CATHOLIC HEALTH
Australia

Catholic Health Australia

Exposure Draft Australian Charities & Not-for-profits Commission Bill: Response to Treasury Consultation

January 2012

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About Catholic Health Australia

21 public hospitals, 54 private hospitals, and 550 aged care facilities are operated by different bodies of the Catholic Church within Australia. These health and aged care services are operated in fulfilment of the mission of the Church to provide care and healing to all those who seek it. Catholic Health Australia is the member organisation of these health and aged care services. Further detail on Catholic Health Australia can be obtained at www.cha.org.au.

Summary: The opportunity of what not-for-profit reform might deliver

The Catholic Health Australia (CHA) network of not-for-profit public hospitals, private hospitals, residential aged care services, community aged care services and home nursing services supports the establishment of an Australian Charities and Not-for-profits Commission (ACNC). Noting this support, CHA does not believe the *Exposure Draft Australian Charities and Not-for-profits Commission Bill 2012* sufficiently meets expectations of what not-for-profit health and aged care services were seeking from the establishment of the ACNC. CHA doubts the *Exposure Draft Bill* meets the expectations of the wider not-for-profit sector.

Nine separate Governments currently set and administer regulatory frameworks in relation to not-for-profit registration, reporting and fundraising requirements across Australia. Many not-for-profit bodies work across the boundaries of these different jurisdictions. Not-for-profit health and aged care organisations were looking to see harmonisation of State, Territory, and Commonwealth not-for-profit registration, reporting and fundraising requirements across Australia. We believe that other parts of the wider not-for-profit sector were looking for similar outcomes. National harmonisation offers the best potential for reduction in 'red tape' and duplication in not-for-profit administration. This is the opportunity of what not-for-profit reform might deliver.

The *Exposure Draft Bill* does not seek to facilitate efforts of national harmonisation. Those not-for-profit organisations established under State and Territory laws appear set to continue to need to meet local registration and reporting arrangements, as well as new ACNC requirements where they seek access to charitable concessions. This will increase reporting requirements, not reduce them as intended. It will create an unjustified duplication.

The *Exposure Draft Bill* is proposed as the vehicle that will replace the current definition of charity, replace current governance practices of not-for-profit bodies, and establish a new set of seemingly ambiguous principles of law. In earlier CHA submissions to Treasury on *Introducing a statutory definition of charity* and the *Review of governance arrangements,* we have outlined our views questioning why a statutory definition of charity is actually needed. We have also argued that the case for change of governance arrangements of most not-for-profit bodies has not been made so as to warrant change to current governance arrangements. We will not revisit those arguments in this submission, but will advance below in our assessment of each of the chapters of the *Exposure Draft Bill* our view that, as currently drafted, it risks creating a new set of seemingly ambiguous principles of law that, if enacted, would likely require the intervention of the courts to help give them clarity of meaning.

Specifically, we argue below that the *Exposure Draft Bill's* proposal to:

- create a new test of "public trust and confidence" to inform when the Commissioner can intervene into the operation of a not-for-profit organisation may create legal uncertainty, and ignores the existing good standing of not-for-profit organisations and the current checks and balances many are already subject to;
- allow the Commissioner to require "any" information from, to issue public sanctions against or direct a not-for-profit organisation to act in a certain manner is simply unreasonable, and would impose a new regulatory burden on not-for-profit organisations greater than those on government or for-profit enterprises;
- introduce new governance requirements makes it unclear at present as to what body of law not-for-profit organisations would operate under when the *Exposure Draft Bill* is enacted.

Addressing these challenges suggests the stated intent of the *Exposure Draft Bill* becoming law by 1 July is unlikely to be achievable. We argue there is no need for this deadline to be met.

We conclude this submission by offering an alternate view on the possible objects and

functions of the ACNC. Our alternate view to that expressed in the *Exposure Draft Bill* is that the ACNC be tasked with becoming the administrator of not-for-profit registration, reporting and fundraising oversight on behalf of all Governments, and that it be tasked to enhance the governance capacity of those participants of the sector requiring help, such that the sector's contribution to the Australian community be improved as a consequence.

CHA seeks to help contribute to how the *Exposure Draft Bill* can be drafted to better satisfy the expectations of not-for-profit organisations for an ACNC, in part by way of retention of existing charity law practices and seeking national harmonisation of existing State and Territory approaches to not-for-profit administration.

