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30 August 2012

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Email: corporations.joint@aph.gov.au

Dear Sir/Madam

EXPOSURE DRAFTS

Australian Charities and Not-for-profits Commission Bill 2012
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012
Explanatory Materials ("the EM")

Thank you for the opportunity to provide our views on the above Bills. Our comments arise from our deep understanding and involvement with the not-for-profit (NFP) sector as well as our consultations therewith in respect to these Bills.

1. About Moore Stephens

1.1 We are writing on behalf of the Moore Stephens Australia network of eight independent firms of business advisors and chartered accountants. Moore Stephens have a real understanding of the environment in which our clients operate. We currently service a diverse range of entities within the sector and specialise in providing assurance, accounting, tax and advisory services to our NFP clients. We provide a national service offering to a number of key clients operating in the not-for-profit sector, including the following:

- Religious organisations;
- Large charities; and
- Universities and many TAFE colleges in Australia.

1.2 We have had a long standing commitment and involvement for the past 50 years in this sector. We have been active in recent years in providing submissions to the Government's various committees and consultations to support the sector through this reform phase.

Moore Stephens Australia Pty Ltd ABN 88 062 181 846. An independent member of Moore Stephens International Limited – members in principal cities throughout the world.

2. Introduction

2.1 We welcome the changes made from the recommendations of the House of Representatives Standing Committee on Economics.

2.2 We acknowledge the value of the overall objectives of the proposed legislation in seeking to provide support to the NFP sector including through education and in having a 'one-stop shop' for the sector.

2.3 We note that the major benefit for the sector will be the achievement of the 'report-once, use-often' framework referred to in Chapter 6 of the EM and we recognise the inclusion of objects to this effect in Division 15-5 (1)(c) of the revised Bill . The 'report-once, use often' framework in our view is imperative to the success of the ACNC and the future effectiveness of the sector overall.

2.4 We also note the major challenges yet to be addressed to effectively achieve this objective, in particular in aligning State and Federal requirements in respect to the many underlying aspects as well as the range of requirements that currently arise for entities within the sector in dealing with various Government departments.

3 Feedback and Comments

3.1 In our view there still exists a number of significant issues of concern with these Bills and resulting challenges for the sector given that the House Economics Committee recommendations were silent on a number of important matters raised with the Inquiry across many of the submissions it received.

3.2 Attached is a copy of our submission to the House Economics Committee and the following is a summary of issues we noted in our submission which remain.

Key Issue	Attached Submission Reference
Reporting thresholds and framework	Sections 4 & 5
Alignment of reform framework with existing requirements	Section 6
Limited application of Basic Religious Charity Exemption	Sections 7 & 10
Collective and joint reporting arrangements	Section 8
Inequities in registration & reporting requirements based on structure as opposed to purpose`	Sections 9 & 10
Registration including subtypes issues	Sections 11 & 12
Nature of the reporting and governance requirements to be contained in the regulations	Sections 4 ,5, 6 & 13

3.3 We acknowledge the positive nature of the inclusion of Section 10 of the transitional Bill which provides for the Commissioner to exercise their discretion to accept statements, reports and other documents given to other Australian government departments as meeting the reporting requirements of the ACNC.

3.4 We note the resulting complexity and uncertainty regarding the reporting arrangements including the work required to align the current reporting regime across many jurisdictions and government departments with that of the ACNC. Accordingly, we recommend that the proposed discretion to the Commissioner be replaced by a voluntary reporting regime during at least the first three years of the Commission. This will enable the Commission to focus on resolving the transition to an effective 'report-once, use-often' framework (including removing duplication) prior to their mandatory introduction.

If you have any queries please contact the contributors to this submission listed below.

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Yours faithfully

Joe Shannon
Chairman
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20 July 2012

The Secretary
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EXPOSURE DRAFTS

Australian Charities and Not-for-profits Commission Bill 2012
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Thank you for the opportunity to provide our views on the above Exposure Draft legislation. Our comments arise from our deep understanding and involvement with the not-for-profit (NFP) sector as well as our consultations therewith in respect to these Exposure Drafts.

3. About Moore Stephens

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- Religious organisations;
- Large charities; and
- Universities and many TAFE colleges in Australia.

3.2 We have had a long standing commitment and involvement for the past 50 years in this sector. We have been active in recent years in providing submissions to the Government's various committees and consultations to support the sector through this reform phase.

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4. Introduction

2.1 We welcome the many changes from the original Exposure Draft and the resulting significant improvements. In particular we welcome the exemptions for Basic Religious Charities and the removal in full of Small Registered Entities from the financial reporting requirements.

2.2 We acknowledge the value of the overall objectives of the proposed legislation in seeking to provide support to the NFP sector including through education and in having a 'one-stop shop' for the sector.

