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Dear Sir

**RE: Review of the Australian Charities and Not-for-profits Commission Act 2012 (the ACNC Act)**

There has been a lot of talk lately about expanding the remit of the ACNC by amending the ACNC Act including entities other than those defined as Charities in the Charities Act 2013 into the regulatory fold of the ACNC. It is that latter-mentioned Charities Act 2013 that regulates the Commonwealth's definition of charity, and it is possible to extend the remit of the ACNC through amendment to the Charities Act 2013 to include purposes that are not currently charitable in Australia. In particular, attention should be given to the UK Charities Act 2011, which is a single statute covering both the charity definition in the UK as well as establishing the Charities Commission in England and Wales.

The UK Charities Act:

- Applies to all charities, whether or not they are registered with the Charities Commission
- Extends the meaning of charitable purposes to include "amateur sport" as well as to extend the meaning of the word "religion" to include polytheistic and non-theistic religions (section 3) – inclusion of amateur sport and organisations that are not currently considered charitable in Australian law could extend the remit of the ACNC without extending the ACNC remit to include "not-for-profits" other than charities
- Provides for restrictions on the disposition (sale or lease) of charity-owned land (Part 7) to charity trustees and connected persons (defined by the Act) – enacting similar provisions would provide that charity land is let and sold in the best interests of the charity, however such restrictions on dispositions may have to be dealt with by State and Territory law
- Defines the term "charity trustee" (the UK equivalent of a responsible entity under the ACNC Act) to include all those "having the general control and management of the administration of a charity" (section 177) and limits the ability of charity trustees to benefit from their charity by ensuring that those receiving payments from the charity and "connected persons" of them (which itself is a term defined in section 187) do not constitute the majority of the board in a "majority unpaid" rule – enacting such amendments would, like the land provisions, provide that charity resources are used in the best interests of the charity
- Introduces a new legal form of charity known as the "charitable incorporated organisation" or **CIO**, which is similar to an incorporated association, and providing for charitable companies to convert to CIO – providing for a new form of entity along these lines could mean that thousands of charitable companies limited by guarantee and incorporated associations could convert to a single-jurisdiction single-regulator structure with CIO-like bodies being registered with the ACNC along with their charity status

Also, I am concerned with the continued exemptions from the Corporations Act 2001 in relation to companies registered under the ACNC Act, in particular the exemptions relating to information about the Company's directors. This is for a number of reasons:

- Many other organisations that the charity may deal with may not recognise the ACNC register as being a proper company register, especially if such other organisations rely on the statutory assumptions as provided in section 128 of the Corporations Act 2001
- The ACNC register does not contain information such as middle names, dates and places of birth and residential address which is needed to ensure the identity of the directors
- There is no provisions for registration of company secretaries with the ACNC
- There remains an ongoing obligation to report director and public officer appointments to the ATO, I would assume that many charities do not do this and some of the information on that register could be out-of-date
- There may be confusion as how to serve documents on the charity as the registered address is not required to be updated
- Ultimately, this can lead to a "pick-and-choose" approach in relation to updating details with ASIC, with some charities possibly updating their details for the purposes of applying for a bank account or for any other reason, and some not

If the ACNC Act were amended to provide for CIOs, this would eliminate the issue of having multiple agencies (an incorporating agency and a regulating agency) and the issues of different sets of information arising from this. Accordingly, the aforementioned exemptions relating to company information should be abandoned and charities who do not wish to report to ASIC or their state incorporating agency should transfer their companies to CIOs.

Finally, I would recommend that no further barriers of entry be implemented as to new charities becoming registered or remaining registered with the ACNC. In particular, I would not want the ACNC Act to be amended as to have a minimum number of directors as the ACNC has recommended in their response to this review. This could result in the appointment of persons who are directors in name only, to make up the minimum numbers, but who do not take a large part in directing the use of resources of the charity. A charity with income of under \$5,000 p.a. (such as Urabba Parks Pty Ltd, which is a charity registered under the ACNC Act and of which I am sole director) can usually be run and operated by a sole member/director, with the ACNC using its powers (whether existing or proposed under changes to the ACNC Act) to monitor the use of resources by all charities.

My recommendations are

- To explore the possibility of adding new items to the definition of “charitable purposes” in the Charities Act 2013 rather than as amendment to the ACNC Act to expand the remit of the ACNC to include amateur sports
- Work on harmonisation between States and Territories in relation to restrictions on dispositions of land by charities
- To amend the ACNC Act to provide
  - For the abolition of directors’ fees in charities unless otherwise approved by the ACNC or the court (this would not apply to salaries of Managing Directors and secretaries provided the “majority unpaid” rule is kept intact
  - For the limitation of related party benefits so the “majority unpaid” rule would apply to the charity unless otherwise approved by the ACNC or by a court
  - For the approval by the ACNC or by a court related party benefits that would exceed the “majority unpaid” rule
  - For the establishment of charitable incorporated organisations that would be regulated directly by the ACNC, and for conversions of companies limited by guarantee and incorporated associations to such an entity type
- To remove the exemptions under the Corporations Act 2001 in relation to the provision of information by companies registered under the ACNC Act

If you have any questions about my response to this Review, please do not hesitate to contact me on 0424 912 890 or email [danny@racovolis.com](mailto:danny@racovolis.com).

Yours faithfully,



**DANIEL RACOVOLIS**