



The Manager
Philanthropy and Exemptions Unit
Indirect, Philanthropy and Resource Tax Division
Australian Treasury
Langton Crescent
PARKES ACT 2600

15 February 2013

To whom it may concern

Re. Draft Australian Charities & Not-for-profits Commission Regulation 2012

Thank you for the opportunity to comment on the draft *Australian Charities and Not-for-profits Commission Regulation 2012* (draft Regulation).

PwC supports the introduction of a national reporting and regulatory framework for the not-for-profit (NFP) sector. We believe it will reduce the compliance burden for NFP entities and make it easier for users of the financial statements to access and compare the financial information of NFP entities.

In our view, the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) and the draft Regulation are a step in the right direction. However, we believe that more can be done to reduce duplication of regulatory requirements and simplify the financial reporting obligations of NFP entities. This is highlighted in our comments overleaf.

We would welcome the opportunity to discuss our views further. I can be reached on (03) 8603 3868 if you are interested in considering our comments in more detail.

Yours sincerely

A handwritten signature in black ink that reads 'Jan McCahey'.

Jan McCahey
Partner

Our key comments on the Draft ACNC Regulation 2012

Interaction of the ACNC Act and draft Regulation with other legislation. It is unclear how the financial reporting requirements of the ACNC Act and the draft Regulation interact with the requirements in other legislation. For example, there are instances where the ACNC Act provides specific exemptions to registered entities which are not available under the *Corporations Act 2001*, including relief from compliance with accounting standards and from disclosing comparative information. In these cases, we recommend the draft Regulations make clear which legislation takes precedence so as to avoid confusion in practice and/or the unnecessary preparation of two different financial statements for two different regulators. Careful consideration is needed to determine whether the ACNC legislation should take precedence over the *Corporations Act* and what ramifications this would have on entities.

- **Consolidated financial statements.** According to Section 60-95 and draft Regulation 8(5), all entities that wish to prepare consolidated financial reports would need to gain permission from the Commissioner, even where they are specifically required to prepare consolidated accounts under the accounting standards. In our view, entities that are required to prepare consolidated accounts under the accounting standards should be able to do so without needing specific permission from the Commissioner.
- **Preparation of joint & collective reports.** We believe the Regulations should require joint and collective financial reports to explain the basis on which the financial statements have been prepared and how transactions have been allocated to individual entities. Further, where a joint report is prepared for a number of entities *that are not* under the control of a common parent entity, we recommend the Regulations clearly state whether one of the responsible entities (directors or trustees) can prepare the financial report and sign the responsible entities' declaration on behalf of the reporting group, or whether the declaration must be signed jointly by all responsible entities.
- **Separate financial reports for subsidiaries.** The draft Regulations are unclear whether entities included in a consolidated report are given automatic relief from separate reporting obligations (Section 60-95). We encourage the ACNC to clarify these requirements.
- **Non-compliance with accounting standards.** There are various circumstances where financial reports lodged with the ACNC will not need to comply with accounting standards:
 - Collective or joint financial reports (subdivision 60-G and draft Regulation 8(5))
 - Financial reports that include additional information or satisfy additional requirements requested by the ACNC Commissioner, which result in the reports' non-compliance with accounting standards (subdivision 60-E and draft Regulation 8(5))
 - Financial reports of registered entities that are not currently required to prepare a financial report that complies with accounting standards (a transitional measure).We are concerned about any legislation that would permit entities preparing and lodging financial reports that do not comply with accounting standards. We believe this could affect the quality and comparability of financial reports in Australia. In our view, any non-compliance with accounting standards should be limited to the areas of presentation or disclosure and, where this occurs, these financial reports should include a statement that explains the non-compliance and its extent.
- **Disclosing comparative information.** Draft Regulation 8(4) gives relief to registered entities from providing comparative information in their financial reports for the financial year commencing 1 July 2013. However, it is unclear whether this relief applies to all financial reports lodged with the ACNC or only those registered entities that are not required to prepare a financial report for any other purposes (eg, *Corporations Act* or State Legislation). We believe that entities should be given relief from disclosing comparative information unless the accounting standards explicitly require it. In instances where comparative information is required by the accounting standards, we recommend giving entities that have never before prepared comparative information a one year "grace period" (transition period) before requiring them to do so.
- **Application of size test.** We believe the application of the size test for registered entities should be clarified due to inconsistencies between the ACNC Act (Section 205-25) and the *Corporations Act* (sections 45A and 45B.) Having different size tests in place is confusing and makes it difficult for entities to comply with existing requirements, particularly if they are subject to more than one test at the same time (eg, companies limited by guarantee). We recommend the size tests between the two pieces of legislation are aligned.