

15 February 2013

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Dear Sir/Madam

AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION - FINANCIAL REPORTING REQUIREMENTS

Draft *Australian Charities and Not-for-profits Commission Regulation 2012* and Accompanying Explanatory Material

Thank you for the opportunity to provide our views on the above draft Regulations and accompanying explanatory material ('EM'). 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 draft regulations and EM.

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.
- 1.2 Moore Stephens has a deep understanding of its clients and the environment in which they operate. We have had a long-standing commitment and involvement with the NFP sector, having been involved with NFP organisations for the past 50 years. We currently provide various professional services, including assurance, accounting, tax and advisory services, to a range of NFP organisations, including:
- religious organisations;
 - large charities; and
 - Universities and TAFE colleges.

As a consequence of our long-standing commitment to and involvement with NFP organisations, we have taken a strong interest in regulatory changes impacting the sector, and have been active in recent years in providing submissions to the Government's various committees and consultations to support the sector through the current reform phase.

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2. Overall Views

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2.1 We support the overall approach being proposed in the draft Regulations and EM, particularly the proposals to:

- harmonise the financial reporting requirements applicable to ACNC registered entities with those currently applicable to companies limited by guarantee and associations;
- impose differential annual information statement, financial reporting and lodgement requirements for registered entities based upon their size;
- require registered entities to prepare their financial statements in accordance with one of the currently recognised financial reporting frameworks (special purpose, Tier 1: Australian Accounting Standards or Tier 2: Australian Accounting Standards – Reduced Disclosure Requirements) based on professional judgement as to the needs of the users of the NFP's financial statements; and
- exempt 'basic' religious charities from having to prepare annual financial reports.

We consider the proposed approach will in most (if not all) cases strike an appropriate balance between the benefits of accountability and transparency on the one hand, and the costs of reporting on the other.

2.2 We also support the proposals to:

- require a registered entities financial statements to provide a true and fair view of its financial position and performance, and require the responsible entity to attach a declaration to its financial statements that, in effect, attests to whether the statements comply with this requirement;
- require a registered entity that prepares special purpose financial statements to prepare its statements in accordance with the 'minimum' Australian Accounting Standards that currently apply to companies that lodge their financial statements pursuant to the *Corporations Act 2001*;
- not require registered entities to provide financial information in their 2012-13 annual information statements; and
- encourage registered entities to adopt the National Standard Chart of Accounts (NSCOA).

We consider these proposals will enhance the quality of financial information published by registered entities without imposing undue costs on them.

2.3 The remainder of this submission details our concerns with some of the proposals in the draft regulations and EM (including some of the proposals identified above), and discusses some possible ways of addressing these concerns.

3. **Specific Concerns and Recommendations**

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Joint and Collective Reporting

3.1 Whilst we support in principle the proposal to permit registered entities to depart from the requirements in Australian Accounting Standards dealing with the preparation and presentation of consolidated financial statements by providing joint or collective reporting, we have a number of concerns with the proposal, including the following.

- a) It is unclear from the EM what criteria the Commissioner might use to determine whether a NFP entity should be permitted to depart from the consolidation requirements in Australian Accounting Standards.

Whilst we appreciate that the Commissioner may need to adopt a 'case-by-case' approach when considering applications for joint and collective reporting, *we consider it would benefit both the Commissioner and NFP entities alike to have at least some minimum guidance or criteria that would assist NFP entities in understanding whether they might qualify for joint and collective reporting.* The types of circumstances we envisage that might qualify for joint and collective reporting include:

- a group of NFP entities that are subject to common control (all have the same ultimate 'parent') but do not prepare consolidated financial statements because their 'parent' is domiciled outside of Australia; and
 - a group of entities are part of a single civil structure but have different ABNs for administrative purposes only.
- b) The prospect that a NFP entity might, in preparing its financial statements on a joint or collective reporting basis, not comply with the requirements in applicable Australian Accounting Standards raises some questions regarding how the auditor might deal with the divergence from the Accounting Standards in their audit report.

Some argue that the divergence would give rise to an emphasis of matter paragraph in the auditor's report for a set of general purpose financial statements on the basis that the applicable financial reporting framework is the ACNC Act and Regulations and all applicable Australian Accounting Standards except for those the ACNC has effectively relieved the registered entity from applying. However, we are concerned that differences of opinion might arise amongst practitioners, particularly in the absence of definitive guidance.

