Submission to the House of Representatives Standing Committee on Economics - Inquiry into the Exposure Draft Australian Charities and Not-for-profits Commission Bill.

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15 July 2012

Dear Sir/Madam,

I write in response to your invitation to make submission to the House of Representatives Standing Committee on Economics - Inquiry into the Exposure Draft Australian Charities and Not-for-profits Commission Bill. Whilst generally supportive of the Bill, in this submission, I draw your attention to several issues that could have serious deleterious consequences for the government's policy objectives if implemented without amendment.

Our detailed submission is attached to this covering letter, however our key recommendations are summarised below.

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 pursued in a logical and timely manner, so to avoid wasteful and expensive duplication of State regulation at Commonwealth level.

Further that such a revised timetable is based on three phases, progression to the next phase of which would be subject to the completion of previous phase, as follows:

Phase 1. (2012-13)

A. Establishment of the ACNC;
B. New Commonwealth statutory definition of charity;
C. Finalisation of the 'in Australia" issue;
D. Finalisation of the 'better targeting of tax concessions' issue;
E. Registration of all charities with ACNC.

Phase 2. (2013-14)

A. First-time lodgement of Annual Financial Statements with ACNC <u>without summarised financial information</u>;
B. Publication of "as submitted" Audited Annual Financial Statements in ACNC on-line register;
C. Finalisation of Australian Accounting Standards relevant to the information required in any proposed ACNC's Annual Information Statement (AIS);
D. Finalisation of "harmonisation of fundraising legislation" relevant to the information required in the ACNC's AIS;

E. 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;

F. Finalisation of SBR elements of charity registration information, information elements of AIS and other tax issues specific to charities;
G. ACNC issues formal Guidance on definitions to be used in AIS.

Recommendation 2.
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.

Phase 3. (2014-)

A. First-time lodgement of AIS based on revised National Standard Chart of Accounts (NSCOA), nationally recognised definitions of "fundraising" and recognised Australian accounting standards that adequately respond to the needs of not-for-profit organisations;
B. Finalisation of any legal reforms associated with Companies Limited by Guarantee and Australian Association frameworks;
C. Finalisation of AASB Service Performance Reporting standards.

Recommendation 3.
That the power of the Commissioner to require data in the proposed Annual Information Statement (AIS) "form" for Tier 1, Tier 2 and Tier 3 charities be limited prior to the completion of Phase 2 of the recommended reforms, to non-financial information and to disclose by way of attachment only their audited (or in respect of Tier 1 charities, reviewed) annual financial statements until the other reforms recommended in Recommendation 1 have been completed.

Recommendation 4.
That the standard that requires adoption of a July-June financial year (unless otherwise exempt or approved by the Commissioner) be removed to allow charities to prepare their annual financial statements in accordance with their constitutions and rules, without amendment;

Recommendation 5.
That the proposed requirement for charities in Tier 1, Tier 2 and Tier 3 and all DGRs to the preparation of annual financial accounts to "general purpose" financial statements" be restricted to Tier 3 charities and that Tier 1, Tier 2 and DGRs with fundraising revenue of less than $250,000 be permitted to provide "special purpose financial reports" as appropriate under Australian accounting standards;

Forwarded for your consideration.

Yours sincerely

Ted Flack

Obstacles to the Aims of the legislation

This submission is supportive of the objects of the Bill as set out in Subsection 15-5(1). It seems reasonable to believe that significant reductions in reporting obligations can be achieved by the establishment of the ACNC if agreements can be secured across Commonwealth, State and local Governments that currently regulate charities and other not-for-profit organisations.

The standardisation of the reporting requirements of all Federal, State and Local governments has that potential, but, given the realities of the Australian federal system of government, it is likely to be achievable with some governments and only in respect of a sub-set of information. The sub-set of "passport" data most likely to be included in such agreements is the subset of data that provides details of the identity of the charity contained in "Application for Registration" and in the "Annual Information Statement" (AIS).

