

25 January 2012



Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
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By Email: NFPReform@treasury.gov.au

**Office of the Chief Executive
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Dear Sirs

Exposure Draft: Australian Charities and Not-For-Profits Commission Bill 2012

CPA Australia welcomes the opportunity to comment on the Exposure Draft: Australian Charities and Not-For-Profits Commission Bill 2012 (the Exposure Draft). 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. Our vision is to make 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's involvement and interest in the charities and not-for-profit sector stems from our public interest remit and the significant role our membership plays in this sector. Our members provide valuable services (both paid and pro-bono) to the charities and not-for-profits sector both as public practitioners and through direct involvement in the governance and management of charitable and not-for-profit entities.

CPA Australia recognises the important role the charities and not-for-profits sector plays in Australia and the need to establish a national regulator to oversee its functioning. In light of the magnitude of the project, a measured approach supported by a transparent, coherent plan that sets out all necessary steps in achieving the desired outcome would be expected. CPA Australia is concerned that such an approach has not been adopted and whilst the work carried out by CPA Australia in preparing responses to this and other consultations has provided an overview of the steps being taken by the Government, the detail surrounding many of the proposals remains unclear. We are equally concerned that the affected charities and other stakeholders have not been afforded sufficient time to participate and to respond to consultations being carried out and to prepare for the impending changes. Given the magnitude of what needs to be achieved in less than six months, we believe the proposed commencement date of 1st July 2012 is ambitious, and strongly recommend a postponement of the commencement date.

We note the Government's commitment to the project and the substantial resources being expended with a view to meeting the implementation date. In light of this, we recommend the establishment of the ACNC by 1st July 2012 as planned, but delay implementation of the legislation in respect of the powers, duties and other operational aspects of charities and not-for-profits by at least another year. This should allow sufficient time for those affected to participate and respond to consultations, and to establish systems, processes and policies in preparation.

There is further benefit in delaying the implementation date, as this will provide more time to the ACNC to establish itself as a true 'one stop shop' regulator as proposed, by ensuring completion of negotiations with other agencies and regulators both at Commonwealth and State level. This should minimise bureaucratic and administrative burdens that are likely to arise from entities having to comply with reporting obligations imposed by multiple agencies/regulators.

OVERALL COMMENTS - THE ACNC REGULATOR, AND REGULATIONS

Establishing regulations and establishing the operational aspects

Along with this Exposure Draft, there are two further open consultations, a Consultation Paper: Review of Not-For-Profit Governance Arrangements, and a Discussion Paper: Australian Charities and Not-For-Profits Commission: Implementation Design. Whilst it is to be expected that different aspects of the regulatory framework will be at different stages of development, a consolidated approach supported by a clear and coherent plan that sets out an overall strategy for the development of the regulatory framework is required. For instance, in the absence of a stated strategy or plan, the reasoning behind some aspects of the consultation being undertaken at a more advanced stage (this Exposure Draft) compared to others (the Consultation Paper and Discussion paper) is not immediately apparent.

The Exposure Draft sets out under Chapter 3, the record keeping and reporting duties of registered entities. In our view other duties and powers of registered entities in performing their core functions should also have been drafted into the Exposure Draft as part of the consultation process. These in our view would have included the powers and obligations of the registered entity and those of the officers of the registered entity. At present, views on some of these other duties are being sought through the Consultation Paper: Review of Not-For-Profit Governance arrangements. Whilst Chapter 3 includes draft legislation relating to reporting, the Discussion Paper: ACNC Implementation Design, which has a submission deadline date of 29th February 2012, requests feedback on aspects of reporting. Whilst we understand a non-linear approach has been adopted in light of the short timeframe to implementation, responses to the consultation paper and discussion paper would in our view, contribute to better informed draft legislation addressing the duties of registered entities. We believe that in order to adequately address these issues it would be necessary to delay the implementation beyond the currently proposed date of 1st July 2012.

The ACNC legislation should be consistent with other legislation that is likely to apply to registered entities and for this reason drafting should take account of other existing legislation that may apply. For example, under the Corporations Act 2001 section 323D, it is relatively straightforward for companies limited by guarantee to amend their accounting period. This is inconsistent with the proposals within the Exposure Draft for changing an accounting period, which require approval by the ACNC Commissioner.

Education and Training

We note from the "Education, Compliance and Enforcement" factsheet that the ACNC will assume an educative role to provide support and assistance to the charities and not-for-profits sector. Whilst we acknowledge this critical role to be played by the ACNC, we also consider it necessary for education and training to be made available prior to when the new regulations come into force, giving sufficient time to those affected to be adequately prepared to discharge their statutory and other obligations. We note the Government at present is focussing its efforts on establishing the regulatory framework. However it is equally essential that sufficient education and training is provided to charity trustees and employees who will be affected by the new regulations well in advance of the changes coming into force, to enable them to develop appropriate systems, policies and processes.

CPA Australia does not believe current efforts adequately address this essential aspect, and would strongly recommend the Government increases its efforts to provide necessary education and training to those affected.

As there are less than six months before the proposed regulations and the ACNC come into effect, we believe those affected, especially the smaller charities, will not have sufficient time to prepare to fulfil their obligations, providing another important reason to delay the implementation date.