2.3 We note that the major benefit for the sector will be the achievement of the 'report-once, use-often' framework referred to in Chapter 6 of the EM. This would enable registered entities who currently deal with numerous Government departments and statutory bodies to deal only with one such body in addressing their reporting obligations to Government.

2.4 We also note the major challenges yet to be addressed to effectively achieve this objective, in particular in aligning State and Federal requirements in respect to the many underlying aspects as well as the range of requirements that currently arise for entities within the sector in dealing with various Government departments.

2.5 In recognising the importance of the achievement of this 'report-once, use-often' framework we recommend its specific inclusion in the functions of the Commissioner as an additional element in Section 110-10 of the Bill. We also suggest that these functions as defined within the Bill include a responsibility for 'developing, enhancing and maintaining' this 'report-once, use-often' framework.

2.6 The 'report-once, use often' framework in our view is imperative to the success of the ACNC and the future effectiveness of the sector overall. Accordingly we recommend that having a structure in place to ensure this achievement is the most critical element of the review by the Parliamentary Committee.

2.7 In addition to the importance of the above overriding matters, we have also set out below a number of other specific matters that we recommend be addressed in the Bill.

5. Feedback and Comments

3.1 Our detailed comments in relation to the Exposure Drafts relate to financial reporting, annual information statements, collective and joint reporting, basic religious charities, responsible entities and registration. Our comments are made from the context of our experience in financial reporting, auditing, taxation and advice to not-for-profits. Hence our comments are from this perspective. We have had a short opportunity to consult with our clients in relation to the draft legislation and our views are informed by those discussions.

3.2 We have not considered the legal implications or constitutional aspects of the proposed legislation but have focused on the practical implications and consequences arising from the draft legislation.

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4 Financial Reporting – True and Fair Declaration by Responsible Entity

4.1 We welcome the exemption from all financial reporting and audit or review requirements for all small registered entities as defined in Section 205-25 being in respect to those with revenue less than $250,000 for a financial year.

4.2 We also welcome the more reasonable timeframe of 6 months to lodge the annual financial reports for large and medium entities as well as the ability of medium entities to have the option of an audit review.

4.3 While the core concept of a Responsible Entity of a Registered Entity is set out in Section 205-30 we note no requirement in the Exposure Draft for Responsible Entities to declare that financial reports lodged with the Commission are true and fair or in respect to the solvency of the entity at time of making this declaration.

4.4 We recommend that the Bill includes a requirement for a Registered Entity to declare the truth and fairness of the annual financial report of the entity as well as its solvency.

5 Financial Reporting – Accounting Framework

5.1 In respect to the financial reporting framework to be applied within the financial reports to be lodged with the Commission we note that these are to be set out in the regulations. In order for the sector to have some certainty on this matter, we recommend that a minimum form and content of a financial report and the financial reporting framework to be applied are included in the Bill.

5.2 We recommend that the minimum contents of a financial report set out in the Bill include the following statements, however described:

For Medium entities:

- Statement of Financial Performance; and
- Statement of Financial Position.

For Large entities:

- Statement of Financial Performance;
- Statement of Financial Position;
- Statement of Cash Flows; and
- Statement of Changes in Equity.

5.3 We also recommend that a minimum financial reporting framework be included in the Bill. We suggest that this framework includes a requirement that financial reports lodged with the Commission be prepared at a minimum in accordance with the following Australian Accounting Standards:

- AASB 101 – Presentation of Financial Statements (other than Statement of Cash Flows for medium entities);
- AASB 107 – Statement of Cash Flows (large entities only);
- AASB 108 – Accounting Policies, Changes in Accounting Estimates and Errors;

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- AASB 110 – Events After the Reporting Date;
- AASB1004 – Contributions; and
- Any Accounting Standards specifically applicable to NFPs.

5.4 In addition we recommend that large entities comply with the measurement and recognition requirements of all applicable Australian Accounting Standards.

5.5 As part of the overall NFP Reform by the Federal Government we strongly recommend the legislative requirement for consultation between the AASB and the ACNC to ensure that the Accounting Standards meet the requirements of the Commission and the sector at large.

5.6 Given the stated intention to only include the financial reporting framework within the regulations it is still our view that it should remain with the Registered Entity to determine whether or not it is a Reporting Entity and therefore whether it is required to prepare a general purpose financial report.

5.7 In our view to require all Registered Entities with revenue greater than $250,000 in a financial year to prepare a general purpose financial report would be far too onerous and thus costly for many Charities. It is for these reasons that it is our view that at some level the required financial reporting framework should be more clearly defined, at least in terms of the minimum requirements, within the Bill rather than be left to the regulations.