<u>It is submitted however that in the absence of these agreements, particularly those that relate to Incorporated Associations[1], those registered as charities under State fundraising legislation[2] and those funded through State Government agreements[3], the establishment of the ACNC will substantially add to the compliance burden of Australian charities and not reduce them.</u> Only about 7% of charities are incorporated under Commonwealth legislation the remainder will presumably continue to report to their State regulators.

The obstacles to achieving true "one-stop shop reporting" are many:

- The sheer diversity of the information required of three tiers of governments, multiple departments and authorities and multiple programs within departments and authorities;

- The lack of common definitions or data dictionaries for the data elements across the diverse information requirements of government (For example there are multiple and contradictory definition of "fundraising" in the State and Territory legislation);

- The costs to government agencies across all three levels of government associated with changing their data collection processes to align with the "passport" and the other financial reporting elements of the proposed "one-stop-shop";

- The costs to charities of collecting and reporting data to ACNC based on a mix of "by nature" and "by activity" financial reporting proposed in the draft AIS for Tier 2 and Tier 3 charities;

- The costs to charities of converting their data collection systems (designed for the reporting requirements of State charity regulators) in order to comply with the incomparable information requirements of the ACNC;

[1] There are approx. 100,000 Incorporated Associations, 10,000 companies limited by guarantee and 3,500 cooperatives in Australia (ABS 1999) see http://goo.gl/zb7t1.
[2] There are approx. 20,000 "Deductible Gift Recipients" in Australia, the great majority of which are also registered with their State fundraising regulators.
[3] See for example the Queensland Department of Community Services guidelines at http://goo.gl/LUdaX

- The costs to many charities of changing their financial year to July-June;
- The increased costs for many charities of obtaining the services of auditors during the September quarter.

In summary, the aspirations contained in the Bill are admirable and worthwhile, but the capacity of the ACNC to deliver a "one-stop-shop" will be significantly hobbled by the difficulties associated with securing the necessary Commonwealth-State agreements in Australia's current political environment.

Regulation Impact Statement

It is therefore submitted that the Regulatory Impact Statement, which states:

> **Regulation impact on not-for-profits**
> ***Impact:*** Registered charities that will come within the scope of the ACNC could experience transitional compliance costs. Once the sector's new regulatory system is in place, the Regulatory Impact Statement finds that it will lead to a reduction in compliance costs and red tape faced by the sector. Small entities that currently have no reporting obligations are a minor exception. These entities would be required to report to the ACNC and may therefore experience a minor increase in compliance burden. However, they may benefit through other aspects, such as more easily accessing Commonwealth exemptions, concessions and benefits, and by having additional public exposure through a page on the ACNC website at no cost.

seriously under-estimates the cost impact on more than 90% of charities, because the assessment focuses on Commonwealth regulated and funded agencies and under-states the impact on State regulated entities. It is submitted that an assumption that the Commonwealth will be able to negotiate agreements with the States and Territories to accept the transfer of the power to regulate Incorporated Associations, fundraising charities and to "out-source" the collection of acquittals for State funding arrangements to the Commonwealth, seems optimistic. In the mean-time, charities will have a new and additional regulator.

Recommendation 1

In order to avoid imposing very significant costs on charities from 1 July 2013, it is recommended that the Australian Government reconsiders the transitional arrangements outlined in the Bill to ensure that a progressive transition from the present system to a single national regulator (ACNC) is pursued in a logical and timely manner. This will avoid wasteful and expensive duplication of regulation.

Further that such a revised timetable is based on three phases, progression to the next phase of which would be subject to the completion of previous phase, as follows:

Phase 1. (2012-13)

F. Establishment of the ACNC;
G. New Commonwealth statutory definition of charity;
H. Finalisation of the 'in Australia" issue;
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Phase 2. (2013-15)

H. First-time lodgement of Annual Financial Statements with ACNC without summarised financial information;
I. Publication of "as submitted" Audited Annual Financial Statements in ACNC on-line register;
J. Finalisation of Australian Accounting Standards relevant to the information required in any proposed ACNC's Annual Information Statement (AIS);
K. Finalisation of "harmonisation of fundraising legislation" relevant to the information required in the ACNC's AIS;
L. 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;
M. Finalisation of SBR elements of charity registration information, information elements of AIS and other tax issues specific to charities;
N. ACNC issues formal Guidance on definitions to be used in AIS.

