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Manager
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The Treasury
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Dear Sir/Madam

Exposure Draft – Australian Charities and Not-for-profit Commission Bill 2012 and Explanatory Materials (“the materials”)

Thank you for the opportunity to provide the Not-for-profit (NFP) industry’s views on the above legislation.

1. About Moore Stephens

1.1.1 We are writing on behalf of the Moore Stephens Australia network of eight independent firms of business advisors and chartered accountants. Moore Stephens have a real understanding of the environment in which our clients operate. We currently service a diverse range of entities within the sector and specialise in providing assurance, accounting, tax and advisory services to our NFP clients. We provide a national service offering to a number of key clients operating in the not-for-profit sector, including the following:

- Religious organisations;
- Large charities;
- Football clubs and sporting associations; and
- Universities and many TAFE colleges in Australia.

1.1.2 We have had a long standing commitment and involvement for the past 50 years in this sector. We have been active in recent years in providing submissions to the Government’s various committees and consultations to support the sector through this reform phase.

2. Introduction

2.1.1 We acknowledge the value of the overall objectives of the proposed legislation in seeking to provide support to the NFP Sector including through education and in having a “one-stop shop” for the sector. Nevertheless we see major challenges and risks for the sector from the implementation of these proposals. We also see it being highly problematic to align the reporting requirements in their proposed form with the “one-stop shop” objective. Accordingly, we provide further comment below on these concerns and propose a number of alternatives for consideration where relevant.

- 2.1.2 The NFP Sector is made up of mostly small charities and other NFPs with a number of larger organisations also operating, some of which have important public accountability in terms of their financial governance while others have limited public obligations other than in respect to operating in line with their objectives.
- 2.1.3 From the information outlined in paragraph 84 of the ACNC's Implementation Design Discussion Paper of 9 December 2011 we note that the proposed legislation would see 46% of registered charities falling into the categories of medium or large and thus being required to lodge annual financial reports with the Commissioner and have these audited or reviewed.
- 2.1.4 In addition based on the details provided in the implementation proposals, the remaining 54% of charities to be registered would also be required to provide the Commissioner with basic financial information in respect to revenue, expenses, assets and liabilities.
- 2.1.5 In addition, based on the data provided in Table 1 of paragraph 45 of this Discussion Paper, nearly 50% of the 55,850 charities to be initially registered under the Act would currently have no obligation to report publicly. Therefore, clearly these proposals are a very significant change for many current charities, both large and small, and thus will have a major impact in terms of both time and their financial resources.
- 2.1.6 Whilst the initial registration is focused on charities, we note that the requirements as currently drafted will apply to all not-for-profits (subject to the transitional arrangements), which are significantly larger in size number-wise and arguably with lower public accountability.
- 2.1.7 Given the significant consequences of the introduction of the legislation in its current form, we consider the commencement date of 1 July 2012 for many of the proposals to be both unattainable and unrealistic for many charities. In addition this allows limited time for charities to review their affairs and structures to enable them to meet the requirements of the legislation in the most effective and efficient manner. Thus in our view these proposals are being introduced with undue haste without a clearly demonstrated need in terms of public risk.
- 2.1.8 Accordingly, we propose that the Government consider delaying the commencement date of the key proposals of this legislation for a minimum of 3 years for all charities who currently have no obligations to provide their annual financial reports to a regulator, government department or to make them publicly available.
- 2.1.9 We propose that during this 3 year period further consultation is undertaken with the sector to determine the appropriateness of applying these requirements to entities who currently have no such reporting requirements; are not in receipt of Government funding or do not have DGR status.
- 2.1.10 We are also concerned as to the competitive disadvantage, vis-a-vis for-profit entities, that would result for NFPs from the proposals given the onerous nature of the requirements. Currently many private entities have no public financial reporting obligations while many others who have to report publicly are not required to prepare general purpose financial reports. This major differential would appear grossly unfair. For instance private entities and charities undertaking employment agency activities supported by Government funding, would have very different reporting and compliance obligations.
- 2.1.11 We support the introduction of a common regulator, the accountability of those in receipt of public monies and the need for a mechanism for the sector to minimise duplication of reporting. However, we are of the view that the timeframe of the introduction along with the level of regulation in its current form will place unnecessary burdens on the sector.
- 2.1.12 Noting the stated objective to reduce "red-tape" for the sector, given the onerous nature of the proposals in respect to financial reporting and auditing, particularly for small and medium

sized entities, who make up the majority of the sector, it is clear that these proposals will have the opposite impact thus redirecting important resources from the core objectives of many charities and other NFPs. Similar concerns arise in respect to the current governance considerations. Accordingly in our view, these proposals are wholly inappropriate in their current form and should be significantly revised if they are to benefit the sector and if the key objectives are to be achieved.

