27 January 2012

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

Email: NFPReform@treasury.gov.au

Dear Sir/Madam,

Re: Consultation Paper – ACNC Exposure Draft Legislation

Thank you once again for providing Surf Life Saving Australia (SLSA) with the opportunity to provide input into the Governments not-for-profit (NFP) reform agenda, and particularly for the opportunity to respond to the ACNC Exposure Draft Legislation.

SLSA is a registered charity, as are our affiliated surf lifesaving clubs and other entities that are our members and whom we represent nationally. SLSA is Australia's major coastal water safety, drowning prevention and rescue authority. We are the largest volunteer organisation of our kind in the country. SLSA's core activities are:

- Coastal safety and lifesaving
- Education and Training
- Fitness and sport
- Junior, youth and member development
- Organisational development

SLSA is the peak body for over 330 surf life saving clubs, regional and State centres and operational support units (including helicopter rescue services) throughout the country. It operates across all local, state and national jurisdictions. These clubs and entities are all separately incorporated organisations and as noted above, all are registered charities (including SLSA). The continued operational viability of all of these entities is essential to providing a seamless high quality lifesaving operation around the country.

Since SLSA first engaged in the Government's NFP reform agenda, we have continued to support the Government's approach, including the establishment of a national NFP regulator. It is pleasing to see that the reform program continues to progress, and the release of this exposure draft legislation is further evidence of the Government's commitment.

What is particularly pleasing is that the draft legislation as presented largely meets our expectations of a national regulator as outlined in our submission on the scoping study into a NFP regulator and subsequent submissions. We would particularly like to thank the Government for engaging in meaningful consultation, as it appears that

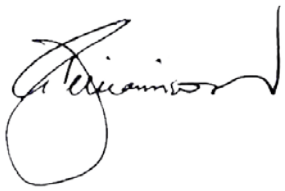
much of what has been included in the submissions of SLSA and others have been encapsulated in Government's final policy position.

While the Government's overall response is sound, there are some issues that SLSA considers should be addressed to achieve a better regulatory outcome for the Government and a better operational outcome for NFP organisations. The following comments will articulate SLSA's position on these issues.

Of particular concern, and fundamental to SLSA's submission is the absolute necessity that all State and Territory Governments must have enacted transitionary legislation to recognise a specific time when the ACNC becomes the one-stop regulator. To progress with the ACNC without this certainty is foolish and will only lead to more frustration amongst national NFP's with linked entities across multiple state and territories – such as SLSA – which would be subject to more duplication than already exists.

I trust that our feedback will assist you in finalising the exposure draft legislation and associated regulations.. If you have any questions in relation to our submission, please feel free to contact me on 02 9215 8050 or via email at bwilliamson@slsa.asn.au.

Regards,



Brett Williamson OAM
Chief Executive Officer
Surf Life Saving Australia

1. Reduced regulatory duplication

Throughout the reform agenda, the Government has continued to emphasise the importance of a transparent NFP sector with a regulatory regime that minimises duplication of reporting and effort (and resultant costs to NFPs). This is further emphasised at discussion point 1.9 of the explanatory material to the ACNC Draft Legislation which states *'The ACNC will administer a system which will simplify NFPs regulatory interactions with Government by minimising regulatory duplication and compliance costs for NFPs.'*

To achieve this, the introduction of a report once, use often reporting framework is essential. This must ensure that the information collected by the ACNC is appropriate to satisfy the reporting requirements of Government funding agencies, including for the acquittal of Government grants. For example, if a set of financial statements, organisational outcomes, etc are provided in a general reporting format to the regulator, these should be used by all other Government funding agencies rather than impose specific grant/agency reporting formats on NFPs. This will likely require many Government agencies to vary their grant reporting requirements to consistently focus on outcomes rather than inputs/outputs, and organisations will need to ensure that their annual reports/returns report on key organisational outcomes including those required of the purpose of the grant funding. If this is not the case, unnecessary reporting duplication will continue.

As an example, NFPs should not be discourage from applying funds to emerging or innovative responses to achieve outcomes, as opposed to satisfying a series of agency specified KPI's relating to prescribed inputs or programs.

We agree with the aspiration that the NFP Regulator should, as far as possible, be responsible for regulating all NFP's. If this is not achieved, it will create confusion, duplication and an uneven playing field for NFP's where some are subject to public scrutiny and others are not, over one or more geographic and Government/agency jurisdictions. That said, until COAG agrees on an appropriate measure for consistently managing the regulation of organisations currently managed by state agencies, the reporting/registration requirements for entities not registered at the Commonwealth level should be minimal, unless they receive significant federal Government funding support. If significant obligations are imposed on such organisations, it will lead to a significant duplication of reporting effort. This is further discussed at item 5 below.

2. Registration of NFP's

Overall, SLSA is comfortable with most of the proposed requirements for an entity to be registered by the ACNC that are outlined in section 5-10. One concern we would like to specifically express in this respect, is the requirement outlined in 5-10(1A)(d) that insists that an entity has not previously been a registered entity. We believe that this requirement is flawed. In most respects, an entity will only have been registered previously because their registration has been revoked at some point in time. Many of these organisations may have had their registration revoked simply because they were unable to comply at a particular point due to limited resources and support. By not allowing such entity to reapply at a future date, it does not recognise that such an entity could work towards business process improvement and achieve compliant processes in the future. Such an entity would be unable to reapply under this current scheme. Further, some organisations may choose at one time or another to deregister again due to the administrative burden of registration

and/or regulation, with the full understanding that they would be no longer able to access charitable concessions. Under the proposed scheme, such an organisation would be unable to reapply for registration in the future.