In providing this submission, we endorse the submission of the Australian Catholic Bishops Conference, a submission that CHA has contributed to in part. We also observe that the release of the *Draft Exposure Bill* during the Christmas and New Year holiday period is not consistent with best practice regulatory review. Many from within the CHA network who would usually review and comment on such matters were not able to do so as a consequence of the consultation's timing.

Comments on Exposure Draft Chapter 1

Draft s1-10 proposes the law to commence on 1 July 2012. Whilst commencement within 6 months might be possible, CHA proposes it would be preferable to commence at a point when some certainty on the prospects of national harmonisation have been obtained and that there is sector support for the detail of the proposed law.

Draft s2-5(1) proposes the law *"promote public trust and confidence"* in entities that *"provide public benefit."* Draft s900 offers no definition of any of these key words or phrases. Whilst their common meaning is obvious and the intent of their inclusion well meaning, we suggest they are legally ambiguous and open to misinterpretation. (We acknowledge the likely application of the *Acts Interpretation Act 1901* on these phrases at Draft 22-5(1) and at some other parts of the *Exposure Draft Bill* may result in the phrases being of little effect in practice).

The inclusion of the proposed object of "*public trust and confidence"* at Draft s2-5(1) suggests such trust and confidence is currently lacking and a regulatory response is accordingly needed. CHA does not accept this assertion, and no argument appears to have been made as to why the inclusion of this object is actually warranted.

Draft s2-5(2)(a)(i) proposes a further object is to promote "*good governance, accountability and transparency."* Again, the inference arising from their inclusion is that these elements do not currently exist. No argument has been made in support of this assertion. Additionally, their inclusion ignores the current mechanisms by which *"good governance, accountability and transparency"* are already required and achieved, and would continue to be required or achieved even if the section came into effect.

To illustrate this point, not-for-profit health and aged care services are required to be licensed, accredited and monitored by a mixture of State and Territory bodies. These requirements look set to continue unchanged even if the *Exposure Draft Bill* becomes law. Licensing, accreditation and performance monitoring is overseen by complex governance structures that currently meet expectations of service consumers, service funders and service owners alike. Other types of not-for-profit organisations have similar governance practices or regulatory and licensing requirements that contribute to *"good governance, accountability and transparency."*

Draft s2-5(2)(a)(ii) proposing to *"minimise regulatory duplication and simplify interactions with governments"* is a welcome inclusion. It is an object that should be expanded. We note the proposal that the law's intent be to simplify interactions with "*governments."* This is appropriate recognition of the opportunity to involve State and Territory Governments in pursuit of national harmonisation - an opportunity that regrettably has not been further provided for in the *Exposure Draft Bill.*

Noting CHA's view that ideally the Commissioner would preside over a nationally harmonised

regulatory framework for the administration of not-for-profit organisations, we accept most of the powers proposed in Draft s2-10. We specifically support the education and information roles proposed at Draft s2-10(c). We note the potential challenges likely to be encountered with the Commissioner being able to fulfil the function of being a *"point of contact with government"* at Draft s2-10(d), or meeting the expectations of not-for-profit organisations that the Commission "be" the point of contact. The drafting is ambiguous, and open to misinterpretation.

To illustrate the potential to misinterpret this proposed section, any not-for-profit that is in some way funded by a Commonwealth agency will still need to interact with that funding agency after the establishment of the ACNC. It is not clear at this point just how much, if at all, that interaction will change as a consequence of the ACNC's establishment. From time to time, not-for-profits encounter challenges in interacting with funding agencies. In such circumstances, it is unclear as to if the inclusion of Draft s2-10(d) might give rise to the potential for a not-for-profit or group of not-for-profits to seek to utilise the proposed section to require the Commissioner to become *"a"* point of contact.

Consideration should also be given in the drafting of the proposed s2-10 as to what other powers a Commissioner might ideally have. Draft subsections (d) and (h) propose the Commission as a single point of contact with the Commonwealth and a "cooperating" role with Commonwealth agencies. These proposed functions could be expressly expanded by granting the Commission a power for it to identify and resolve problems the not-for-profit sector faces in dealing with the Commonwealth, or driving improvement in the way the Commonwealth contracts or funds nor-for-profit organisations. The Commission might also be required in its annual report to the Parliament to give a specific report on 'red tape' reduction for not-for-profit organisations in their dealings with the Commonwealth.