3. Feedback and Comments

3.1.1 Our commentary in relation to the Bill is primarily focused on the registration, responsible individual, reporting and auditing, governance and transitional provisions of the materials. Our comments are made from the context of our experience in financial reporting, auditing, taxation and advice to not for profits. Hence our comments are from this perspective. We have had a short opportunity to consult with our clients in relation to the draft legislation and our views are informed by those discussions.

3.1.2 We have not considered the legal implications or constitutional aspects of the proposed legislation but have focused on the practical implications and consequences arising from the draft legislation.

4. Definition of Responsible Individual

4.1.1 We note that the proposed section 210-15 defines Responsible Individual and the relevant commentary is referred to in Paragraph 1.154 - 1.160 of the materials.

4.1.2 There are a number of areas we wish to make comment on including:

- Scope of the definition
- Solvency Declarations
- Advisory boards
- Lack of specific exclusions
- Number of responsible individuals

4.2 Scope of definition

4.2.1 We recognise that the definition has been drafted to ensure that different types of entities are contemplated and that implied responsibilities within those entities are addressed as outlined in paragraph 1.159 of the materials.

4.2.2 It is our view however, that in its current form the definition may result in a significantly higher number of responsible individuals for organisations than contemplated.

4.2.3 The main areas of concern result from 210-15 (c) (i) & (ii) specifically S210-(c)(i) “...or *participates in making*” and s210-(c)(ii) “*who has the capacity to affect significantly the registered entity’s financial standing*”

4.2.4 For example in the education sector, you may have a number of Principals of schools that report to a centralised head office function or a Board of Directors. Each of these Principals would meet the above definitions on the basis of their management of their individual schools but would not be considered a director or shadow director of a corporate entity for example under the Corporations Act due to the nature of their duties.

4.2.5 Likewise we are concerned that the definition in its current form would extend to management/executive roles such as Nursing Unit Managers and Directors of Nursing in hospitals and aged care facilities, Chief operating officers and even Fundraising Managers do “participate in making” or “have the capacity to significantly affect the financial standing” of a number of charities.

- 4.2.6 To narrow the net of responsible individuals, we recommend that the definition be redrafted to remove the problematic aspects of the definition and include a reference to the relevant officer holders of the organisation under the constituent documents of the entity. Where dealing with unincorporated associations reference could be made to those acting in a similar capacity to a director or trustee.
- 4.2.7 Given the many volunteers who currently give their time and expertise to govern NFPs, we are also concerned as the possible flight of many from the sector given the onerous responsibilities proposed. This issue reinforces the need to ensure the definition of responsible officer truly reflects their responsibility for governance of an NFP rather than those that may be more in a management or advisory role.

4.3 Solvency

- 4.3.1 Following on from the scope of the definition of a responsible entity, there is a requirement under the proposed s55-25 for a solvency declaration to be made “by the responsible individuals of the registered entity”. We support this as an appropriate governance and financial reporting mechanism.
- 4.3.2 However, as a result of this declaration, significant obligations may be placed on those carrying out their management/executives duties beyond what would be equivalent in the corporate environment. Many caught under the proposed responsible individual definition hold employment related posts only and unlike Directors who are 24 hours/7 day a week appointments by being the mind of the organisation, these positions do not extend beyond the employment relationship.
- 4.3.3 Furthermore, we would anticipate that a number would not continue in these roles if this definition remained as is, due to the requirement to sign off solvency. Again this supports our recommendation for the definition to be narrowed.

4.4 Advisory Boards

- 4.4.1 Under the current definition, we are unclear as to how advisory boards, (quite common in the religious area) will be dealt with. Who will be the responsible individuals for a parish? Is it the parish priest or is it members of their finance or pastoral committees who have no decision making authority but have an obligation to advise the priest. Decisions are made at the priest’s discretion which is supported by the internal laws of the organisation.
- 4.4.2 We note the exception in the proposed s210-15(c)(iii) for advice given by an individual in the proper performance of functions attaching to the individual’s professional capacity or their business relationship with the registered entity. It would appear unlikely that those on an advisory board in a paid or unpaid professional capacity would meet this exemption.
- 4.4.3 These appointments are regularly based on aspects outside professional and business spheres such as theological positions, pastoral care considerations familial experiences and commitment to the mission or objectives of the organisation.
- 4.4.4 Many charitable organisations (religious and otherwise) have these advisory committees. Where there is no opportunity under the entity’s specific rules for these advisory boards to enforce their “advice” notwithstanding that the responsible individual may be “accustomed to act” on their advice, we recommend that these positions be specifically exempted from the definition of responsible individual. This is on the basis that Advisor board members are not in a position to carry out the duties of a responsible individual within the organisation.

