



20 June 2012

Committee Secretariat
House Standing Committee on Economics
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: economics.reps@aph.gov.au

Dear Sir/Madam

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

The Institute of Chartered Accountants in Australia (The Institute) welcomes the opportunity to provide input into the draft legislation in regards to the establishment of the Australian Charities and Not-for profits Commission (ACNC).

We support the government in its commitment to strengthening the NFP sector, including the establishment of the Australian Charities and Not-for -profits Commission (ACNC). We are pleased to see some of our previous recommendations addressed in this draft of the legislation. Those recommendations regarding size thresholds, timing for lodgement and issues regarding consolidation of information being presented have all been addressed to a certain extent in this latest draft.

However, in its current form we do not believe the draft legislation is ready to be passed through the Parliament. We encourage the Committee to recommend a closer examination of the areas we have raised below and in Appendix 1. We accept that as a consequence of this recommendation the start date of the regulator made need to be delayed. We consider the industry would support a short delay, in order to ensure the legislation supports the policy objectives outlined by the Minister and results in effective legislation adequately supporting the needs of the sector.

A key policy objective for this reform, as outlined in government media communication, is the creation of a 'first-ever one stop shop regulator for the sector' which will 'help the sector grow and reduce red tape'. The detail contained in the draft legislation is not consistent with this objective as it fails to address the question of how the proposed regime will co-exist with parallel existing legislation. We do understand there are parallel processes occurring to address some of these areas. However, lack of definitive timelines and recommendations leaves the sector uncertain and concerned. We consider that transitional provisions could be used to eliminate duplicate reporting by the sector and encourage the Committee to closely consider this proposal.

If you have any queries on our comments please contact Ms Kerry Hicks, the Institute's Head of Reporting via email at kerry.hicks@charteredaccountants.com.au.

Yours faithfully

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Overall

The initial Bill had two stated aims, one of which was to 'minimise regulatory duplication and simplify such entities' interactions with governments'. The initial Bill did not fulfill such an aim and we notice that this aim is missing from the latest draft of the legislation. Therefore it is evident that the legislation fails to address the question of how the proposed regime will co-exist with parallel existing legislation. Many NFPs have multiple reporting requirements, particularly those grantee organisations that must provide acquittal reports to fund providers as well as those that have state government reporting under specific legislation. It is possible that different regimes may be in conflict and at the very least increase regulatory burden for a sector lacking resources to cope with such an increase. We do understand there are parallel processes occurring to address some of these areas. However, lack of definitive timelines and recommendations leaves the sector uncertain and concerned. One way of addressing this uncertainty would be the establishment of transitional provisions within the draft legislation to ensure duplicative reporting between State and Commonwealth governments was not an outcome.

In the same vein as the 'basic religious charity' exemption we believe that consideration should be given to providing the Commissioner with the power/discretion to extend these exemptions to other types of organisations (for example, schools) where extensive reporting and compliance is already in existence and unlikely to be changed or amended as a result of the ACNC legislation.

Governance standards (Division 45)

We note there are certain organisations that already comply with governance requirements - some through state government bodies, higher education providers must comply with governance requirements set by Tertiary Education Quality and Standards Agency, and those international aid organisations comply with the ACFID (Australian Council for International Development) code of conduct, and some under their own Acts, to name a few. We do not wish to see duplication or conflicting governance requirements, and are keen to see how these issues are being addressed.

We also would encourage long transitional requirements be given to governance areas that may require changes to constitution, as many organisations do not have the processes or resources to review such documents regularly.

We note that the requirements currently of incorporated entities relating to reporting to members and the need for a directors report are currently not included in the legislation. We expect they will be included in the governance regulations. It would be helpful if these governance standards could be issued as soon as possible so that full consideration can be given to them as part of a consultation process.

Reporting matters (Division 60)

It is not clear that a Responsible Entity needs to formally declare the 'truth and fairness' of the financial report and confirm the solvency requirements, in the same way directors sign and complete a 'directors declaration' under the Corporations Act (s295). It may be that this requirement will be part of the regulations, which have not yet been produced for review. Having directors acknowledge their responsibility for the financial reports, is a critical part of the financial reporting process.

The legislation now includes a small tier (ie <\$250,000 revenue) where annual financial reporting, audit/review requirements is not required. The Commissioner is able to direct an entity to comply with those requirements in a higher threshold, if so required. However we do consider it important that members themselves can request such reporting if required. We consider that the legislation should mirror s294A of the Corporations Act into the draft legislation which allows members with at least 5% of the votes to give the organisation a direction to prepare a financial report and directors' report and request an audit or review if necessary.

We are concerned at the lack of any framework for financial reporting being included in the main legislation, being completely regulated to the regulations. We feel some minimum requirements should be stated in the Act, with more detail then in the regulations. These minimum requirements



could be the standards to be followed, the components of the financial report as well as the need for them to be 'true and fair' and in compliance with ACNC Act.

Annual information statements (Section 60-5)

We consider that the form of information statement should be specified within regulations, rather than not specified in the law at all. We note that the ACNC implementation guidance does specify the information statement requirements for the different tiers. Further, we consider the annual information statement should be deferred until at least years commencing 1 January 2013, since to apply these from years commencing 1 July 2012 includes the reporting of information generated prior to the initial registration.