We recommend the Australian Charities and Not-for-profits Commission (ACNC) discuss this matter with the Australian Accounting Standards Board (AASB) and the Auditing and Assurance Standards Board (AuASB) with a view to establishing a clear position on the implications for audit reports of any divergences from applicable Australian Accounting Standards as a consequence of joint and collective reporting.

Australian Accounting Standards Applicable to Non-Reporting Entities

3.2 As noted above, we support the proposal to require a NFP entity that prepares special purpose financial statements to prepare its statements in accordance with the 'minimum' Australian Accounting Standards that currently apply to companies that lodge their financial statements pursuant to the *Corporations Act 2001*. However, we note that the minimum Standards identified on page 3 of the EM do not include AASB 1054: Australian Additional Disclosures. *We recommend that AASB 1054 be listed as a minimum Standard for application by NFP entities registered with the ACNC, primarily because:*

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- *it is one of the minimum Australian Accounting Standards applicable to non-reporting entities lodging under the Corporations Act 2001; and*
- *it contains disclosure requirements that are relevant to not-for-profit entities.*

3.3 We also note that AASB 1004: Contributions is not included in the list of minimum Australian Accounting Standards in the EM. *As contributions represent the vast majority of most NFP entities' income, to facilitate consistent reporting across NFP entities AASB 1004 should be included in the list of minimum Standards.*

3.4 As you may be aware, the AASB is currently undertaking a project to revise the requirements in AASB 1004. AASB 1004 has been criticised by NFP entities, primarily because it requires NFP entities to report contributions (such as government grants) as income in the period in which the contributions are received rather than in the period or periods in which the contributions are spent (and expenses recognised), thereby creating 'accounting mismatches' in their financial statements. The AASB's project to revise AASB 1004 has been aimed at addressing this issue by developing requirements that facilitate NFP entities presenting more realistic depictions of their financial performance. Accordingly, not including AASB 1004 (and, by implication, the accounting requirements that will eventually replace AASB 1004) in the list of minimum Australian Accounting Standards to be applied by NFP entities will potentially diminish the quality of reporting provided by these entities to the ACNC, other Australian government agencies and the Australian public generally.

3.5 The EM proposes that, in contrast to the circumstances that currently apply to NFP entities lodging their financial statements under the Corporations Act 2001, non-reporting entities lodging their financial statements with the ACNC will not be required to comply with Regulatory Guide (RG) 85: *Reporting requirements for non-reporting entities*. As you are aware, RG 85 requires non-reporting entities to prepare their financial statements in accordance with the relevant recognition and measurement requirements in Australian Accounting Standards. It is unclear, however, how this proposal will interact with the proposal for the Commissioner to allow reports lodged with another Australian government agency, such as the Australian Securities and Investments Commission (ASIC), to be considered lodged with the ACNC. *We recommend that the ACNC clarify whether NFP organisations that are non-reporting entities and registered with the ACNC but lodge their financial statements with ASIC as a transitional measure will be subject to RG 85.*

Temporary Movement Between the Reporting Tiers

3.6 The EM proposes that the Commissioner will be empowered to treat a registered entity as having not transitioned from one reporting tier to another tier if the transition is caused by

'something extraordinary' and it was 'likely' that the entity would transition back to the original tier in the following year. *Consistent with our comments at 3A.1a) above, we recommend that some minimum guidance or criteria be provided that would assist registered entities in understanding the circumstances in which the Commissioner might invoke this power. We note that ASIC provides some minimum guidance in RG 115: Audit relief for proprietary companies regarding the circumstances in which it might consider giving audit relief to a small proprietary company that temporarily becomes 'large'.*

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ACNC's Relationship with the Australian Accounting Standards Board (AASB)

3.7 The EM notes that the ACNC and AASB will work together to develop guidance on financial reporting for entities registered with the ACNC. *We wholeheartedly support this proposal for a number of reasons, including the following:*