4.5 Lack of specific exclusions

- 4.5.1 Paragraphs 1.154 - 1.156 provides a preliminary indication of the nature of responsibilities for a responsible individual and we note that a consultation paper has been released regarding governance matters. We refer you to our submission regarding this consultation for further commentary.
- 4.5.2 We note however, that the proposed legislation is silent in relation to persons that should be automatically excluded as a responsible individual or not considered a “fit and proper person” to be a responsible individual.
- 4.5.3 We recommend that it would be beneficial to the sector to have automatic disqualifications as a responsible individual to assist in promoting good governance. We refer you to the eligibility rules and automatic disqualification periods in the Corporations Act which could be incorporated into the definition of a responsible individual.

4.6 Limits on number of Responsible Individuals

- 4.6.1 Following on from our previous point we recommend that there be included in the legislation a minimum and maximum number of responsible individuals for each registered charity. Given the specifics of some religious organisations, we recommend that religious organisations have a minimum of one responsible individual (eg Bishop or Priest) but that all other charities have a minimum of two responsible individuals.
- 4.6.2 Whilst these conditions may be considered part of governing rules and may be more appropriately addressed in the governance consultation paper, we are of the view that they should be considered when reviewing the appropriateness of the responsible individual.

5 Registration

- 5.1.1 The following are areas concerning registration which we wish to make comment on;

- Definition of not-for-profit
- Entity level registration
- Interaction between registration and eligibility for tax concessions
- Initial registration procedures
- Timing of registrations
- Voluntary registration
- Impact of Statutory Definition of charity on registration and deregistration

5.2 Definition of not for profit entity

- 5.2.1 Pursuant to Section 5-10(1) an entity that meets the requirements in subsection 5-10(1A) is entitled to registration...
- 5.2.2 Subsection 5-10(1A)(a) requires the entity to be a not for profit entity. There is currently no definition of not-for-profit entity in the draft legislation. However, it is disappointing that the explanatory memorandum continues to use the language that was contained in the Treasury consultation paper on restating the ‘In Australia’ special conditions for tax concession entities released on 4 July 2011 that was so heavily criticised. We have previously commented on this issue in our submission dated 12 August 2011. We reiterate our points again in the context of the Explanatory Materials. The Explanatory Materials state at section 1.13 that an entity will only meet the definition of a NFP if it:

- does not carry on its activities for the purposes of profit or gain for particular entities, including its owners or members, either while it is operating or upon winding up; and
 - does not distribute its profits or assets to particular entities, including its owners or members, either while it is operating or upon winding up.
- 5.2.3 Our concern is that this definition restricts distributions to particular entities, including owners or members. In particular, we do not see why wholly-owned subsidiaries of tax exempt entities, where the subsidiaries have the same primary objectives as their parent entities, are not allowed to distribute to their tax exempt owners or members without losing their tax exempt status.
- 5.2.4 We recommend that not for profit entities be allowed to carry on their activities for the purpose of profit or gain for other not-for-profit entities.
- 5.2.5 Clause 1.17 of the Explanatory Materials states “*However, the Commissioner will not register charitable like Government entities, which access tax concessions. These will continue to be assessed by the ATO.*” We do not see any policy reason for the ATO’s continued involvement in registering not for profits. In addition there is currently no guidance on what is meant by charitable like Government entities. Does this cover entities founded under a Government Act where some of their councillors are Government appointments or where substantial funding is provided by Government, such as Universities or subsidiaries of Universities?

5.3 Entity Level Registration

- 5.3.1 We note that the draft legislation contemplates registration with the ACNC at an entity level. However, it is quite common for not for profit and charitable entities to have multiple ABNs, tax endorsement registrations and financial reporting structures either through the concept of branch or divisional (sub-entity) arrangements.
- 5.3.2 Registration at an entity level poses a number of issues in relation to the structure of both the registration and the reporting and auditing requirements. There are a number of valid reasons for an entity to be treated as multiple entities for funding, endorsement, financial reporting and governance arrangements. These can vary from entity to entity and relate to structure, internal governance arrangements and practical administration. We recommend that entities be given an option to register at an entity or sub-entity level to facilitate the transfer to the new regulations to ensure that these issues can be addressed on a case by case basis. We would be pleased to provide Treasury with a number of examples of entity specific issues should you require further clarification.
- 5.3.3 We also refer you to our comments in paragraph 6.8 concerning the application of these issues for the “one-stop shop” reporting objective.

5.4 Interaction between registration and eligibility for tax concessions

5.4.1 Paragraph 1.8

“Entities are able to apply for registration for multiple type or subtype within a purpose if they meet the necessary conditions for registration depending on the activities undertaken by the entity.”

