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Dear Sir

SUBMISSION - EXPOSURE DRAFT - AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION BILL

Grant Thornton Australia Limited (Grant Thornton Australia) appreciates the opportunity to provide comments to Treasury on the Exposure Draft 'Australian Charities and Not-for-profits Commission Bill 2012'. We fully support the need for short-term reform to ensure that the sector is able to benefit from both reduced red tape and also have improved transparency and accountability. However, we are disappointed that Treasury has allowed for only a short 8 week period for comment on what we believe are fundamental reforms to the not-for-profit ("NFP") sector. The practical implications of a timeframe this short is further exacerbated by the timing of the consultation period spanning the Christmas and New Year holidays. Over this period, many of our staff and our clients in the NFP sector are on leave, reducing the potential for our response to reflect a richer, more thorough and balanced response to the consultation questions posed.

We strongly support the government in its commitment to strengthening the NFP sector, including the establishment of the Australian Charities and Not-for -profits Commission ("ACNC"). Our comments on specific issues raised by the Exposure Draft ("ED") have been attached to this letter.

In addition to those specific comments, we believe the following matters should be considered in the further drafting of the legislation:

- The broad scope of reform being undertaken in the NFP sector means that there are numerous consultation processes being undertaken concurrently. This means that it is very difficult, at the current time, to obtain a clear understanding of how the various elements of reform are integrated. For example, the consultation on the governance requirements for NFPs means this vital section has not been included in the current ED of the Bill.

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Our Ref: Submission - Not-For-Profit.Docx

- We are concerned that the drive to have the ACNC operational by 1 July 2012 will compromise the objective of streamlining and reducing the bureaucracy and administrative burden placed on the NFP sector. Such haste jeopardises the ability to instigate true long-term reform for the sector.
- The failure of the ED to deal with the issues of transition is causing uncertainty within the NFP sector. The ED is currently drafted to cover the registration of all NFP entities with effect from 1 July 2012. In the Discussion Paper 'ACNC Commission: Implementation design', however, the scope of the implementation of the ACNC has been initially limited to the registration and regulation of charities. To date, there is no indication as to when the legislation will be applicable to other entities within the NFP sector. Whilst we support this staged approach to the adoption of reform, there needs to be greater clarity as to the transition arrangements in the final Bill.
- The ED contains no mechanism by which the public can make complaints or register concerns in relation to the activities of registered entities.
- Education was one of the major stated objectives of the ACNC, however this is largely unaddressed in the current ED.

Should have any queries in relations to these matters please do hesitate to contact me on 07 3222 0307.

Yours faithfully
GRANT THORNTON AUSTRALIA LIMITED



Simon Hancox
National Industry Leader – Not-for-profit

Chapter 2 – Registration of not-for-profit entities

Registration

Under the current ED the registration of NFP entities is to a type or sub-type (where applicable). Situations may arise, due to changes in the activities of a NFP or the availability of new tax concessions, where the entity wishes to change classification. In the ED there is no mechanism to facilitate such a change once registered.

Pursuant to draft Section 5-10(1A)(d), to be entitled to be registered the entity cannot have previously been a registered entity. This requirement of registration does not allow entities whose registration had been revoked by the Commissioner to re-register where the reasons for revocation have been rectified.

Section 10-20(2) provides an applicant with the right to treat their application as having been rejected if the Commissioner has not responded in writing to the application within 60 days. The transitional provisions should contemplate whether this provision is applicable in the first year of application where the ACNC may be processing a large volume of applications.

Revocation of registration

As currently drafted, section 10-57 ‘Day when the entity’s registration is taken to be revoked’ is unclear and we believe it requires revision.

Appeals process in relation to registration/revocation of registration

Sub-section 10-C ‘Revoking Registration’ provides the Commissioner with broad conditions that allow for the revocation of registration. In these situations, a robust appeals mechanism should be in place. We note from the ED that these provisions are yet to be drafted.

Chapter 3 – Duties of registered entities

Financial reporting

Section 55-20 ‘Financial statements and notes’ requires an entities’ financial statements to be prepared in accordance with the Australian Accounting Standards. This terminology can be taken to imply that the entity is required to prepare general purpose financial statements, as applicable to a reporting entity. This interpretation is further strengthened by the terminology used in the Explanatory Memorandum to the ED and the fact sheet ‘The ACNC Exposure Draft: Reporting and Auditing’. These documents refer to the financial statement reporting as ‘general purpose reporting’.

General purpose financial statements require the highest level of disclosure under the current Accounting Standards Framework and we strongly believe that a requirement to prepare such financial statements would be onerous on the majority of NFP entities and be inconsistent with current practice and the stated objective of reducing the compliance burden on the sector.

Until specific financial reporting standards are developed for the NFP sector, we recommend that registered entities are able to apply the reporting entity concept in the preparation of their financial statements and that the terminology used in the Explanatory Memorandum and Factsheet be modified to minimise confusion.

Section 55-10(2) ‘Annual financial reports’ specifies that lodgement of the annual financial report is due no later than 31 October each year. This specification does not provide the required flexibility for entities with a substituted accounting period. It would be more appropriate for the section to refer to ‘four months subsequent to the entity’s financial year-end date’. Additionally, consideration needs to be given to the timeframes for lodgement, as those in the ED coincide with the timeframes for most for-profit entities. In order to decrease compliance costs for the sector, an extended timeframe – for example up to six months – could be implemented for medium NFPs.

Proportional reporting

Whilst we strongly agree with the application of proportional reporting, we consider the revenue thresholds set out in the ED to be too low.

Given the reliance in the NFP sector on donations and bequests as sources of income, it is feasible for entities to fluctuate between tiers on an ad hoc basis. The legislation should, therefore, provide a mechanism for a registered entity to apply to the Commissioner to exercise his discretion as to classification in cases where a one-off event has occurred.

Audit

The ED does not address the processes for the appointment, removal or resignation of auditors. We consider the current provisions contained in the *Corporations Act 2001* (Part 2M.4) to be an appropriate basis for drafting these requirements.

Section 55-60 ‘Auditor’s report on annual financial report’ requires the auditor’s report to describe ‘any defects or irregularities in the financial report’ or ‘any deficiency, failure or shortcomings...’. This terminology does not allow for the application of the materiality concept as contained in the Australian Auditing Standards and would impose onerous requirements on the auditor with consequential compliance costs to the entity. We recommend that the terminology be modified to reflect the concept of materiality.

Substituted accounting periods

Section 55-90 provides the Commissioner with the ability to approve a different accounting period, providing the application is made in the approved form. The contents of the approved form have not yet been finalised and the Explanatory Memorandum accompanying the ED implies that a substituted accounting period will only be approved where the entity demonstrates a ‘genuine need’ to adopt an alternative period. In keeping with the objective of reducing compliance costs, we see great benefit in allowing NFPs to have year-ends outside those applicable to the corporate sector. As such, we believe the application of the ‘genuine need’ test should have a low onus of proof.

Chapter 4 – Regulatory Powers of the ACNC

Division 100 ‘Australian charities and not-for-profits register’ requires the Commissioner to maintain a register in relation to registered entities. In the Explanatory Memorandum at page 43 [1.177] there is a general description of the type of information to be included in the register. This principle-based approach to the information to be disclosed is not reflected in section 100-10 of the ED which only provides a list of information to be included in that register. We believe the principles-based approach adopted within the Explanatory Memorandum should be reflected within the ED.

Section 100-20 provides the Commissioner with the power to withhold or remove information from the register in certain circumstances, however there is no mechanism provided whereby the registered entity can apply to have information withheld or removed.