



**STEER
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Steering Money to Missions

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RLD

27 January 2011

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Dear Madam or Sir,

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

As an organisation that will come under the aegis of the proposed ACNC we thank Treasury for the opportunity to comment on the above Exposure Draft and associated Explanatory Memorandum.

About Steer Incorporated

Steer Incorporated [Steer] (ACN 004 552 809) is an Australian income tax exempt, charitable institution established in 1961 and incorporated as a company limited by guarantee. Steer pursues the objectives contained in its constitution by raising funds to support the activities of faith-based charitable institutions involved in Christian mission and outreach work in Australia and overseas.

1. General Comments

Regrettably, Steer's ability to adequately comment on the draft Bill and Explanatory Memorandum (EM) has been hampered by the fact that:

- There are some sections of both documents which are yet to be drafted, but may have a significant impact on the charitable and NFP sector.
- The EM contains a number of typographical errors, several of which mean that it is difficult to interpret just what was intended. In those cases we have attempted to discern the meaning from the context but have some concerns that our inferences may not have been correct in all cases.

Given these difficulties, we request that there be a further opportunity to comment on the exposure drafts when the final sections have been completed and the issues arising from the typographical errors clarified.

2. Types of Registered Entities

Steer notes that the draft Bill (Section 5-10) and the EM (1.5) contain an expanded list of charitable organisations and NFP's, which we presume reflects the Government's thinking following the recent consultation on the definition of charity. We support the proposed taxonomy, subject to the following comments:

- Item 4 refers to “Advancement of social and community welfare (including the prevention of poverty)”. We agree that prevention of poverty is a worthwhile objective. However, historically the relevant laws have referred to the ‘relief of poverty’, and we believe that this is a well understood concept which should be retained. **We request that the Bill be amended to refer to ‘the relief and prevention of poverty’.**
- Items 23 to 27 refer to ‘Encouragement of community entertainment’. We do not believe that the activities listed under these items are about entertainment only, or even principally. **We request that a more appropriate heading be devised for these activities.**

3. Notice to Registered Entity to Show Cause

Steer notes that the draft Bill (Section 10-62) and the EM (1.36) provide for a period of 10 business days for a registered entity to show cause why its registration should not be revoked. We believe that 10 business days allows insufficient time for entities to show cause, given the nature of the charitable and NFP sector and its reliance on responsible individuals who are very often involved on a voluntary and part-time basis. A 10 day period is likely to cause difficulties for small Tier 1 organisations that may need to call meetings of their voluntary boards and/or obtain legal advice. The 10 business days requirement is also likely to cause difficulties for organisations located in remote or rural areas where a significant proportion of the 10 business days is likely to have passed before the notice is received due to infrequent postal services, etc. These problems will be exacerbated if the notice is issued close to public holidays (eg Christmas/New Year). **We request that the period for showing cause be extended to 28 calendar days or 20 business days.**

4. Retention of Records

The draft Bill (Section 50-5) and EM (1.64) state that records relating to the reports submitted to the ACNC must be retained for 5 years, but then in Section 55-80 of the draft Bill and paragraph 1.113 of the EM state that a registered entity may be requested to provide supplementary information to the ACNC relating to activities up to 6 years ago. At first sight these requirements seem to be in conflict, but may simply reflect a difference in the way in which they have been expressed. **We request that these requirements be clarified and the wordings harmonised.**

5. Reporting date and accounting period

The draft Bill (Sections 55-5) requires all registered entities to adopt a 30 June end of financial year for accounting and reporting purposes, although we note that Section 55-90 of the Bill and the EM (1.104) allows the Commissioner to approve a different accounting period where there is a “genuine need”. We do not know how the Commissioner will assess an application to use a different accounting period, or on what precise grounds approval will be granted. However we assume that such approval is intended to be an exception rather than a rule.

If this is the case, we believe that this requirement will create significant difficulties for a number of charitable and NFP organisations for the following reasons:

- A significant number of charitable and NFP organisations currently use a non-30 June end of year for all sorts of legitimate practical, operational and organisational reasons. For example some charities and NFP's, such as schools and kindergartens, align their financial end of year with their 'activity year' or calendar year. Others, which form part of or are linked to a larger organisation, are required to align their financial year with that of their parent body or partner organisation.
- Requiring all charitable organisations and NFP's to adopt a 30 June end of financial year for the ACNC's purposes (apart from those approved to do otherwise) will mean that they will effectively be required to keep two sets of accounting records – one set to 30 June, and the other set to the alternative date. This will be an onerous requirement.
- Requiring all charitable organisations and NFP's to adopt a 30 June end of financial year (apart from those approved to do otherwise) will place considerable pressure on those public accountants and auditors who currently serve the charitable and NFP sector. Currently the workload for such professionals is spread over the year to some degree, but under the proposal contained in the draft Bill this work will be concentrated into a relatively short period following 30 June, at a time when their workload is already heavy. This problem will be exacerbated by two factors:
 - The effect of the draft Bill will be that a number of charitable organisations and NFP's which currently do not require a formal audit or review by a registered auditor or currently practicing accountant will be required to undergo an audit or review. This will add to the workload for public accountants and auditors.
 - The Bill will introduce a number of new elements into the audit or review of a charitable organisation or NFP (Section 55-60 of the draft Bill), thereby again increasing the workload of public accountants and auditors.
- With the increased number of audits and reviews of charitable organisations and NFP's required in a short period after 30 June as proposed under the draft Bill, it may be impossible for registered entities to obtain the services of a registered auditor or qualified and registered accountant within the time frame required. As a result such entities may find themselves in breach of the reporting requirements. This is most likely to apply to charitable organisations and NFP's in remote or rural areas.
- With an increased demand for audits and reviews to be completed following 30 June, it is likely that the cost of having the audit or review done will increase, reflecting an increased demand in the face of a constant or only slightly increased supply. The increased cost of audits and reviews will result in an extra financial impost on charities and NFP's.