Why there should be a delay in the introduction of the Annual Information Statement (AIS) requiring summarised financial information

The arguments against proceeding with a compulsory return in the AIS Form similar to those distributed as drafts in the Consultations on the Implementation of the ACNC are well documented in many of the submissions to that consultation. It is submitted that until these very serious difficulties, particularly in respect of summarised financial information, have been substantially resolved, it would be inappropriate for legislation to be passed that gives the Commission a free hand to determine what data is collected by this process. To legislate for the introduction of an undisclosed form of AIS by 1 July 2013, without a requirement to resolve the difficulties posed by inconsistent and contradictory definitions assumes that these difficulties will be resolved by that date. In our view this is unlikely given the technical complexities and the political realities.

The attached Audited Annual Financial Report of YFS provides a good example of the some of the difficulties. It will be noted that:

1. YFS's annual financial statements are "Special Purpose Financial Statements" designed to respond to the special needs of their funding bodies and in accordance with the requirements of the QLD Incorporated Associations Act.
2. YFS have prepared detailed accounts for each of their 60 grants across 14 different agencies in all three levels of government and three private agencies.
3. They receive relatively little from public fundraising.

It will be noted that the ACNC is currently proposing that Tier 3 charities like this (Income over $1m and a Deductible Gift Recipient) will be required to prepare "General Purpose Financial Statements" and disclose a range of financial information based on definitions that are not the same as those required by either the Incorporated Associations Act under which they are incorporated or by the 14 different funding bodies they have to report to.

For an organisation such as YFS (and there are many thousands like them), the compliance costs associated with the new ACNC requirements will be significant and do little to "protect and enhance the public trust and confidence in the NFP sector". For interested stakeholders, YFS's full Annual Report is available on their web site at http://goo.gl/ZRY3b.

Recommendation 2.

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.

Phase 3. (2014-)

D. First-time lodgement of AIS based on revised National Standard Chart of Accounts (NSCOA), nationally recognised definitions of "fundraising" and recognised Australian accounting standards that adequately respond to the needs of not-for-profit organisations;

E. Finalisation of any legal reforms associated with Companies Limited by Guarantee and Australian Association frameworks;

F. Finalisation of AASB Service Performance Reporting standards.

Recommendation 3.

That the power of the Commissioner to require data in the proposed Annual Information Statement (AIS) "form" for Tier 1, Tier 2 and Tier 3 charities be limited prior to the completion of Phase 2 of the recommended reforms, to non-financial information and to disclose by way of attachment only their audited (or in respect of Tier 1 charities, reviewed) annual financial statements until the other reforms recommended in Recommendation 1 have been completed.

Whilst it is acknowledged that most of the larger charities have adopted the July-June financial year as their financial year, it is important to recognise that many thousands of smaller charities, particularly those incorporated as associations under State law, have adopted other 12 month periods as their financial year. This is partly because of the difficulties they experience in obtaining the audit of their annual financial statements during the crucial three or four months of July to October each year. Commercial auditors are often prepared to provide audit services at a discount if the charity needs such services out of the busy first quarter of the financial year.

ACNC would do well to take a flexible approach to designated financial years since the combination of the new requirements for general purpose annual reporting and auditing in a limited time frame have the potential to significantly drive up the price of auditing services for small to medium organisations.

Recommendation 4.

That the standard that requires adoption of a July-June financial year (unless otherwise exempt or approved by the Commissioner upon application to ACNC) be removed to allow charities to prepare their annual financial statements in accordance with their constitutions and rules. The costs that would be imposed on thousands of incorporated associations, should they be required to change their constitutions in order to comply with a July-June financial year , are likely to be substantial and achieve little in terms of accountability.