Submission to Parliamentary Joint Committee on Corporations and Financial Services on Australian Charities and Not-for-profit Commission Bills and the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012.

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By email: corporations.joint@aph.gov.au

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Dear Sir/Madam,

I write in response to your invitation to make submission in response to the invitation to make submission on the two Australian Charities and Not-for-profit Commission Bills and the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012. Whilst generally supportive of the ACNC Bills, there are some very real concerns about whether the Bills will achieve the purposes for which they are intended. I make no submission on the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012.

Our detailed arguments in support of the view that the ACNC will not achieve its stated objectives by the means that it is proposing have previously been made out in the numerous enquiries and extensive consultations. Suffice in this submission to summarise the issues as follows:

1. The Australia Charities and Not-for-profits Register

At the heart of the ACNC Bill is the notion that the ACNC will reduce the present costly and wasteful "red tape" associated with State and Commonwealth regulation and funding of charities and not-for-profits. One of the key measures in the proposals is a publicly available national "Register" of these organisations.

It should be noted however that the Australian Business Register (ABR) already provides a listing of all charities with an Australian Business Number (ABN) and details of the various tax endorsements enjoyed by each. The missing elements that it is proposed will be found on the ACNC Register are contact details, a summary of their financial position and some account of the aims and activities of the organisations listed.

There is no particular reason why the ABR could not add the basic details, such as contact name and address proposed for inclusion in the ACNC Register.

The details of much of the additional financial information proposed for the ACNC Register is yet to be finalised and will depend on the outcome of difficult negotiations with the State and Territory regulators which currently regulate the financial affairs of the vast majority of charities and NPOs who are not incorporated under Corporations Law.

The inclusion of information about the aims, objectives and achievements of listed organisations will necessarily be highly summarised for use in the Register. One wonders how useful information in this

form will actually be. Far better to provide a link to comprehensive information available on the organisation's web site.

It is most unlikely that without a transfer of State powers to the Commonwealth or the use of the Commonwealth's power to regulate communications, that the ACNC will replace the role of State regulators in Associations, fundraising or charitable gambling. This means that the much vaunted "one-stop-shop" will not be possible in the near future.

The alternative approach we have previously recommended is to require listed organisations to provide a link to their Annual report on the organisation's web site or alternatively upload a PDF version to the Register. This means that the listed organisations would not be required to reformulate either financial or service-related information for a new regulator.

Longer-term, the development of not-for-profit accounting standards and non-financial reporting standards (through the Australian Accounting Standards Board) will provide the basis of comparable information.

To force the reporting of financial and non-financial information to the ACNC in a form that is different to their existing State and Territory reporting requirements, increases red tape for the regulated entities and achieves the opposite to the stated intention of the Bills.

2. Governance standards and external conduct standards

Whilst generally supportive of the proposed ACNC role in setting and monitoring governance standards in charities and nonprofit organisations, we are cautious about attempting to do this by regulation. In general, the great majority of charities and not-for-profit organisations are self-governing bodies that owe accountability to their members, their service users and their donors of time and money.

The notion that because they are income-tax exempt they owe accountability to government, is in our view misplaced. There are many aspects of our lives that are tax free without the assumption that they should therefore be regulated somewhere in Canberra. The income of charities has always been outside of the taxable economy.

The people who are best placed to regulate their affairs are the members of the Board (Committee or Trustees). They need to be encouraged to do that well. The ACNC can have a useful role in advocating for high standards of governance and ethical behaviour by providing resources and guidance to Directors, Trustees and Committee members charged with the responsibility for the oversight of these organisations.

We advise great caution in the way in which the ACNC goes about its regulatory activities. The very real risk is that, in the zeal to regulate rather than educate, an atmosphere of personal risk could be created around participation in the governance of community organisations. It is in Australia's best interests to encourage inexpert participation in the very large number of small and medium sized charities and

associations. Let the large organisations move to Corporations law and be held to account as company directors. But let small to medium organisations continue to attract community-minded citizens.

3. Public Trust and Confidence

We agree that the establishment of the ACNC will provide a signal to the Australian community that there is "someone keeping an eye on charities and non-profits". The Register will be an important public element of that signal, although we know from analysis of traffic on charity web sites that few donors (0.79%) visit web pages containing financial records before donating on-line to the charity of their choice.

4. We would like repeat the following recommendations, made to previous consultations:

a. Recommendation 1.
That the Australian Government reconsiders its timetable of reforms for the regulation of charities to ensure that a progressive transition from the present system to a single national regulator (ACNC) is introduced. Further that such a revised timetable be based on three phases as follows:

1. Phase 1. (2012-13)
- 1.1. New Commonwealth statutory definition of charity;
- 1.2. Finalisation of the 'in Australia" issue;
- 1.3. Finalisation of the 'better targeting of tax concessions' issue;
- 1.4. Registration of all charities with ACNC.

2. Phase 2. (2013-14)
- 2.1. First-time lodgement of Annual Financial Statements with ACNC <u>without summarised information</u>;
- 2.2. Publication of "as submitted" Annual Financial Statements in ACNC on-line register;
- 2.3. Finalisation of Australian Accounting Standards relevant to the information required in the ACNC's Annual Information Statement (AIS);
- 2.4. Finalisation of "harmonisation of fundraising legislation" relevant to the information required in the ACNC's AIS;
- 2.5. Implementation of a revised National Standard Chart of Accounts (NSCOA) to assist charities to collect accounting information in accordance with the proposed mandatory AIS disclosures;
- 2.6. Finalisation of SBR elements of charity registration information, information elements of AIS and other tax issues specific to charities;
- 2.7. ACNC issues formal Guidance on definitions to be used in AIS.

Recommendation 8.
That Phase 3 not be commenced until such time as State and Territory regulators accept the information lodged with ACNC as fulfilment of their regulatory requirements.

3. Phase 3. (2014-)

3.1. First-time lodgement of AIS based on revised NSCOA, nationally recognised definitions of "fundraising" and recognised Australian accounting standards;
3.2. Finalisation of any legal reforms associated with Companies Limited by Guarantee and Australian Association frameworks;
3.3. Finalisation of AASB Service Performance Reporting standards

Forwarded for your consideration.

Yours sincerely

Ted Flack