5.4.2 Paragraph 1.9

“However, tax concessions may require entities to only be registered for one type or sub type.”

- 5.4.3 We seek clarity in relation to the above comments in the explanatory materials. Many existing large and complex charities have separate divisions or branches which may require registration under multiple sub types. If the registration is available for the entity under

multiple registration, how does the entity deal with these existing divisions or branches which fall under various sub types and the interaction between this registration at an entity level and the tax concessions which are available.

- 5.4.4 For example, you have a disability service provider which is a public benevolent institution (PBI). As part of its operations it also provides education services which would be eligible for registration under the “advancement of education”. Therefore it would be eligible to register under both sub types. PBIs currently have access to more significant tax concessions than a charitable institution established for the advancement of education but this is simply one entity.
- 5.4.5 Will the ACNC then require existing entities to report and register divisions separately to the ACNC in order to obtain the relevant tax concessions? In the Factsheet on registration the issue of a conglomerate of entities is dealt with but the Factsheet and the materials are silent in relation to where organisations are one entity but have separate divisions such as disability services, poverty relief, schools, hospitals and education facilities.

5.5 Initial registration procedures

- 5.5.1 The Registration Factsheet indicates that on commencement of the legislation all existing entities endorsed by the Australian Taxation Office will be considered to be registered by the ACNC and will not need to re-register.
- 5.5.2 As outlined above these proposals do not take into account that many organisations have numerous ABN registrations for GST endorsement, funding, reporting and administrative purposes with respect to sub-entity arrangements.
- 5.5.3 The proposals also do not address in any way entities who may operate in the nature of parent and subsidiary relationships or who are currently a single legal entity under their present regulatory structure, albeit with a number of GST registrations and ABNs.
- 5.5.4 To simply take currently endorsed charities to be the initial list of registered entities for the purposes of the proposed Act is a gross over-simplification of the current structure of many charities.
- 5.5.5 In addition compliance with the consolidation requirements of Accounting Standards could result in duplication of reporting for charities if the above matters are not dealt with appropriately in the proposed legislation.

5.6 Timing of registrations

- 5.6.1 We note that the government and implementation taskforces have made previous announcements that the role of the ACNC in terms of registration and governance will be limited initially to charities only.
- 5.6.2 Furthermore, we note that the exposure draft legislation and materials refer to the registration of all not for profit entities. We anticipate that these announcements will be incorporated in the transitional provisions of the Act when drafted.
- 5.6.3 We draw attention to the apparent inconsistency in the ACNC Factsheet on registration which refers to range of charitable purposes being registered to include public benevolent institutions, charities established for the advancement of health, and charities established for the advancement of education in the initial stages of the ACNC. However, in the same Factsheet, there is the indication that all existing charities with tax endorsement (this would extend beyond the charitable purposes previously mentioned) will be considered registered from the commencement of the ACNC.
- 5.6.4 We recommend that this be clarified to assist those charities who are endorsed for other charitable purposes to deal with the timing of the impact of this legislation.

5.7 Voluntary registration

5.7.1 Paragraph 2.16 makes the comment that:

“registration would be voluntary, however entities will need to be registered to access government support”

5.7.2 It is our view that this comment needs further explanation. For many within the sector, it would appear that without registration, a charity, would be treated at Commonwealth law as if it was a for-profit entity given that all tax status would stem from registration including income tax exemption.

5.7.3 We note that it is intended for some form of registration to be available for all not-for-profit organisations (refer section above) and this will then result in access to tax concessions through the registration process, where appropriate. However, until such time as this occurs for all not-for-profits, we see that there may arise an inequity in some circumstances.

5.7.4 For example, you have a small community based organisation that provides temporary housing for disadvantaged youth. We would anticipate that this entity would be considered a charity as it has as its main mission/objective the “relief of poverty”. In order for it to access any concessions to support its cause it will need to be registered.

5.7.5 On the other hand you have a small community based organisation which promotes soccer in its local area. Under the proposed legislation this is a “not-for-profit” entity but would not be considered a charity and therefore would not lose its tax status during this transitional period.

5.7.6 On this basis we recommend that the ACNC undertake public awareness programs to assist these types of entities in understanding what the consequences of non registration will have on charities rather than promote that registration is voluntary.

5.8 Impact of Statutory Definition of charity on registration and deregistration

5.8.1 We note that as part of the reform package, the Government is reviewing the statutory definition and is seeking to adopt this definition by 1 July 2013. The exposure draft legislation is silent on how this adoption may impact on those currently regarded as charities.

5.8.2 We note that as part of the transitional provisions existing charities will be registered based on their current endorsement. We refer you to our comments under initial registration procedures.

