

Outline of oral submissions of Dr Matthew Turnour regarding the Australian Charities and Not for Profit Commission Bill 2012

My submissions are:

1. That the legislation to establish the ACNC be passed with such further amendment as is necessary having regard to the further evidence to this committee - that is I submit having an ACNC is better than not having an ACNC.
2. That as the constitutionality of the legislation is doubtful, at least in part, that funding be made available (possibly from the ATO test case funding budget) to facilitate a challenge to the legislation by one or more charities at the earliest possible time so that charities do not spend time and money complying with legislation that the government has said itself is not constitutional.

Factors informing this recommendation include the following:

- A. Australia would be better off with an ACNC than the current arrangement. There is a legitimate debate to be had over whether its function should be simply educational or whether it should have expansive regulatory powers. October 1, 2012 is now less than one month away, though, and whilst I have reservations, on balance, in my view, we are better off to proceed with establishing the ACNC rather than not. That brings me though to my second point.
- B. The debate over education or extensive powers may be largely irrelevant if the High Court holds much of the regulatory power to be ultra vires the Commonwealth. The sector, the government, the opposition, and the independents all have an interest in this being clarified expeditiously.
- C. As it seems the sector, the government and the opposition all see the value in an ACNC but dispute as to its role and powers, and as that debate depends mainly on the views of the High Court, my submission is that the committee recommend the passage of the legislation (with further amendments) provided all steps (including the making available of funding) for a High Court challenge be taken.

Outline of oral submissions of Dr Matthew Turnour regarding the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012

My submissions are:

1. That this Bill be abandoned.
2. That the subject matter of the Bill be divided broadly into two separate headings and each be dealt with differently.
3. That the subject matter dealing with the definition of Not-for-profit be considered as a part of the anticipated Charities Bill and that the drafting of both take into account:
 - a. Henry Review Design Principles of fairness, efficiency, simplicity, sustainability and coherence
 - b. The Charities Definition Inquiry Recommendations and models
 - c. The centrality of altruism and public benefit
4. That the Assistant Treasurer move responsibility for the preparation of the draft of this legislation to the ACNC from Treasury and that the ACNC report directly to the Assistant Treasurer and not through Treasury.
5. That the subject matter related to Australians overseas engagement (both financial and voluntary) becomes a subject for a separate Inquiry. The Inquiry would make recommendations to the government on how government policy (including tax) might better encourage and support *voluntary* international engagement by Australians through charities and other NFPs.

Factors informing and resources to assist

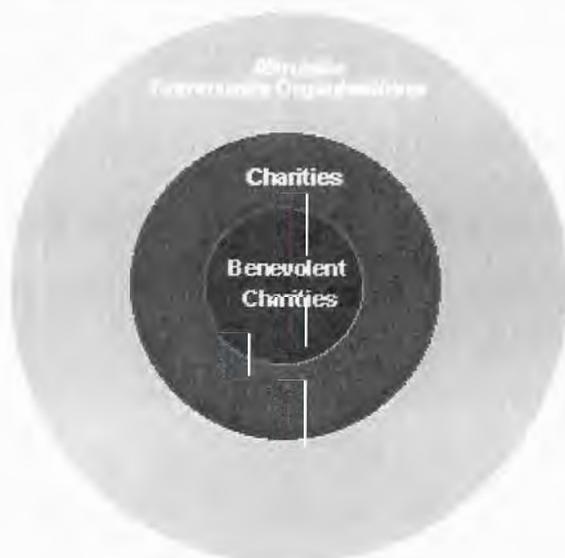
Factors informing these submissions include:

1. The definition of charity legislation is due to commence next July 2013 so there will not be excessive time lost by including it in the Definition of Charity Legislation and calling the Bill the *Definition of Charity and Not-for-profit Bill*
2. This is Treasury's third (at least) attempt at drafting 'in Australia legislation'. It would seem that the issues are difficult and the ACNC's specialist knowledge will be invaluable in developing the best possible legislation.
3. The broader 'in Australia' issues, are actually a lot more than an amendment to the Tax Acts. The amendments are an expression of the Government's commitment to overseas aid and engagement and must be viewed in this holistic way. This issue should be addressed at a higher level with a view to setting policy for the next decade or so. The terms of reference should focus primarily on enabling Australians who wish to voluntarily contribute financially internationally, and only incidentally, on protection of the revenue base. It should focus on the broader policy agenda from both a government and charity sector perspective and include the wider policy issues such as the National Compact Framework, the Millennium Goals in relation to poverty, the emerging role of Australian charities as world leaders.

Resources to assist in explaining concepts



Figure 1 Turnour framework



Principles to be applied

First of all, we should not forget that taxes need to rate well against the principles of:

1. **fairness,**
2. **efficiency,**
3. **simplicity,**
4. **sustainability and**
5. **coherence.**

Ken Henry

<http://www.taxreview.treasury.gov.au/Content/Content.aspx?doc=html/speeches/04.htm>

Charities Definition Inquiry

http://www.cdi.gov.au/report/cdi_overview.htm