
The Parliament of the Commonwealth of Australia

Report on the Exposure Draft of the Australian Charities and Not- for-profits Commission Bills 2012

House of Representatives
Standing Committee on Economics

August 2012
Canberra

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Chair's foreword

The Bills will establish an independent, national regulator for the charities and not-for-profit sector. The Australian Charities and Not-for-profits Commission will become a one stop shop. Charities and not-for-profits will provide streamlined information to the Commission, which will determine their charitable status and pass on officially required data to other Commonwealth agencies, including the Tax Office. It will implement flexible, proportional regulation in accordance with entities' size and through graduated enforcement powers such as warnings and enforceable undertakings.

These Bills have been a long time coming. The current regulatory framework for the sector is fragmented, inconsistent, and uncoordinated across a range of government agencies. It meets neither the sector's needs nor those of the wider community.

A national regulator for the sector was first proposed in 2001 and has been a consistent theme in reviews of the sector since then. Charities and not-for-profits have been subject to an inefficient regulatory framework spread across many agencies and more than one level of government. The Bills offer a way to remedy this.

The sector itself supports the change. Bodies in the sector must prove their bona fides each time they deal with government, and they anticipate the day when this information is located in one easily accessible place.

Broadly, the committee covered three major policy areas in the inquiry. The first is the capacity of the Commission to reduce red tape. Work has already begun. The Commonwealth is seeking to 'turn off' any duplication, such as reports to the Australian Securities and Investments Commission or other Commonwealth agencies. It is also discussing whether States and Territories might wish to do the same with their associations legislation to the extent that these organisations are

covered by the Bills. This is a long term project, but the committee is confident that, over time, duplication will be minimised.

Some in the sector were also concerned about reporting and governance standards and how the Commission's requirements would interact with those of other State and Federal bodies. The Not-for-profit Sector Reform Council made this argument in evidence:

Given that the government has taken on board the sector's request for further time to discuss and be consulted in relation to the reporting requirements and the governance standards, it can take on its role from day one to be engaged in those consultations about how it will implement its requirements under the legislation.

However, the Committee has made recommendations to increase the flexibility for the Commission and the sector by allowing the Commission to accept reports and materials from other agencies for a limited time, and to annex existing and sector-developed standards to the bills.

The second policy area was the liability of directors, trustees and management committees for the conduct of their organisations. Key stakeholders were very concerned about how these provisions would operate. The committee found the legislation and explanatory materials unclear and noted that at times they did not appear to match the policy intent. For the sake of clarity, the committee has recommended that these provisions should be redrafted.

The third main policy area revolved around procedural fairness. The committee has made a number of recommendations to ensure that organisations are notified and have the opportunity to respond prior to enforcement action.

There have been considerable efforts to harmonise business regulation across the country recently, and it is only fair that a similar process occurs for the charities and not-for-profits sector. The sector holds great hope that the Bills will deliver this result and the committee agrees that, with some amendments, this will occur. The Bills should pass.

On behalf of the committee, I thank the organisations that assisted the committee during the inquiry through submissions or participating in the hearings in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair



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Membership of the Committee

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Terms of reference

On Thursday, 5 July 2012, the Assistant Treasurer and Minister Assisting for Deregulation, the Hon. David Bradbury MP, referred exposure drafts of the following Bills for inquiry and report:

- the Australian Charities and Not-for-profits Commission Bill 2012; and
- the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012.

The Minister requested that the committee report by Tuesday, 14 August 2012.



List of abbreviations

AAT	Administrative Appeals Tribunal
ACBC	Australian Catholic Bishops' Conference
ACN	Australian Charities and Not-for-profits
ACNC	Australian Charities and Not-for-profits Commission
ACNCIT	Australian Charities and Not-for-profits Commission Implementation Taskforce
ACOSS	Australian Council of Social Service
AICD	Australian Institute of Company Directors
AISNSW	Association of Independent Schools of New South Wales
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CCA	Community Council of Australia
CHA	Catholic Health Australia
CHF	Consumers Health Forum of Australia
COAG	Council of Australian Governments
Commission	The Australian Charities and Not-for-profits Commission

Commissioner	The Australian Charities and Not-for-profits Commissioner
CSA	Chartered Secretaries Australia
DPMC	Department of Prime Minister and Cabinet
Explanatory Materials	The draft Explanatory Memorandum for the Bills
GDP	gross domestic product
GIC	General Interest Charge
ICAA	Institute of Chartered Accountants in Australia
ISCA	Independent Schools Council of Australia
NCCP Act	National Credit and Consumer Protection Act
NFP	Not-for-profit
NSRC	Not-for-profit Sector Reform Council
PAF	Private ancillary fund



List of recommendations

2 Analysis of the Bills

Recommendation 1

That the objects of the Australian Charities and Not-for-profits Commission Bill 2012 explicitly include the reduction of red tape.

Recommendation 2

That the Explanatory Memorandum include material on the meaning of 'public trust and confidence' and the way that it might be interpreted.

That the guide to the Act reflect the educative and enabling role of the Commission in supporting transparency and accountability in the sector.

Recommendation 3

That the Commissioner have discretion to accept reports or material prepared for other agencies and levels of government as reports for the purpose of the reporting framework under the Bills. This arrangement should be time limited and be reviewed as the lodge-once use-often process is developed.

Recommendation 4

That the Government consider incorporating existing or sector-developed governance standards into the Bill through regulation, in addition to a default set of governance standards.

Recommendation 5

The Government investigate ways to strengthen protection in the Bills for private donors who wish to keep their philanthropy private.

Recommendation 6

The Committee recommends that Treasury redraft Division 180—Obligations, liabilities and offences, of the Australian Charities and Not-for-profits Commission Bill 2012, with a view to clarifying its intent and operation.

Recommendation 7

The Committee recommends that the Australian Charities and Not-for-profits Commission Bill 2012 be amended to provide that the Commissioner provide written notice of intent, and an opportunity for the entity to be heard, before a decision is enforced to revoke the registration of an entity or suspending or remove responsible entities.

The Commissioner should be exempt from these provisions if they are satisfied that the circumstances require immediate action.

Recommendation 8

The Committee recommends that clause 40-5 of the Australian Charities and Not-for-profits Commission Bill 2012 be amended to:

- require the Commissioner to provide written notice of intent to the relevant registered entity, and an opportunity for the entity to be heard, prior to publication of the Commission's intention to publish information under clause 40-5(f); and
- allow the details of matters published on the ACNC Register under clause 40-5(f) to be removed from the register once an appropriate amount of time has elapsed, the matters in question have been resolved and there is no public interest grounds for retaining the information.

Recommendation 9

The Explanatory Memorandum to the Bills clarify that the Commissioner has a discretion not to impose an administrative penalty.

Recommendation 10

The Committee recommends that the Australian Charities and Not-for-profits Commission Bill 2012 be amended to provide for a review of the legislation after it has been in operation for five years.

Recommendation 11

Subject to the recommendations in this report, the House pass the Australian Charities and Not-for-profits Bill 2012 and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012.