5.8.3 We recommend that the proposed legislation in its transitional provisions clearly provide these entities with certainty regarding how they will be dealt with should the proposed review result in these entities no longer being registered as charities; reclassified as a different type of charity or not-for-profit; or no longer considered a not-for-profit organization.

5.8.4 Given that these entities have been previously endorsed under Federal legislation as charities, it is our view that these entities should be dealt with concessionally and be provided with mechanism to allow for restructure over a reasonable timeframe and not be considered to have breached the legislation solely as a result of their review.

6 Reporting and auditing

6.1.1 Based on the information outlined in the ACNC’s Implementation Design Discussion Paper of 9 December 2011, at present nearly 50% of the 55,850 Australian charities are not currently subject to any external financial reporting or audit requirements as they are not registered as a body corporate under any Act that requires such reporting. We note that a small number of such entities with Government funding may be required to provide specific financial information to Government.

- 6.1.2 Clearly, the proposals are a fundamental change for many charities and in their current form represent arguably the most onerous financial reporting obligations within the Australian context outside “Public Interest Entities” defined within the current financial reporting framework.
- 6.1.3 In respect to the proposed financial reporting and auditing requirements as set out within Division 55 of the Exposure Draft we have a number of concerns as follows:
- The significant additional cost that will arise for many charities from these requirements;
 - The use of revenue as the sole determinant for the setting of the reporting and auditing criteria;
 - The lack of a demonstrated need for those charities who are not in receipt of public funds or who do not have DGR status to have their financial statements made available to the public;
 - All registered charities who have DGR status or who have annual revenue greater than \$250,000 being required to prepare their annual financial reports in full compliance with all applicable accounting standards;
 - The lack of alignment between the proposed timing of the introduction of these requirements and the current reporting projects of the Australian Accounting Standards Board (AASB) that will affect all not-for-profit entities in Australia once finalised;
 - The cost impact and practicalities of compliance with applicable accounting standards given the planned implementation and reporting timeframes; and
 - The requirement under Section 55-40(3)(d) for auditors to form an opinion “whether the registered entity has kept other records required by the Act”.
 - Issues with the interaction between the “one-stop shop” objective and the reporting requirements.

6.2 Cost impact

- 6.2.1 It is clear that the financial reporting and audit requirements of the Exposure Draft would result in a significantly greater cost for the majority of NFPs than at present including the charities to be registered initially. In most cases we have estimated that at a minimum these costs would increase by at least 50%, with also a further significant implementation cost of at least a similar amount. Many charities would face severe financial challenges in meeting this additional cost burden. If a number of the requirements were reconsidered taking account of the other matters detailed in this submission the additional cost burden might not be as significant as it will clearly be if the current proposals are legislated.

6.3 Using revenue as the basis for determining size Reporting requirements of non-DGR and non-Government funded charities

- 6.3.1 We recognise that the proposed requirements mirror that of companies limited by guarantee. However, we consider the use of revenue as the sole basis for determining the financial reporting and audit requirements for all charities to be a very blunt instrument indeed.
- 6.3.2 There are numerous charities that have chosen specifically not to register as companies limited by guarantee due to a range of reasons including compliance costs, size and need for reporting requirements given their nature and income streams.
- 6.3.3 We also note numerous examples within the Corporations Act, the various Associations Incorporation Acts, the related regulations and the UK Charity Commission, where other criteria, including number of employees and asset values are also considered when determining such reporting requirements.

- 6.3.4 In addition we note the widely used small business definition within the Income Tax Act. This definition considers any entity with an aggregated turnover of less than \$2m to be a small business, providing an indicative measure as to what is considered a small entity in the Australian context.
- 6.3.5 Furthermore there are numerous charities who hold that status primarily due their mission and thus their value to the society as a whole. Many of these charities do not have DGR status or are not in receipt of any Government funding. Rather their holding of tax concessions relates solely to their mission rather the financial outcomes of their activities. Accordingly any reporting requirements for such entities that have not already chosen to register under a Commonwealth or State Act which already has financial reporting obligations similar to the Exposure Draft should be primarily focused on the continuing of their mission rather than on the financial outcomes of their activities.
- 6.3.6 In our view it is totally inappropriate to require such entities to make their annual financial reports available to the public. In addition there has been no demonstrated need and/or public benefit for making such information publicly available of such information.
- 6.3.7 Given the above we recommend a review of the reporting criteria currently proposed to ensure a greater alignment between the public need and benefit and the cost of compliance. Accordingly we propose the following criteria as a basis for consideration to determine financial reporting and audit requirements of registered charities and in the future other not-for-profit organisations.