- *NFP entities generally do not have the time or resources to respond to AASB proposals, but do often have views that could provide meaningful input to AASB proposals. The ACNC's relationship with the AASB could facilitate these views being conveyed to the AASB in a cost-effective manner; and*
- *ensuring the ACNC is kept abreast of potential changes in financial reporting requirements that will impact on NFP entities and has sufficient time to communicate its view to the AASB and NFP constituents.*

3.8 In respect to the second dot point directly above, as discussed elsewhere in this submission the AASB is currently reviewing the requirements in AASB 1004. We are also aware that the AASB is about to publish an Exposure Draft of guidance for NFP entities to assist them in applying the requirements in AASB 10: Consolidated Financial Statements. *To ensure that the ACNC's reporting requirements are kept up-to-date, it is essential that the ACNC is in regular contact with the AASB and has a collaborative relationship with the standard setter.*

Other Matters – Reduced Disclosure Requirements

3.9 Based on our experience with NFP entities, we are aware of a number of areas that could be improved. Some of these areas are currently under review by the AASB, including accounting for contributions and the identification of 'parents' and 'subsidiaries' in a NFP context. *One area that is not currently under review by the AASB, but arguably warrants immediate attention, is the definition of 'public accountability' in AASB 1053: Application of Tiers of Australian Accounting Standards as it applies to NFP entities.*

3.10 We note an increasing number of NFP entities adopting Tier 2: Australian Accounting Standards –Reduced Disclosure Requirements (RDR). As noted in the EM, RDR comprises the recognition, measurement and presentation requirements of Tier 1: Australian Accounting Standards, but significantly less onerous disclosure requirements of the same Accounting Standards.

3.11 To apply RDR, an entity must:

- prepare general purpose financial statements; and
- not have 'public accountability', as defined in AASB 1053.

However, the definition of 'public accountability' in AASB 1053 is consistent with the notion adopted by the International Accounting Standards Board (IASB) in its *International Financial Reporting Standard for Small and Medium-sized Entities (IFRS for SMEs)*, which was drafted with for-profit (FP) entities in mind.

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- 3.12 Whilst we unequivocally support the notion and role of RDR in providing a cost-beneficial reporting framework for SMEs, and, when appropriate, encourage our NFP clients to consider adopting RDR, we are concerned that as a consequence of the AASB adopting a concept developed for FP entities, NFP entities that might otherwise be considered 'publicly accountable' are providing a lower level of disclosures than might otherwise be expected by their stakeholders.
- 3.13 We acknowledge the difficulties in identifying robust criteria that consistently identify NFP entities falling under Tier 1 and Tier 2 reporting requirements, many of which the AASB is aware of as they are documented in the Basis for Conclusions to AASB 1053. Nevertheless, we consider that the current definition of 'public accountability' is effectively non-operational in a NFP context. Subject to how an entity reads the definition, it could reasonably conclude:
- all NFP entities preparing general purpose financial statements are required to apply Tier 1: Australian Accounting Standards (that is, NFP entities are not permitted to apply Tier 2: Australian Accounting Standard – Reduced Disclosure Requirements – as they prepare general purpose financial statements and therefore have users relying on their financial statements, they also have public accountability); or
 - all NFP entities preparing general purpose financial statements other than those that hold assets in a fiduciary capacity for a broad group of outsiders (which is likely to preclude few NFP entities) are permitted to apply Tier 2: Australian Accounting Standard – Reduced Disclosure Requirements.
- 3.14 We also consider that the definition of a reporting entity as it applies to NFP entities could benefit from a review. As it currently stands, the definition relies on the existence of users dependent on general purpose financial reports for information. However, in many circumstances, NFP entities have no identifiable users apart from government departments and agencies. Nevertheless, their NFP status, which provides them with various benefits, including tax-free status, suggests that they are accountable to the broader community. Accordingly, we recommend that the definition of reporting entity as it applies to NFP entities be reviewed to facilitate improved financial reporting by NFP entities that receive publicly funded benefits.

Provision of Comparative Information

- 3.15 We support the proposal to relieve NFP entities from the requirement to provide comparative information in the first set of financial statements lodged with the ACNC (financial years commencing on or after 1 July 2013). However, we recommend that NFP entities that can present comparatives in their first set of financial statements lodged with the ACNC not be prevented from doing so.

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

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Yours faithfully



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