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Response to the Exposure Draft of the Australian Charities and Not-for-profits Commission Act

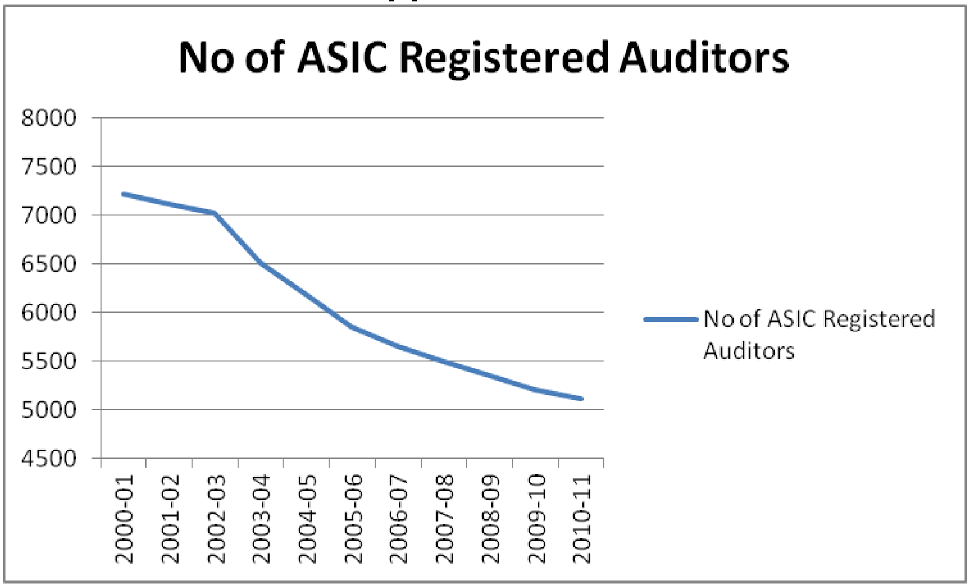
1. This submission is made in the context of being in support of the Australian Charities and Not-for-profits Commission Act and the matters referred to herein are for the furtherance of the better operation of the Commission and the entities which it will regulate.

2. This submission addresses some issues with Reporting (Chapter 3, Division 55) in their application to small and medium entities and the Auditor qualifications for medium entities. It seeks to highlight the reality of increased costs to entities affected by the Act and to present a solution.
3. The Final Report on the Scoping Study identified that the NFP sector is characterised by its diversity, with entities ranging from micro-sized sporting and recreational clubs to large national and multinational charitable organisations, consists of approximately 600,000 entities.
4. The Scoping Study Consultation Paper identified that mall entities account for 440,000 of these most of which are unincorporated, and also accounted for a significant amount of the total monetary and voluntary benefits provided to the beneficiaries of the sector. The very reason that so many are unincorporated is the extra cost of a company so that this an issue that must be considered.
5. Small entities reporting requirements are limited to an **annual information statement** in the approved form. This statement is to be reviewed by a registered company auditor. There is no way that an auditor can sign any statement as Auditor without a complete audit or with so much disclaimed that the report would not provide what the Act is trying to achieve.
6. Medium entities reporting requirements include **annual financial statements and notes**. These are to comply with the accounting standards and this places the preparation of them into the hands of a professional person. These are to be reviewed by a registered company auditor and the comments as to small entities as above apply here. The Commissioner may require that the annual financial statements and notes be audited and an audit report obtained. It is to be expected that entities with high public profile need more assurance.
7. Deductable Gift Recipient (DGR) entities are included as medium entities. Many DGR's have no direct government funding as they are mostly set up supported by benefactors who are close to charitable cause being funded. For example, a school building fund, of which there are many.
8. The review of the annual information statement required for small and medium entities is to be by a registered company auditor (within the meaning of the *Corporations Act 2001*) but can be an individual to whom Section 324BE applies. This broadens the number of professionals that can undertake this work but has little effect to lessen the cost of the work. The Commission must find a satisfactory way to get this work done outside of professionals. The question to be answered is: In reviewing the experience of past years where statements were not signed off by qualified persons, what is the level of cost to the stakeholders of the sector? Has government grants gone missing? Has public giving been misdirected?

