

Secretary
House Standing Committee on Economics
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

Our Ref
ET/120015
Your Ref

Date
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By email: economics.reps@aph.gov.au

Dear Secretary

**INQUIRY INTO THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS
COMMISSION EXPOSURE DRAFT BILLS**

Moores Legal is an Australian law firm with a team that practices exclusively in the area of Not for Profit ("NFP") law and governance and advises a wide range of organisations in the NFP Sector and philanthropists.

It appreciates the opportunity to provide a submission to the Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bill ("the Bill").

The short-time frame unfortunately prevents us from making a detailed submission so our comments are limited to addressing some key issues.

We would make the following recommendations in relation to the Bill and the establishment of the ACNC:

1. That the Bill be amended to include an automatic review of the legislation after 5 years.

We note that a similar provision was included in the *Charities Act 2006* (UK) and in the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

We would suggest that such a provision is warranted given the importance of reducing the regulatory burden on Not for Profit entities and the fact that it is likely to only be achieved over time (with the cooperation of the States and Territories).

2. That the ACNC be provided with a budget to fund a test case litigation program.

We are aware that the Australian Taxation Office ("ATO") has a program referred to as the test case litigation program ("TCLP"). Under the TCLP, the ATO provides financial assistance to litigants for their legal costs to pursue litigation against the ATO where the matter is likely to clarify legal precedent and be in the public interest.

A number of the most significant and recent cases clarifying the law of charity have been funded in part by the TCLP, and include:

- *Commissioner of Taxation v Word Investments* [2008] HCA 55;
- *Victorian Women Lawyers Association Inc v Commissioner of Taxation* [2008] FCA 983;
- *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42; and
- *Commissioner of Taxation v Bargwanna* [2012] HCA 11.

A TCLP will also be all the more important if the Government enacts a statutory definition of “charity” as there is likely to be a need to clarify the boundaries of the statutory limbs of charity.

We thank the House Standing Committee on Economics for the opportunity to comment.

If you have any queries, please contact Elizabeth Turnour of our office using the details provided below.

Yours faithfully
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