Audit or review (Section 60-30)

Paragraph 1(b) permits a firm to be appointed as auditor of a registered entity, and requires at least one member to be a registered company auditor. However, it is not clear if the legislation intends that only the member who is a registered company auditor is permitted to sign the audit or review reports, or whether any member may undertake the audit or review, and sign the relevant audit or review report. We suggest that this be clarified and that any member of such a firm be permitted to sign the audit or review report.

Paragraph 4 requires the reviewer to form a conclusion as to the financial report, access to information and record keeping, which are the same as the requirements for an audit, contained in the preceding paragraph. However, a review engagement is not designed to deliver the same level of assurance as an audit engagement, which leads to a conclusion framed in the negative, rather than in the positive form for an audit engagement. We suggest that the requirement be clarified in respect of review engagements to reflect the framework for such an engagement.

Auditor's report on financial report (Section 60-45)

This section contains the requirement for the auditor to form an opinion whether the report has been prepared in accordance with the division of the act. However, it should include the requirement for the auditor to form an opinion whether the financial report is 'true and fair' in accordance with the requirements of the act and the reporting framework.

A further area of concern however is the requirement in 60-45(3)(a) for the audit report to describe 'any defect or irregularity in the financial report'. We believe this is a very broad requirement which could be construed as a requirement to report on matters which would not normally be included in an audit report under Australian Auditing Standards where the auditor forms the view that the defect or irregularity is material.

We would recommend consideration of replacing this requirement with an obligation similar to that imposed on auditors under s311 of the Corporations Act. Under Section 311 the auditor will be required to report to the regulator where they have reasonable grounds to suspect a contravention of the Act, and it is significant, or they have reasonable grounds to suspect a contravention of the Act, that is not significant but will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors (or responsible individual).

Reviewer's report on financial report (Section 60-50)

Similar to the previous comment, the act should be clearer about the requirement for the reviewer's conclusion to reflect whether the financial report is 'true and fair' in accordance with the requirements of the act and the reporting framework. However, care must be taken to ensure that the requirement for the reviewer's conclusion is framed in the negative, in accordance with the requirements of the review standards. That is, the reviewer's conclusion

should read (in the absence of qualifications to the conclusion) "Based on my review, which is not an audit, nothing has come to my attention that causes me to believe that the [name of



report and period] does not present fairly, in all material respects, the [entity's financial report and period] in accordance with [relevant reporting framework].”

Errors identification (Section 60-65)

Section 60-65 of the draft legislation requires any errors in previously lodged information to be corrected to the Commissioner within 29 days after the entity identifies the error. We do not support retaining this clause in the final legislation. Firstly, we note that there is no requirement for such reporting in the Corporations Act, and hence this requirement is more onerous than company reporting. Secondly, where an error relates to information that has been audited or reviewed, this requirement will cause enormous difficulties to practically apply, as the audit or review is complete at the time the audit or review report is signed. Re-engaging the auditor or reviewer for such an exercise will create administrative and logistical difficulties.

Substituted accounting periods (Sub-division 60-F)

We are pleased that the Commission intends to automatically recognise substituted accounting periods for those entities that transition to the new regulator from 1 October. However we do not support the need for Commissioner approval subsequent to transition for a substituted accounting period. We consider that this requirement is more onerous than that required for companies under the Corporations Act, and hence results in more compliance burden for a NFP. We consider the draft legislation should be consistent with the requirements of s323D of the Corporations Law.

Collective and joint reporting (Sub-division 60-95)

We are pleased to see some changes in this area, and consider the changes to be an improvement on the previous draft. However, we are finding it difficult to assess this area given that the regulations on financial reporting have not yet been released for comment. We are concerned that the grouping of entities can only be done at the discretion of the Commission. We consider that groups of entities that meet the 'control' definition in accordance with the relevant accounting standards should automatically be allowed to apply this collective and joint reporting framework. We note that the regulations should specifically identify any additional disclosures that would be required for any individual deductible gift recipient (DGR) entity included in a consolidated group, if any.

Enforcement powers (Division 90)

We are concerned that the powers outlined in this section place a higher level of liability on registered entities and individual directors than those currently required under the Corporations Act. In addition the penalties outlined for infringements are disproportionately higher. It would be very disappointing if the imposition of such onerous obligations and penalties discouraged experienced and well respected individuals from being trustees and directors of NFP boards.

In relation to Section 100-1 and 100-5 regarding suspension and removal of responsible entities, we are concerned that the powers being given to the ACNC in this regard far exceed the powers of ASIC. The directors of an incorporated entity are appointed by the shareholders or member and we do not consider the regulator should have power to this extent.

Basic religious charity concept (Section 205-30)

We support the introduction of the 'basic religious charities' exemption in relation to the governance and financial reporting requirements as it is an appropriate practical outcome for this sector to manage compliance costs and still improve sector transparency. However, we are concerned with the prohibition to this exemption which exists in section 205-30(5) relating to the receipt of a 'grant (however described) by an Australian government agency'. We consider this clause to be far too wide reaching for it to be practically applied, as it could relate to monies given as a gift with no acquittal required, or could relate to any level of government (including local government). We ask you to consider whether you are able to attach a dollar amount in relation to this section or look to clarify the exact nature of this prohibition by limiting the form of government, the nature of the grant and the time period (which should be more like the current year and until the monies have been fully acquitted).

