition, except for basic religious charities, charities with revenue in excess of \$250,000 will be required to lodge their financial report with the ACNC (with a different mechanism operating that may require financial reporting by basic religious charities). We believe this combination of reporting requirements is able to satisfy the public interest.
	60-15	Without the detail of the Regulations, charities lack the certainty of information necessary to assess the effect on them of the changes and plan a program for implementation as necessary.
	60-30	60-30(1): In response to the Treasury's most recent consultation on proposals to amend the Corporations Act, we recommended that public practitioners capable of undertaking a review engagement (under section 324BE of the Corporations Act 2001) should also be able to undertake audits performed for Tier 2 companies limited by guarantee. The rationale for this recommendation lies in the concerns highlighted by some of our members regarding the shortage of RCAs in rural areas, and the impact this shortage has on the ability for many smaller entities to have their financial reports audited. Accordingly we recommend that for medium registered entities public practitioners capable of undertaking a review engagement (under s324BE of the Corporations Act 2001) should also be able to undertake an audit if the entity chooses to have an audit instead of a review.
		60-30(1)(b): While the draft Act presents the option to appoint a firm as auditor, it does not specify whether the audit report must be

		signed by a member of the firm who is a Registered Company Auditor. We recommend that this is made clear (as it is in s.324AB Corporations Act 2001), as it is appropriate for a firm to be appointed only if a Registered Company Auditor has ultimate responsibility for the audit.
		60-30(3)/(4): As detailed in our submission on the previous exposure draft (dated 25 January 2012), we would recommend the section regarding the auditor's opinion should be framed similarly to the equivalent requirements in Corporations Act 2001 (s.308). In contrast to the current proposals for an opinion on whether the financial report is in accordance with Division 60, this would require an explicit opinion similar to that required under the Corporations Act 2001, confirming the financial report gives a true and fair view, and its conformity with accounting standards.
		60-30(4)(a) This section as currently drafted requires a positive conclusion as to conformance with Division 60 in the case of reviews – i.e., 'the reviewer believes that the financial report satisfies the requirements of Division 60'. Applicable standards on review engagements stipulate a negative form of the conclusion - i.e. nothing has come to the attention of the reviewer that indicates the financial report does not satisfy the requirements of Division 60. We recommend that the wording in this section be amended to reflect a negative expression of the conclusion to be consistent with the applicable standards with which reviewers must comply in accordance with section 60-35.
	60-95	Paragraph 60-95 enables the Commissioner to approve collective or joint reporting by related entities. We understand this approval would allow an entity to produce a financial report that is not consistent with accounting standards. This may be problematic (see compliance with accounting standards below).
<i>Other comments</i>		
	In the explanatory material:	Paragraph 5.10 states that the set of governance standards will apply to most registered entities, and the set of external conduct standards which apply to all registered entities, regardless of entity type. This should be reversed as the governance standards should apply to all and the external conduct standards should apply where relevant. Paragraph 5.19 states: 'The governance and external conduct standards will set a minimum level of behaviour for all entities registered'. We are not sure how that

		<p>would be the case if these are principle based as principles do not generally set minimum levels of behaviour.</p> <p>Paragraph 5.23 refers to prolonged con-compliance. We think that length of time is not the only consideration that should be taken into account as events that occur infrequently or in short periods of time may have catastrophic consequences.</p> <p>Paragraph 5.43 states that ‘In deciding what processes are reasonable for the entity to implement to satisfy the requirements, the registered entity would consider its size, and the extent to which it receives donations, grants and other monies from governments or the public’.</p> <p>We are of the opinion that the number of stakeholders and the potential impact on them should also be considered because it is possible that a small entity that receives very little public funds may have immense consequences for a small or larger number of people.</p> <p>Paragraphs 5.46 and 5.47 comment on the reduced risk in smaller entities. This may not be the case as smaller entities lack the systems and possibly expertise to prevent or detect fraud.</p> <p>In relation to external conduct standards we would like to comment that clarification as to where (Australia or recipient country) an activity is illegal would be helpful.</p>
	<p>Compliance with accounting standards</p>	<p>The Corporations Act s296 requires that the financial report comply with the accounting standards. The Explanatory Materials paragraph 6.81 notes that sometimes the joint and collective reporting proposal (see paragraph 60-95) will not result in reporting that is consistent with the requirements of the accounting standard AASB 10 Consolidated Financial Statements. This may be problematic as the Corporations Act requires the directors’ declaration contain a statement about compliance with accounting standards. We believe the Bill should require the same.</p>
	<p>True and fair view</p>	<p>We note paragraph 55-5 requires that the records kept by the charity must be thorough enough to enable true and fair financial statements to be prepared and audited. However, there does not appear to be any other reference to true and fair. For example, the Corporations Act s297 requires the financial statements and the notes to give a true and fair view and the Directors’ Declaration (see s294(4))</p>

		requires a statement about true and fair. We believe the Bill should require the same.
	Directors declaration	Paragraph 60-10 requires the lodgment of a financial report and its requirements must comply with the Regulations. The Regulations are incomplete. There does not appear to be a requirement to prepare and lodge a Directors' Declaration. In the Corporations Act, the Directors Declaration is part of the Financial Report. We believe the Bill or the Regulations should require the same.
	Auditors opinion	The absence of a comprehensive financial reporting framework (including insufficient detail re true and fair view and compliance with accounting standards) will affect the capacity of the auditor/reviewer to undertake the engagement and will have implications for audit quality. Given the number of entities and the importance of the sector we think this is an inappropriate outcome. We note the work the AASB is doing on control in the not-for-profit sector and its possible relevance to the joint reporting by related entities contemplated in the Bill. We think it important that thought is given to how the work of the AASB could inform the development of a comprehensive financial framework for possible use by charitable entities.

Background

CPA Australia's involvement and interest in the charities and not-for-profit sectors stems from our public interest remit and the significant role our membership plays in the sectors. Our members provide valuable services (both paid and pro-bono) to the charities and not-for-profit sectors both as public practitioners and through direct involvement in the governance and management of entities. We have maintained a strong interest in the charities and not-for-profit sector as evidenced by our submissions and demonstrated by, for example, the Senate Economic Committee Inquiry into the Disclosure Regimes for Charities and Not-for-profit Organisations and the Productivity Commission Inquiry into the Contribution of the Not-for-Profit Sector in addition to a number of state and Commonwealth government proposals for incorporated associations and public companies limited by guarantee. Over the last 18 months we have made a number of submissions to The Treasury and the Australian Charities Not-for Profit Commission (ACNC) on their proposals for the charities sector, participated in ACNC roundtables and actively engaged with our own members on this topic.