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

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## **1. Introduction**

1. The St Vincent de Paul Society is a respected charitable organisation operating in 142 countries around the world. In Australia we operate in every State and Territory with more than 50,000 members and volunteers committed to our work of social assistance and social justice. We are accountable to the people in our community who are marginalised by structures of exclusion and injustice.
2. On 6 July 2012, the Chair of the Standing Committee on Economics, Ms Julie Owens MP, invited submissions from interested persons and organisations on the Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills (“the Bills”).
3. The National Council of the St Vincent de Paul Society (“the Society”) wishes to make comment on the Bills.

## **2. The National Council of the St Vincent de Paul Society supports the establishment of a national regulator**

4. In principle the Society welcomes the establishment of a national regulator for the not-for-profit sector. We believe that there are significant benefits in the establishment of an independent national regulator for the not-for-profit sector including the potential to reduce red tape and establish a simpler regime for regulation of charities way of “a one-stop shop”<sup>1</sup>.
5. Nonetheless, we still hold some concerns which are outlined below (from [3]-[6] below).

## **3. Inadequate time for response to Inquiry**

6. We are concerned that the time allowed, approximately 15 days, for the review of 259 pages of Explanatory Memorandum and accompanying legislation and the formulation of a submission to the inquiry, is inadequate.

## **4. Reducing “red tape”**

7. One government promise in the establishment of a regulatory system for not-for-profit (“NFP”) entities was that the reforms will provide significant benefits to the sector by reducing red tape “through processes to avoid or minimise duplication where possible”<sup>2</sup>.
8. One such way of reducing red tape may be to reduce the duplication of reporting requirements with State/Territory legislation.
9. However, there is an absence of explanation as to how the regulatory system will reduce “red tape”. Section 15-10(f) of the Bill notes that, in exercising their power, the ACNC Commissioner must have regard to benefits gained from minimising procedural requirements and procedural duplication by the Commissioner and other Australian government agencies. This statement in itself does not provide adequate assurance that the not-for-profit sector will in some way benefit from the reduction of red tape.

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<sup>1</sup> Para [1.45]. Explanatory Memorandum to the *Australian Charities and Not-for-Profits Commission Bill 2012*.

<sup>2</sup> Para [1.56], Explanatory Memorandum to the *Australian Charities and Not-for-Profits Commission Bill 2012*.

10. Indeed, it is merely a requirement on the Commissioner to have regard to procedural duplication when exercising their power.
11. Indeed, if the not-for-profit sector is required to comply with another set of reporting requirements, the burden compliance for charities will inevitably increase.
12. We believe that it would be beneficial for government to identify areas of duplication in order to effectively achieve the objectives of a “one-stop” shop and the reduction of red tape. This would involve State and Territory agreement.

### **5. Governance standards**

13. The St Vincent de Paul Society has previously commented on the governance arrangements for the not-for-profit sector.<sup>3</sup>
14. Section 45-10 of the Bill states that the governance standards for entities will be established by way of regulations.
15. The Society is concerned that, in the absence of any consensus on the governance standards on charities and the charity sector’s concerns about the potential for unreasonable government intervention in a charity’s governance arrangements, the Bill places undue reliance on regulation that is yet to be drafted.
16. If the government proceeds with the Bill and enacts regulations for governance standards later, we re-iterate our position that these governance standards ought to be flexible, acknowledging the different characteristics of charities and that any regulatory regime cannot adopt a “one size fits” all approach.<sup>4</sup> Furthermore, the development of any regulations ought to be done in consultation with the not-for-profit sector.
17. We note that while regulations are easier to change in the interim, once a set of governance standards are developed in consultation with the charity sector and eventually adopted, that these governance standards ought to be enacted in the ACNC Act, to afford charities with a similar degree of certainty as companies enjoy under the *Corporations Act 2001* (Cth).

### **6. Enforcement powers**

18. The enforcement powers allow the ACNC, among other things, to apply to the Courts for injunctions (Div 100) and appoint acting responsible entities (Div 100). Granted that such powers go beyond the scope of the powers currently vested with the ATO, it would be necessary for charities to know the threshold at which the ACNC will intervene, i.e. for example, in the instance that the charity is likely to engage in criminal action.
19. We submit that this be clarified in the Explanatory Memorandum. Examples of the manner in which the ACNC will exercise their powers and procedure that will be complied with, together with examples of instances in which the ACNC may exercise each of the powers, could be usefully explained in the Explanatory Memorandum.

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<sup>3</sup> St Vincent de Paul Society, *Submission to Treasury Review of Not-for-Profit Governance Arrangements*, January 2012 <<http://www.vinnies.org.au/files/NAT/SocialJustice/2012/Submission-to-NFP-Governance-Review.%20final.pdf>>.

<sup>4</sup> St Vincent de Paul Society, *Submission to Treasury Review of Not-for-Profit Governance Arrangements*, January 2012 <<http://www.vinnies.org.au/files/NAT/SocialJustice/2012/Submission-to-NFP-Governance-Review.%20final.pdf>>, page 3.

## **7. ACOSS' Submission**

### ***Drafting of the legislation***

20. We reiterate point 3 of ACOSS's submission that the drafting of the legislation is at times inconsistent and may have the effect of being confusing. This may be particularly concerning to small charities with limited legal resources.

### ***Procedural fairness***

21. We also reiterate point 8 of ACOSS's submission that the Bill currently contains no requirement for the ACNC to inform or hear an organisation before it makes an adverse decision against it. If for whatever innocent reason or otherwise, we were found not to be complying with the ACNC Bill, we would like an opportunity to be heard on the matter before the ACNC makes an adverse finding. The power to hear from a charity before it makes an adverse decision against it is made ought to be enacted legislatively.

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