Nature of NFP	Mission Compliance	Criteria			Financial Reporting	Independent Audit	Independent Review
		Revenue	Gross Assets Excl. PP&E	Employees (FTEs)			
DGR – small	Yes	<\$250k	n/a	n/a	Yes (limited)	No	No
DGR - medium	Yes	>\$250k	n/a	n/a	Yes (limited)	No	Yes
DGR – large	Yes	>\$1m	n/a	n/a	Yes	Yes	n/a
Other – small	Yes	<\$1m	<\$2m	<10	Yes (limited) (if meet 2 of 3 criteria)	No	No
Other - medium	Yes	>\$1m <\$2m	>\$2m <\$5m	>10 <20	Yes (if meet 2 of 3 criteria)	n/a	Yes
Other – large	Yes	>\$2m	>\$5m	>20	Yes (if meet 2 of 3 criteria)	Yes	n/a
Exception for religious worship and promotion. Refer to paragraphs 6.3.8 to 6.3.10	Yes	n/a	n/a	n/a	No	No	No

- 6.3.8 We recommend an exception for the preparation and lodgement of financial reports be made where religious entities, organisations or branches are “wholly or mainly concerned with the advancement of religion” except where the organisation has an obligation to lodge financial reports with a regulator (eg ASIC); chooses to voluntarily report or the regulator makes a direction under the proposed Division 140. This exception would not extend to other charitable or not for profit works of these organisations such as education, aged care and public benevolent institutions undertaken with a religious affiliation or ethos.
- 6.3.9 There are a significant number of places of worship such as churches, synagogues, temples and ancillary administration entities for the advancement of religion in Australia, this exception would significantly reduce the burden placed on the sector by the introduction of the reporting requirements and in our view would not result in a dilution of the public benefit of these reforms.
- 6.3.10 We note that the UK Charity Commission has a specific exception in relation to certain charities who are wholly or mainly concerned with the advancement of religion. These bodies are regulated by the Commission but not required to be registered with the Commission and as a result are not required to prepare and lodge financial reports with the Commission. Under the UK legislation, the Commission has investigative powers for these organisations. Our proposed exception is narrower than that of the UK Charity Commission, as we are proposing a limited financial reporting mechanism. However, we recommend that unlike the UK model, the exception is not limited to a particular religion and its selective denominations given the diversity of religious practice in Australia.
- 6.3.11 From our experience using the above criteria to determine the reporting and audit requirements for registered charities would achieve a greater balance between the public benefit, related risks and the cost of compliance to what is set out in the Exposure Draft.

6.4 Full compliance with accounting standards

- 6.4.1 We note that under Section 55-20 of the Exposure Draft any financial statements to be lodged with the Commission are required to comply with the Accounting Standards, further paragraph 1.97 of the Explanatory Materials confirms that such financial statements and notes must be prepared in accordance with Australian Accounting Standards.
- 6.4.2 While no comment is made in the Explanatory Materials as to whether these financial statements are to be prepared as a general purpose financial report or otherwise, we assume that the intention is for these to be general purpose financial reports.
- 6.4.3 Given that all charities with DGR status and all others with revenue greater than \$250,000 would have to lodge such financial statements with the Commission this will be a very onerous requirement for many small charities.
- 6.4.4 In our view this is the case notwithstanding the issue in June 2010 by the Australian Accounting Standards Board of AASB 1053: Application of Tiers of Australian Accounting Standards. This standard aims to reduce the disclosure requirements for certain entities required to prepare general purpose financial reports compared to full compliance with Australian Accounting Standards.
- 6.4.5 Given the nature of most charities in Australia the adoption of AASB1053 by reporting charities would only have a very minimal impact on the financial reporting and compliance cost impacts of the Exposure Draft.
- 6.4.6 Given the impact of ASIC Regulatory Guide 85: Reporting requirements for non-reporting entities and its relevance to entities registered under the Corporations Act, as well as its application by a number of regulators of Incorporated Associations, the financial reporting proposals of the Exposure Draft are much greater than currently apply to many charities.

- 6.4.7 This Guide focuses on the requirement for entities lodging financial statements with ASIC to ensure that the measurement and recognition requirements of Australian Accounting Standards are complied with rather than seeking full compliance therewith for non-reporting entities.
- 6.4.8 In our view it is vitally important for the sector, both from cost and other perspectives, that the financial reporting requirements of registered charities do not set an expectation that all financial statements required to be lodged with the Commission should be prepared as general purpose financial reports. Relevant guidance in the nature of this ASIC Regulatory Guide should be endorsed by the ACNC prior to the proposed Act's reporting obligations commencing.
- 6.4.9 For smaller and medium sized charities and NFPs consideration should be given to even further reducing their requirements to possibly a modified accruals basis of accounting or, even a cash basis in some instances, in order that the reporting requirements can be easily addressed without having to re-direct resources from their charitable and other community activities.