Steer is an organisation which uses a 30 April end of financial year for several legitimate operational and organisational reasons. We note that in dealing with companies limited by guarantee, ASIC permits the use of a non-30 June financial year and establishes a reporting date accordingly. We have seen no evidence that this creates difficulties for ASIC or for the public in general. Indeed this procedure probably assists in spreading ASIC's workload across the year. We do not believe that requiring all charitable organisations and NFP's to adopt a 30 June end of year will provide significant benefits to the ACNC, the Government or the Australian public, particularly given the significant issues raised above. **We therefore request that the 30 June end of financial year requirement be removed from the Bill and replaced by a provision that allows registered entities to report to the ACNC on a date which suits their particular organisational requirements.**

6. General Purpose and Special Purpose Reports

The EM (1.110 and following) refers to the power of the Commissioner to require a registered entity to provide a ‘special purpose report’ as distinct from a ‘general purpose report’ (1.111). From an auditing perspective the terms ‘special purpose report’ and ‘general purpose report’ have very particular meanings in relation to audited financial reports. We do not believe that these paragraphs are using the phrases in the strict auditing sense. However their usage in this context creates some confusion about what is being referred to in this section, and what will be required of registered entities. **We request that the meaning behind these phrases be clarified, and that if the reference is not to special purpose and general purpose financial reports, then alternative wordings be used.**

7. ACN Register

The EM (1.161 and elsewhere) but not the draft Bill refers to the ‘ACN Register’ and we assume that this is the abbreviated version of ‘Australian Charities and Not-for-Profit Register’ the Government intends to adopt in literature, websites, etc. However, ‘ACN’ is an accepted abbreviation for ‘Australian Company Number’ which is endorsed by ASIC and widely used, including on Government forms. We believe that using ‘ACN’ to refer to Australian Charities and Not-for-Profit Register could lead to significant confusion. **We therefore request that another abbreviation or term be adopted.**

8. Content of the Australian Charities and Not-for-Profits Register

- Section 100-10 of the draft Bill indicates that the Register will include *inter alia* the qualifications, position and names of each responsible individual of the registered entity concerned. While we support the promotion of transparency and good governance within the charitable and NFP sector, we question the need to include this level of detail on the Register for every registered entity, particularly small Tier 1 organisations. Such organisations may in fact have very limited activities and influence, and a budget of only a few hundred dollars a year. In such cases we believe that it may be sufficient to record the details of the officers of organisation and/or the executive members. **We therefore request that a tiered approach be taken to the information about responsible individuals recorded on the Register, or at the very least on the Charities Portal.**
- Section 100-10 of the draft Bill also indicates that the Register will include “the governing rules of each registered entity”. Again while we support the promotion of transparency and good governance, we question the need to include the constitution of every registered entity on the Register, particularly in relation to small Tier 1 organisations. In some cases, providing the constitutions as proposed, may result in registered entities having to deal with people with malevolent intent who seek to destroy or hinder the work of the organisations concerned by way of multiple frivolous and vexatious enquiries or complaints based on their reading of the constitutions concerned. This may also have an unhelpful impact on the issues which are presented to the ACNC for attention and/or investigation. **We therefore request that EITHER:**
 - **The governing rules of each registered entity not be included on the Register (as opposed to being made available to the ACNC for its records), OR**
 - **A tiered approach be taken to including the governing rules on the Register, or at the very least on the Charities Portal.**

9. Education of the Sector

Section 2-10 of the draft Bill states that the Commissioner has the function of “providing...educational information” to not-for-profit entities. Steer regards this as potentially a very significant and valuable function of the ACNC, not only in terms of regulating the charitable and NFP sector, but also in terms of encouraging best practice. However, the EM (1.192 and 1.193) seems to dismiss the educational function of the ACNC by noting that the Bill contains “...only a few provisions relating to the ACNC’s key role and responsibility of providing the sector with adequate educational material...The reason is that education will be an inherent role of the ACNC...”. Further in making this statement the EM appears to conflate ‘education of the sector’ with providing ‘adequate educational material’.

As indicated, we believe that education of the sector is and should be a significant role of the ACNC that should be more fully reflected in the Bill. **We request that the draft Bill be amended to more fully reflect the ACNC’s educational role in the sector.**

Conclusion

We trust that these comments will be helpful in finalising the content of the proposed Bill and the EM, and ensuring that the ACNC is able to work effectively and has the confidence of the charitable and NFP sector.

Yours faithfully,



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National Director
STEER INCORPORATED

27 January 2012

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