9. This submission seeks to establish the case for an approach based on the achievement of outcomes rather than the over emphasis on inputs. This does not mean garbage in then garbage out. Whilst it is accepted that the approach must provide confidence and a uniform presentation, the cost of this undertaking for the small entities needs to be regarded. The principal outcome is that government grants and public giving reaches the objectives of the entity. In most of the small and medium entities this will be self evident.
10. The objective of this submission is to avoid leakage of philanthropic giving away from the beneficiaries into compliance costs. We are talking about a possible 400,000 entities at perhaps a professional cost of $600 to $1500 each. In saying this, one is to consider how much can be done by a professional in say two hours at the present charge rate of $300 to $400 per hour. Does the Commission realise that the overall cost is hundreds of millions of dollars?
11. The question of level of expertise may in practice not be realised. In a professional office for example, trainees (at $80 to $120 per hour) often are doing such work and review by a qualified person could be minimal often reducing to signing what staff have done. The profession submitted in their response to the Scoping Consultation that the proliferation of charity work, especially in a small or regional city, is a burden. This legislation adds to that burden. Such entities being charitable expect the professional work to be at charitable rates.
12. The Bill requires that the auditor be a registered company auditor and to be independent. Registered company auditors are scare, especially in regional areas, and independence is more difficult, and again in small communities, the only people interested are persons known to an otherwise responsible person. So often the professional that is asked to do the entity work is the accountant and tax adviser to one of the responsible persons. Does this meet the independence standard of the *Corporation Act?*
13. It is submitted that information provided to the Commission can be gathered effectively in a simple cost effective manner with lower level of professional oversight. Desired outcomes of the Final Scoping Study include simplicity, reduction of red tape, and cost effective administration. It stated that small entities annual information could be 'post card' size.
14. It is noted that the information will be gathered by the Commission using entity specific forms and be lodged online where possible. These forms will conform to accounting standards and therefore source financial information will be channeled into uniform and correct presentation format of that financial information. The essential point is to provide what is required to meet the government and the public needs for information sufficient to achieve the confidence and the trust that they are entitled to.
15. The requirement of a registered company auditor is likewise a matter that should be reviewed to determine whether the outcome desired can be achieved be any other means.
16. The availability of Registered Company Auditors to take on this workload is a real question. The number of Registered Company Auditors is less each year. The annual reports of ASIC disclose that the number in 2000-01 was 7222, and the number at 2010-11 was 5114. The numbers reduced at the rate 146 per year from 2006 to 2011. **Appendix "A"** is a graphical presentation of a 'dying breed'.

17. In the superannuation fund context similar criteria to this sector exists, namely, protecting of the taxation concessions and protection of the funds members. It is submitted that the auditor requirements for small and medium entities, mirror the proposed auditor requirements for an SMSF and that the auditor requirements for a large entity, mirror that of an APRA regulated superannuation fund. From 1st July 2012 ASIC will maintain a separate register of SMSF auditors. These will have transitioned from the ATO register of SMSF auditors as at 30th June 2012. ASIC will provisionally register those SMSF auditors separate to Registered Company Auditors. Registration renewal as an SMSF auditor will be subject to periodic examinations prescribed by ASIC. This Register could be renamed and include ACNC entity auditors. Refer to **Appendix "B"** for Treasury proposals in this area.
18. Such an approach will then be in place when non incorporated entities are brought into the ACNC regulatory fold.
19. The Commission could approach the issues from the perspective of the presumption of compliance in the various aspects covered by the Bill. The place of the ACNC could be positioned as monitoring and investigative, concentrating its resources in dealing with matters brought to its attention by stakeholders and observed risk.
20. The submission is that many entities could be cleared by the declaration of a **responsible person.** In reality, it is the exception that a charity entity would not have among their sponsors a reputable person having standing within the community which is served by the entity. The more public the charity the more public the sponsors. That is how they engender confidence to receive donations.
21. The position could be protected by similar wording as in section 55-35 (1) (a) and inserted as section 55-35(1A) "The annual information statement of a small entity, and the annual financial report of a medium entity that paragraph (1)(a) of this section applies to, unless the Commissioner, by written notice given to the registered entity, provides that this paragraph does not apply, may be certified as (a) giving a true and fair view of the performance of the registered entity, and (b) is prepared in accordance with the Act.
22. Summary
    - (a) Small to medium entities need an annual Information Statement that is signed of by a responsible person. (as defined in this Act). The ACNC Annual Return Form will be in accordance with the accounting standards.
    - (b) DGR Funds should be able to be signed off by a responsible person unless the Commissioner advices that a full auditor's report is required
    - (c) Large Funds provide financial statements and an auditor's report.

Appendix "A"



Source: ASIC Annual Summary.

Appendix "B"

Auditor registration for Non Profit entities

Treasury proposes to seek the views of stakeholders on two strategies that may assist in addressing the decline in the number of registered company auditors:

- State and Territory governments should consider whether it would be appropriate to ensure that registration as a registered company auditor is not the sole qualification for purposes of eligibility to undertake a statutory audit required under state and territory legislation. This finding is consistent with the views expressed in the 1997 *Review of Requirements for the Registration and Regulation of Company Auditors* at paragraphs 244-245 (a report of a working party of the Ministerial Council for Corporations).

- Consideration could be given to the introduction of simplified financial reporting and audit requirements for smaller companies limited by guarantee (which predominantly have a not-for-profit focus). There are approximately 11,000 companies limited by guarantee. Treasury notes that the Australian Government is currently examining proposals to amend the Corporations Act which would exempt companies limited by guarantee that fell below a threshold set at $250,000 of consolidated revenue and that are not deductible gift recipients, from all financial reporting, directors' report and auditing requirements under Chapter 2M of the Corporations Act. As a means of reducing audit costs, the proposals also envisage companies limited by guarantee that exceeded the $250,000 threshold of consolidated revenue but have a consolidated revenue of less than $1 million being given the option of having their financial information subject to a 'review' rather than an 'audit'. The review or audit for a company limited by guarantee that fell into such a category could be undertaken by either a registered company auditor or a member of a professional accounting body with a practising certificate