6.5 Alignment with AASB NFP projects

- 6.5.1 We note that the Australian Accounting Standards Board (AASB) currently has a number of important projects in place that will impact significantly on the accounting and finance reporting requirements of all NFPs including charities. These key AASB projects relate to:
- Accounting for income of NFP entities;
 - Control in the NFP Sector;
 - Disclosures by NFP entities; and
 - Service performance reporting by NFPs.
- 6.5.2 Given the impact of these projects on the NFP Sector and their direct link to the criteria of Revenue as a basis of determining the reporting requirements of the Exposure Draft, in our view it would be inappropriate for the financial reporting requirements detailed in the Exposure Draft to commence before the outcomes of these AASB projects are finalised. Accordingly, we recommend the deferral of these requirements until more clear guidelines are available to the sector in respect to accounting for and reporting on an NFP's activities.
- 6.5.3 We also note the Statement of Recommended Practice (SORP) issued by the UK Charity Commission in respect to Accounting and Reporting by Charities in the preparation of the annual financial reports. This SORP covers a wide range of issues that are unique to accounting by charities and including in respect to the types of funds controlled by a charity, the use of such funds and the reporting of amounts unused.
- 6.5.4 As many of the current Australian Accounting Standards are more focused on the needs of for-profit entities rather than the unique aspects of NFPs we recommend that the ACNC's initial focus should be on working in alignment with the AASB to develop a more robust accounting and reporting framework for charities before the proposed reporting requirements are implemented.

6.6 Implementation and reporting frameworks

- 6.6.1 Paragraph 1.44 of the Explanatory Material sets out the requirement that:

"the new reporting framework will apply for registered charities from 1 July 2013 for information from the previous year."

- 6.6.2 This effectively means that charities will be required to report publicly for the first time under these requirements for the financial year commencing on 1 July 2012, only just over 5 months from now. This clearly allows insufficient time for many charities to invest the significant time and resources required to make this transition and/or to allow them to restructure their affairs in a manner that would enable them to meet these requirements in the most efficient and effective manner and thus using their resources wisely.
- 6.6.3 In addition to the effective commencement date of 1 July 2012 there is also the issue of comparative amounts that will be required to be reported. While *AASB1: First-time adoption of Australian Accounting Standards* provides some relief to the disclosure of comparatives in these circumstances, nevertheless this requirement will see additional compliance costs including in respect to disclosing the adjustments that would have been required for such comparatives to comply with Accounting Standards.
- 6.6.4 The proposals also recognise the constitutional issues still to be dealt with in order to achieve a 'one-stop shop' for all charities. Given the matters remaining to be resolved between the Federal and State Governments the likelihood of duplication of requirements for many charities in the initial period would appear high.
- 6.6.5 In light of these issues, we recommend the deferral of the proposed requirements to at least 1 July 2014 in respect of the commencement of the first financial year for which such reporting would be required, this being initially in respect to the year ending 30 June 2015.
- 6.6.6 This would allow sufficient time for charities who currently have no external reporting requirements to make the necessary transition and for the constitutional issues to be resolved.
- 6.6.7 For companies limited by guarantee or other entities that currently lodge their financial reports with either ASIC or other Federal Government departments, we recommend that as a transitional measure these financial reports be lodged with the ACNC to commence the transition of reporting to the ACNC. In respect to entities other than for companies limited by guarantee, we recommend that these not be placed on the public record as their structure may not be appropriate for public reporting and therefore could also be misleading.
- 6.6.8 Section 55-10 requires that a registered entity must provide the Commissioner with the annual financial report no later than 31 October in the following financial year.
- 6.6.9 As such a financial report will need to be lodged with the Commissioner within 4 months of the financial year end. While we acknowledge that this period aligns with the current requirement for a company limited by guarantee we note that it is a shorter period than the present requirement for many incorporated associations while it is much shorter than the requirement of the UK Charity Commission which allows for a 10 month lodgement period after year end. In addition many Government departments also currently allow for a period longer than 4 months for the lodgement of relevant financial information in respect to Government funded activities.
- 6.6.10 Again we have significant concerns as to the time and cost pressures this will place on many charities particularly given the demand for auditors during the peak period of July to October. Accordingly, given the different nature of company versus charity stakeholders, we see no reason to apply this 4 month reporting period for all charities. Accordingly we recommend that this period of lodgement is extended to 9 months following year end, with consideration being given to it being limited to 6 months for larger charities.