In respect to the Commissioners rights to revoke registration, we are relatively comfortable with the proposed conditions for revocation as they provide the Commission with the essential regulatory compliance tools. That said, it is important that the ACNC also carry out an effective education/support role and provide effective information and tools that assist entities in maintaining compliance. Such information needs to use simple language, be easy to read, understand and implement and be relevant to both small and large NFPs.

We particularly note that the Act provides for a show cause provision (Section 10-62), but that the Commissioner is not obliged to use it (Section 10-55(6)). While the explanatory materials state that revocation would only be used by the Commissioner when an entity persistently fails to submit returns, fails to comply, etc, this is not clear in the draft legislation. We believe that the Draft Legislation must be modified to compel the Commissioner to use the show cause provision as his/her first response, with revocation of registration being used as a final response.

3. Requirements of NFP's

SLSA believes that the reporting measures outlined in Division 55 of the Act are appropriate as they provide sufficient transparency for the Government and flexibility to cater for differing sized NFP organisations. The financial reporting requirements that ensure small entities prepare and present financials, medium entities have them reviewed and large entities have them formally audited are a good example of appropriate differentiation for NFP organisations.

That said, we disagree with the definitions of small medium and large entities as is stated in section 210-10 of the Exposure Draft legislation. In summary, the legislation differentiates the various sized organisations as follows:

Small entity:	Annual revenue of less than $250,000 Is not a deductible gift recipient
Medium entity:	Annual revenue of less than $1m and is not a medium entity.
Large entity:	Annual revenue of $1 million or more.

While we agree that the revenue bands identified above are appropriate, SLSA considers the second criterion for a small entity to be inappropriate. This asserts that the reporting obligations of a DGR of their turnover should be higher than that of an organisation of the same size that is not a DGR. All such organisations may be involved in community fundraising. We believe that this is not appropriate and should be modified.

The resources available to small NFP organisations are scarce regardless of their status. We believe that the reporting requirements for small organisations should be the same regardless of their DGR status.

If the Government wishes to add a higher onus of proof on organisations that receive Government support, this could also be provided on a tiered basis. For example, an

organisation that is a small DGR and receives over $100,000 of its revenue from Government grants or donations (i.e. benefiting from Government concessions), then it could be classed as a medium sized entity. All other small DGR's could still be classed as small sized entities.

In respect of an organisations audit requirements, SLSA believes that the tiered reporting requirements as described above, irrespective of an organisation's DGR status should stand. In making this statement, SLSA acknowledges however that it is good governance and financial management practice for an organisation to have a formal audit undertaken. Indeed, national organisations such as SLSA may set policies for its subsidiaries to have audited accounts to ensure good organisational governance. In fact, most of SLSA's State Centre subsidiaries mandate that all of its member surf life saving clubs be properly audited.

We note that at Section 55-90 that the Commissioner is authorised to approve a different accounting period and that entities will be given the opportunity to apply. While this is understandable, we would also encourage the Government to consider transitionary arrangements to cater for organisations that currently recognise different accounting periods, many of whom are small NFP's (which may have different accounting periods to minimise audit costs), and that have these periods written into their rules. Approval to recognise these exiting accounting periods for currently registered entities should be simple.

4. Australian Charities and Not-for-Profits Register

We note that the Exposure Draft Legislation provides for the establishment of the Australian Charities and Not for Profits Register at Division 100. While most of the items to be collected and included in the register make sense, we would question the requirement under 100-10(l)(i) – 'the qualifications of the responsible individual in relation to the registered entity.' We would question what this requirement is supposed to collect and achieve.

SLSA does not support any requirement that expects responsible persons from NFPs to have particular qualifications. We take this view for a number of reasons, including that there is no similar requirement for for-profit organisations, that this would add a significant impost on a largely volunteer workforce and that it would discourage leadership and participation pathways for young directors, etc.

Section 100-20 provides the Commissioner with the power to withhold or remove information from the Register. We believe that there are some pieces of information that should be collected by the Commission and recorded in the Register without necessarily being published. One example could be the personal information of responsible individual. As is stated in Section 180-25(d) of the Act, the Commission will not disclose personal information. Such information is however important for the Commission to maintain its regulatory function and should be retained in the Register. Despite section 1.164 of the explanatory material stating that the Commissioner has the authority to withhold information on the ACN register from being publicly available, this is not clear in the legislation and should be amended.

5. Transition

As is stated in section 1-15(1) of the Exposure Draft, '*The Act binds the crown*.' While this is necessitated by the powers provided to the Commonwealth in the Australian Constitution, SLSA would like to reiterate the importance of truly national regulation. National regulation will provide the greatest benefits to organisations for consistency, public transparency and reduction in red tape. We would urge COAG to resolve this issue quickly. The longer this reform is delayed, the more this will generate reporting duplication in the sector and inconsistencies across the country. We would suggest that it is an absolute necessity that all State and Territory Governments must have enacted transitionary legislation to recognise a specific time when the ACNC becomes the one-stop regulator, prior to the regulator requiring any additional information of state based NFPs.

While it is true that reform should be progressed hastily, we would caution the Government from enforcing reporting obligations on state registered entities until this piece of reform is resolved. While we recognise that the ACNC will require some evidentiary material to maintain the charities registration of entities, this should merely replace existing registration requirements required by the ATO. Beyond this, agencies should not be obliged to comply with the ACNC's reporting or governance requirements, as this would replicate requirements at states. While we encourage the Commonwealth to expedite the reform process, NFP agencies should not incur additional burden if negotiations with the states/territories were to stall.

The Transitional Issues Fact Sheet provided with the legislative material states that reporting to the ACNC will commence from 1 July 2013. It also states that Charities will commence reporting at this stage based on information from the previous year (i.e. the 2012/13 Financial Year). We would encourage the Government to confirm these reporting requirements ASAP and advise the sector of these requirements prior to the commencement of the 2012/13 Financial Year.