5.8 As with our submission in respect to the original Exposure Draft, we remain concerned as to the number of entities that would be included in the financial reporting requirements as a result of the size criteria of revenue set for determining small, medium and large Registered Entities. Our analysis indicates that this will see nearly 50% of Registered Entities being classified as being medium or large and therefore will be required to comply in full with the onerous obligations of the Bill. Accordingly, we continue to be of the view that the size criteria for determining medium and large entities could be doubled to $500,000 and $2,000,000 respectively without having any impacts on the core aims of the Bill.

6 Annual Information Statements – alignment of reporting

6.1 Paragraph 6.34 of the EM refers to the requirement for registered entities to lodge an Annual Information Statement (AIS) for the 2012-2013 financial year. We note that the lodgement of financial reports with ACNC is proposed for the following year.

6.2 We further note that the 'mock ups' of the fixed form AIS for each tier of reporting (ACNC: Implementation Design Discussion paper) included financial and governance information for each of the Reporting tiers.

6.3 It is our view that any information provided through the AIS should be in a format which enables the ACNC, the Public and Stakeholders to compare information between registered entities.

6.4 Given that there is limited guidance in relation to the financial reporting framework (refer to our section on financial reporting) and that the Governance standards have been deferred, we recommend that the Initial AIS not include any financial reporting data and limited governance related details until the commencement of the financial reporting and governance arrangements in the 2013-2014 financial year.

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7 Annual Information Statements – Basic Religious Charities

7.1 The EM refers to the exemption from financial reporting and governance standards. In its current form the exemption does not extend to the lodgement of an annual information statement for a Basic religious Charity (BRC). The proposed AIS currently includes financial information for all tiers of reporting.

7.2 To satisfy compliance with Sub-division 60-B, we recommend that BRCs be required to lodge simplified AIS which does not include any financial information. The simplified AIS would confirm key details held on the ACNC register and a declaration by the BRC in relation to compliance with the External Conduct Standards. This would provide the public with confidence that BRCs are complying with the other aspects of the ACNC regime without the onerous requirements of the financial reporting obligations.

8 Collective and Joint Reporting

8.1 We welcome the inclusion in the Bill of Sub-division 60G which allows for the collective and joint reporting by a Reporting Group as defined. This is a significant and important enhancement on the original Exposure Draft and will allow entities that operate within one or similar governance structures to lodge a single AIS and a single financial report with the Commission.

8.2 Nevertheless, we note the requirement in all instances to apply to the Commissioner for approval.

8.3 We are aware of many complex structures that operate within the sector and are concerned that the criteria set out in Section 60-95(4) may not allow for collective and joint reporting in many situations where in our view its approach would be appropriate and would reflect commercial reality. Given the complexities of this issue we highly recommend further consultation with the sector to ensure that an appropriate framework is in place.

8.4 We also recommend, rather than always requiring application to the Commissioner in this respect, that the Bill sets out specific conditions under which a Reporting Group would be automatically entitled to report collectively or jointly. For example, we recommend at a minimum where the following conditions exist that such an entitlement is automatic:

- Where a group of entities meet the definition of control under Australian Accounting Standards. This would see the controlling entity preparing a single financial report and an AIS incorporating its activities and those of the entities it controls; or

- Where entities are part of one civil structure and separate ABNs have been established for administrative purposes only.

8.5 It is unclear from the Exposure Draft as to how the collective and joint reporting may impact on the Commission's ability to collect comparable data regarding various subtypes of the sector. It is our understanding that one of the secondary objectives of the Commission is to gather such information with the view to assisting and promoting the development of the sector and we are concerned that this requirement for data may ultimately result in additional reporting for entities which undertake activities which are classified under

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multiple subtypes within a Reporting Group. The Commissioner having full discretion in this area compounds these concerns.

8.6 In respect of the discretion of the Commissioner on this and other matters we note the Tax Ruling structure within the regulatory arrangements of the Australian Taxation Office and similarly the class order structure within the regulatory arrangements of the Australian Securities and Investments Commission. We consider it important that a similar structure is set up within the powers of the Commissioner, including allowing for consultations with the sector in respect draft documents in relation to such matters. This would ensure greater clarity is achieved in how these powers of discretion would be applied in practice.

9 Responsible Entity (RE)

9.1 We welcome the revised narrower definition of RE from that of Responsible Individual contained in the original Exposure Draft.

9.2 The introduction of the concept of primary entity and penalty regime directly linked to the RE's as described in Division 180 raises some concern. This is particularly the case with religious organisations as there are significant numbers of these organisations which are unincorporated associations such as parishes.

9.3 Section 180-20(6) provides for a differing application of penalties to the RE's of the entity based on its structure to enable a mechanism for unincorporated associations to be sued.

9.4 There are a variety of reasons as to why a Charity or any Not for Profit is established under a particular structure. These reasons can not only include questions of limited liability and asset protection but internal governing laws, the practicality of the structure and other legislative requirements.

9.5 We are of the view that to distinguish one entity from the other based solely on structure will give rise to inequity within the Sector albeit that we acknowledge the intent of the framework.