6.7 Reporting on other records required by the Act

- 6.7.1 Section 55-40(3)(d) of the Exposure Draft includes a requirement for an auditor of a registered entity to form an opinion “whether the registered entity has kept other records required by the Act”.
- 6.7.2 We acknowledge that this requirement is similar to the current requirements of the Corporations Act.
- 6.7.3 Nevertheless, as we are yet to see the proposals in respect to the regulatory requirements for the Governance arrangements for NFPs, we have concerns as to the possible onerous nature of such obligations on auditors, and thus also the cost for NFPs, of these requirements. This is particularly the case if the current review of not-for-profit governance arrangements was to result in a regulatory requirement to maintain records to evidence compliance with governance structures more akin to those of an ASX listed entity, a Registered Managed Investment Scheme or an APRA regulated financial institution, as against the limited aspects of the Corporations Act that currently apply to the majority of registered companies.
- 6.7.4 These concerns relate to such areas as best practice governance procedures, risk management procedures and others in the nature of those referred to in the NFP Governance review discussion paper. It is clear that if these requirements were overly onerous the cost for charities and NFPs would be too great for most to bear. Accordingly we recommend this requirement for auditors be redrafted to relate specifically to matters such as registers of responsible individuals and other similar specific requirements of the Act so as to bring more clarity to the requirements and therefore to limit the cost to charities.

6.8 Interaction between the “one-stop shop” objective and the reporting requirements

- 6.8.1 Given our comments in paragraph 5.2 above in respect to the need for NFPs to be able to register at entity or sub-entity level we see difficulties arising in the proposed reporting requirements being able to meet the “one-stop shop” objective.
- 6.8.2 This primarily arises from the application of the consolidation Accounting Standard and given that many entities undertake many different types of charitable and other NFP activities.
- 6.8.3 Thus the application of Accounting Standards at an entity level may not meet the reporting needs of the numerous Government departments who may have provided funding to the entity, whilst preparing general purpose financial reports at sub-entity level for public reporting is highly problematic.
- 6.8.4 Therefore the interaction of the objectives, the registration and the reporting proposals need to be re-thought to ensure such issues do not arise.

7. Administrative and Other Matters

- 7.1.1 The following are administrative and other matters which we wish to make comment on:
- Record retention inconsistencies;
 - The Commission and the Advisory Board;
 - Regulation Impact Statement.

7.2 Record retention inconsistencies

7.2.1 The proposed legislation and the explanatory materials outlines the requirements of retention of records relating to registered entities as follows:

- | | |
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| S50-5 | requires registered entities to retain the records for 5 years. |
| S55-50 | requires audit working papers to be retained for 7 years. |
| S55-80(6) | outlines the additional reporting requirements for which a request is limited for past periods for no later than 6 years (which we would reasonably expect that records would need to be available to produce these reports). |

7.2.2 In our view, the inconsistencies between these periods will result in unnecessary confusion and could result in inadvertent breaches of the record retention responsibilities of the entity.

7.2.3 Given that the Corporations Act requires the first two types of records to be retained for 7 years, we recommend that Section 50-5 be revised to be for 7 years.

7.2.4 Furthermore, we appreciate that the draft legislation is contemplating the need for additional reporting on a range of matters. However, it is our view that the requirement to produce additional reporting for the ACNC for a past period of six years is a heavy compliance burden. It is our view that should there be need for additional reporting that this is limited to a shorter period of time, for example 2 years.

7.2.5 Should the length of time and the need for additional reporting be to address compliance concerns, then it is our view that the ACNC will have sufficient powers under the operative provisions of the proposed Act to address these matters.

7.2.6 We also recommend that transitional provisions address the circumstances where records have not been retained as there was no statutory or other obligation prior to the introduction of the legislation.

7.3 The Commission and the Advisory Board

7.3.1 We note the commentary outlined in Paragraphs 1.266-1.274 and the proposed sections of the draft legislation. We strongly support the establishment of an advisory board to the Commissioner. The effectiveness of this relationship will be predicated on the focus of both the board and the Commissioner in developing a working relationship between the sector and the regulator.

7.3.2 It is unclear as to whether S170-10 requires both experience in the sector and qualifications in law, taxation or accounting or it is either/or. We recommend that experience in the sector either through advising or direct participation should be a requirement for these Board members given the scope of the work to be undertaken.

7.3.3 Furthermore, as the NFP sector is quite diverse and encompasses a range of diverse activities we recommend that the Board be constituted with representatives of a range of areas within the sector.

7.4 Regulation impact statement

7.4.1 Whilst this section is yet to be drafted, we consider that the proposed legislation in its current form will provide for a generally robust regulation of the sector and we support the introduction of the “one-stop” shop for the sector and the public generally.

7.4.2 We note however, that the reporting requirements and in particular the levels of differential reporting raise significant concerns and will result in much greater costs and time

commitments for the sector in their introduction and ongoing and recommend in drafting the transitional provisions that the government take into account the significant degree of cost burden which will be imposed and seek to have these transitions occur effectively with support being provided to the sector.

If you have any queries please contact the contributors to this submission listed below.

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Yours faithfully



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