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The Manager
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Personal and Retirement Income Division
The Treasury
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**SUBMISSION ON THE EXPOSURE DRAFT
AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION BILL 2012**

This submission is made by The Ian Potter Foundation, The George Alexander Foundation and The Ian Potter Cultural Trust.

We have made a submission on the *Review of Not-for-profit Governance Arrangements Exposure Draft* which in a number of cases deals with matters related to the Bill. The present document does not repeat such comments and should be read with the other submission.

We make the following comments on the draft Bill:

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Sec. 5.10(1A)(d)	Paragraph (d) must be deleted. It is quite unrealistic to have the statute debaring a charity from applying for re-registration because it has previously been registered. Even if registration is regarded as a penalty, which is not necessarily the case at all, it cannot be a death penalty. If, for example, a charity which has been mismanaged and deregistered is cleaned up, gets new personnel, and becomes once more effective and of good repute, then to deprive it of the tax and other benefits conferred by registration simply damages the persons and purposes that the charity was formed to help.
Sec. 5.10(1A)(e)	This paragraph seems to need redrafting. Unless the terms used in Sub-paragraph (i) are derived from legislation (which we have not checked), they are probably meaningless - what on earth is an outlaw entity? If they are statutory terms, then the statute should be identified. But in any event, are not (i) and (ii) meant to be alternatives? If so, the conjunction "and" should be "or".
Sec. 5.10(3)	We find it surprising that no mention is made in the table of the public ancillary funds for which the Minister has recently promulgated Guidelines, nor of Private Ancillary Funds. Should testamentary trusts be mentioned?
Sec. 10-35 & 10-60	We note that the provisions for appeals against refusal or revocation of registration are yet to be drafted.
Sec. 10-65	See below

As public ancillary funds, The Ian Potter Foundation's and The George Alexander Foundation's concern with Sec. 10-65 is to ensure that we can make searches to ensure that grant applicants are registered as charities and DGRs. However we find that this section is an extraordinary provision. The section says:

- (1) If an entity is registered in accordance with this Division, the Australian Business Registrar must enter in the Australian Business Register a statement that the entity is so registered for a specified period.
- (1A) However, the registrar need only enter a statement if the registered entity has also been endorsed to access a tax concession under Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) The Australian Business Registrar may remove the statement from the Australian Business Register after the end of the period.
- (3) The Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the Australian Business Register under this section is true. For this purpose, the Registrar may:
 - (a) change the statement; or
 - (b) remove the statement from the Register if the statement is not true; or
 - (c) remove the statement from the Register and enter another statement in the Register under this section.
- (4) Making, changing or removing an entry in the Australian Business Register as required or permitted by this section does not contravene section 180-15 or 180-20.

Sub-section (1) provides that if an entity is registered in the ACNC Register, the Australian Business Registrar must enter in the ABR a statement that "it is so registered for a specified period". The specification of the period is presumably made by the ACNC. There is no indication what that period of registration is to be. Presumably the ACNC was intended to be the specifier. However, there is no reason why registration on the ABR should only continue for a specified period when registration on the ACNC's register continues in perpetuity unless terminated under the statutory power. Further, sub-section (2) authorizes the ABR Registrar to remove the entry when the specified period expires, not when the ACNC's registration is revoked or otherwise terminates. Clearly registration on the ABR must continue while the registration on the ACNC Register continues, no more and no less, and certainly not for any "specified period".

Another extraordinary aspect is that, not only is no obligation placed on the ACNC to inform the ABR registrar promptly that it has changed the ACNC register, but sub-section (3) would impose an extraordinary and unnecessary statutory duty on the ABR registrar to take reasonable steps to ensure that the statement that he puts on the ABR is true. Since, by sub-section (1), the statement to be registered on the ABR is to say no more than that the entity is registered in the ACNC's register, this is nonsense. Again, the ABR registrar's duty should be no greater than to register or deregister what the ACNC tells it.

To overcome those problems, the section should be simplified as follows:

- (1) If an entity is registered in accordance with this Division, the Commissioner must promptly notify the Australian Business Registrar, and the Australian Business Registrar must enter in the Australian Business Register a statement that the entity is so registered.

- (1A) However, the registrar need only enter a statement if the registered entity has also been endorsed to access a tax concession under Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) If an entity is deregistered in accordance with this Division, the Commissioner must promptly notify the Australian Business Registrar, and the Australian Business Registrar must promptly remove the statement from the Australian Business Register.
- (3) Making, changing or removing an entry in the Australian Business Register as required or permitted by this section does not contravene section 180-15 or 180-20.



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