9.6 We recommend that the provisions be revised (where possible) to provide for a limited recourse against the members of the committee to that level of the net assets of the registered entity as disclosed in the last Annual Information Statement lodged immediately prior to the conduct of the offence (or in the case of BRC the level of assets based on the financial records of the entity).

10 Basic Religious Charity (BRC)

10.1 We are very pleased to see that an exemption for BRCs has been included in the Exposure Draft in respect to a number of the requirements. The BRC exemption provides for a practical approach to balance the compliance cost and the public benefit of reforms for those charities who are wholly or mainly concerned with the advancement of religion.

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10.2 We recommend the following refinements to the exemptions for the reasons outlined below:

An amendment to s205-35 (c) to allow for "entitlement for registration as any other subtype" where this entitlement relates to ancillary or incidental activities undertaken in the course of the advancement of religion.

10.3 It is not unusual for churches or other religious institutions to undertake ancillary activities as part of their advancement of religion. This may occur through the conduct of religious education, provision of temporary housing or 'pastoral care' activities. A strict reading of s205-35(c) would place significant restrictions on these activities which are ancillary or incidental to the advancement of religion. In our view simply the "entitlement" for registration is too restrictive given the operations of religious organisations.

An amendment to s205-35 (2) to allow for these entities to be classified as a BRC where they meet the small registered entity

10.4 Given the evolution of the practice of various religions (particularly Eastern) in Australia, a number of Religious organisations have had to incorporate to enable the ownership of assets by the Religious institute. State Lands and Property Acts which enable recognition of property ownership are essentially limited to mainstream Christian denominations.

10.5 In this context, we are of the view that the underlying structure of a religion organisation is irrelevant to the conduct of its activities. However, where these entities are already subject to a level of reporting under the Corporations Act or the relevant State Associations Act, this exemption should not result in less reporting than what is required under these laws.

An amendment to s205-35(3) to allow for entity to be classified as a BRC where the level of turnover received by the DGR Fund of the Registered entity is less than the threshold for a small registered entity.

10.6 There are a significant number of parishes and other religious communities that support affiliated education facilities through the maintenance of a school building funds. Under the Exposure draft BRC definition these parishes would not be considered BRC. Our proposed amendment would allow BRC's to continue maintain DGR funds where the DGR funds themselves meet the small registered entity threshold.

An amendment to s205-35(5) to allow for entity to be classified as a BRC where the level of turnover received from Australian Government Agencies is less than the threshold for a small registered entity.

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10.7 Various government agencies have historically seen religious organisations particularly in ethnic communities as well placed to assist them by providing to access and support for a particular section of the community and as such have provided support and funding to Religious organisations to support their community. Given this history and the acceptance of these grants in good faith, we propose that the exemption should be available to those religious charities where the level of the grants received from Australian Government Agencies meets the small registered entity threshold.

11 Registration as Subtypes

11.1 We note that under s25-5(4) of the Exposure Draft, an entity may be entitled to registration as more than one subtype of entity. The EM provides clear direction (including illustrative examples) in relation to revocation of these registrations due to change in circumstances or activities of the registered entity.

11.2 However, the EM is silent in relation to a registered entity's ability to register under additional subtypes subsequent to its initial registration. It is not unusual for a Charity to shift its focus due to a need or desire to undertake additional or supplementary activities which are still within the general ambit of their governing rules. This can be the case where the Charity is focused on a particular community region or ethnic group or where a greater need has been identified for which registration for an additional subtype is warranted.

11.3 We recommend that consideration be given to including a clearly defined mechanism for a registered entity to apply for additional subtypes post registration.

12 Clarity regarding conflicting Subtypes

12.1 Paragraph 3.46 of the EM makes reference to the ability to register under multiple subtypes providing amongst other things *"the requirements of the subtypes do not conflict".* No additional guidance is provided in relation to those subtypes which are considered "conflicting". To assist in the initial phase of registering we recommend that subtypes which give rise to these conflicts are clearly identified.

12.2 Furthermore consideration should be made for the inclusion of a mechanism to address any subtype conflicts which may arise for existing entities. We do not consider that the consequential amendments provisions will adequately deal with these circumstances where multiple subtypes represent the current operation of the Charity.

13 Governance Arrangements

13.1 We welcome the additional information including in the Exposure Draft in relation to these arrangements.

13.2 However, given the significant role which will be played by the regulations, it is difficult to provide constructive comments on this aspect of the Exposure Draft.

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13.3 We encourage the release of draft regulations as soon as practicable to enable the sector to firstly provide their commentary on the impact of these regulations but, more importantly, to provide Charities with sufficient time to address any immediate changes that may be required to their existing arrangements.

If you have any queries please contact the contributors to this submission listed below.

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Yours faithfully

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