Fundraising and acquittal

For the larger charities, regulations surrounding fundraising acquittal continue to prove burdensome and we have not noted any proposals to reduce this burden in the current consultations. Whilst we note from the most recent not-for-profit newsletter (issue 3) that a consultation paper to review fundraising regulation is to be released in 2012, we recommend that the drafting of fundraising legislation be assigned equal importance as the proposals currently being considered as part of the overall ACNC strategy.

General Purpose Financial Reports

Under the proposals, where financial reports are required to be prepared and submitted, these will be made publicly available, giving rise to the possibility these financial reports will meet the definition of General Purpose Financial Reports. This would require adoption of all accounting standards under the current framework, causing additional and unnecessary burden on the smallest of charities (with DGR status) that will be required to prepare financial reports for submission. Whilst it is possible many of the more complex financial reporting requirements will not apply to smaller charities as they do not have relevant transactions, resources will still need to be expended in periodically identifying which accounting standards do, and do not apply.

We note that the Australian Accounting Standards Board (AASB) is currently reviewing the accounting framework to accommodate the unique requirements of charities, but a separate accounting standard for charities and not-for-profits is not under consideration. Whilst we support the public availability of financial reports as it is in line with the public interest role that charities play, we recommend a review of the requirements to lessen the financial reporting burden that is likely to arise as a result of the proposals. In light of the Trans-Tasman harmonisation initiatives and New Zealand's major review of financial reporting in the not-for-profit sector, it may be beneficial for both countries to cooperate in identifying a suitable solution in this area.

Current proposals indicate that the same reporting requirements will apply to both charities and other not-for-profits. As it is possible that charities have different objectives and activities when compared to other not-for-profits, we would recommend a review of the reporting requirements of these two distinct classes of entities to identify whether it would be adequate to apply the same reporting requirements, or whether it would be more appropriate to have separate reporting requirements for charities and other not-for-profits.

SPECIFIC COMMENTS – EXPOSURE DRAFT: ACNC BILL 2012

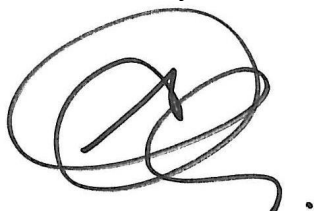
- Division 5-10: An entity that has previously been registered is not entitled to registration with the ACNC. Where an entity's registration is revoked, there appear to be no provisions to apply for re-registration once issues that may have resulted in de-registration have been identified and rectified. We recommend this be addressed to accommodate re-registration of entities that have addressed issues that caused revocation of registration.
- Division 55-15: In addition to the Responsible Individuals' declaration, the minimum requirements for a financial report should include provisions for a Trustee/Responsible Individuals Report, to ensure appropriate disclosure of the discharge of their obligations, and an overview of the entity's performance.
- The proposals include provisions for the content of the audit report, however similar provisions for the content of the review report have not been included. We recommend these provisions be drafted and included in the legislation to ensure there is clarity as to the content of a review report.
- Division 55-35: The proposals include a specific requirement to obtain an auditor's report, a similar requirement to obtain a reviewer's report should be included.
- Division 55-40: The proposals require the audit or review to be carried out by a Registered Company Auditor (RCA), suggesting only individuals who are RCAs can undertake the work. To be consistent with requirements in section 324AA, Corporations Act 2001, we recommend the proposals be amended to allow for audit or review appointments to be accepted by an Authorised Audit Company or Audit Firm as well.
- Division 55-40: 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.

- Whilst the Exposure Draft addresses the audit of financial reports, it does not address the procedures for appointment, removal and resignation of auditors which also need consideration. We recommend the legislation addressing these aspects should be framed similarly to the equivalent requirements in Corporations Act 2001, part 2M.4.
- Division 55-40(3): We would recommend the legislation stipulating content of 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 the ACNC Act, this would require an explicit opinion similar to that required under Corporations Act 2001, confirming the financial report gives a true and fair view, and conformity with accounting standards.
- Division 55-60: Whilst the proposals stipulate the contents of the audit report when the financial report does not comply with the provisions of the ACNC Act, no similar proposals have been included for a review report. We recommend this discrepancy be addressed by inclusion of provisions that stipulate the contents of a review report when the financial report does not comply with the provisions of the ACNC Act.
- Division 55-60(4)(a): The requirement for the auditor's report to describe "any defect or irregularity in the financial report" is too broad and at odds with the requirement within the auditing standards to report on matters that, in the auditor's judgement, are material. We recommend amendment of this requirement to be aligned with requirements within the auditing standards.
- Division 55-90: The proposed legislation implies that registered entities will default to a 30th June year end, with a requirement to seek the Commissioner's approval for a change in year end (or accounting period). As highlighted earlier in our submission this is inconsistent with other legislation (such as the requirements in Corporations Act 2001. section 323D) and is likely to cause additional regulatory burden. We recommend this inconsistency be addressed and brought in line with existing legislation.
- Division 210-10: The tiered reporting structure applying to companies limited by guarantee are generally referred to using the descriptors tier 1 (small), tier 2 (medium) and tier 3 (large). To avoid confusion, we recommend a consistent and similar approach be adopted in the use of descriptors in the proposed legislation.

If you require further information on any of our views, please contact Dr Mark Shying, CPA Australia by email at mark.shying@cpaaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alex Malley', written over a circular scribble.

Alex Malley FCPA
Chief Executive Officer

cc: M Shying