Draft s2-15 offers the opportunity for the *Exposure Draft Bill* to be revised such as to allow for national harmonisation. The proposed section currently appropriately seeks to limit powers of the Commission to those powers held by the Commonwealth, but ideally the section could be redrafted to allow for participation of State and Territory bodies in the working of a national 'one stop shop' for administration of not-for-profit organisations, at such time when agreement with States and Territories has been achieved.

Draft s3-5 identifies "*donations, tax concessions, grants, and other support from Australian Governments"* as the funding sources of not-for-profit organisations. This list of funding sources is not complete. Many not-for-profit human services are funded by consumer contribution by way of direct "fee-for-service." Private hospital services can be funded through private health insurance products, and aged care accommodation can be funded through aged care bonds, which are, in effect, loans of a resident to the care provider to enable capital funding of accommodation. Many not-for-profit organisations have themselves over time built their own assets through sound management and investment strategies, enabling them to fund capital development or service programs.

We see no reason for the inclusion in the proposed law of Draft s3-5, but if the section is retained and it proposes to list sources of funding, it would ideally provide an entire list of all funding sources so as not to create the opportunity for confusion about the treatment of an entity funded in a way not prescribed in the law. The uncertainty that may be created by the unintentional exclusion of a funding source is that an entity funded in a way not prescribed in the proposed law may risk being excluded from registration should the section ever be interpreted for the purposes of defining the extent of entities to be regulated by the Commission.

Further at Draft s3-5, reference is again made to the proposed law promoting "*public trust and confidence."* This submission has already argued that in the absence of a definition of these words and phrases, the proposed section is ambiguous.

Comments on Exposure Draft Chapter 2

Draft s4-1(1) and s4-1(2)(b) make reference to "trust and confidence." We have argued earlier in this submission that this phrase is ambiguous and warrants removal or definition.

Draft s4-1(2)(b) proposes a power for the Commission to deregister entities where "trust or confidence" is or "may be" undermined. Again, the application of the *Acts Interpretation Act 1901* would likely render Draft s4-1(2)(b) as of no effect, but we note later sections of the *Exposure Draft Bill* would give effect to the intention expressed here. We do not argue against a Commissioner having a power to deregister an entity in defined circumstances. Rather, we argue the circumstances warrant specific definition. The intent of a power for the Commission to act in circumstances where "trust and confidence…may be" undermined is not clearly defined, and would likely require future definition by the courts if it is not sufficiently defined in the legislation.

Draft s5-10(1) introduces the proposed table of entities entitled to be registered with the Commission. We concur that the proposed headings in "advancement of health," the "advancement of social and community welfare", and "advancement of religion" would sufficiently enable the registration of not-for-profit Catholic health and aged care bodies, in continuance of their current recognition by the Commonwealth as income-tax-exempt entities. We particularly endorse the inclusion of Draft s5-10(2) which enables entities to be registered under multiple headings.

There are two deficiencies with Draft Division 5. The first is at Draft s5-10(1A)(a), which would require an entity to be not-for-profit. Whilst the reason for this proposed section is well intended, it may have the effect of preventing the registration of an entity established with a purpose of serving a non-profit or charitable entity by way of remitting all surpluses to that non-profit or charitable entity. There are multiple illustrations of such entities within the CHA network. By way of illustration, it is common for charitable hospitals to operate distinct commercial businesses within the group structure as part of the normal business of hospital services. Commercial business may involve leasing of medical consulting rooms, provision of car parking, operation of cafes and shops within hospital premises, food services, linen services, and pathology services and alike. In circumstances where an entity that delivers a commercial service is owned by a charity, and where any surpluses are remitted to that charity, there should be no barrier to the entity being registered with the proposed Commission. We favour the approach of Taxation Ruling 2011/4 section 61 that states "*commercial or business-like activities can be compatible with a charitable purpose. An institution undertaking commercial or business-like activities can be charitable if: its sole purpose is charitable and it carries on a business or commercial enterprise to give effect to that charitable purpose. In these circumstances it does not matter that the activities themselves are not intrinsically charitable; the sole purpose of the institution is charitable and the commercial activities directly carry out the charitable purpose; it has a business or commercial purpose that is simply incidental or ancillary to its charitable purpose; or its activities are intrinsically charitable but they are carried on in a commercial or business-like way.*"

The second deficiency is the proposal expressed in the table that "social and community welfare" not-for-profit organisations could only be registered where they seek to "prevent" as opposed to "relieve" poverty. Ideally, both types of entities would be registrable under this heading.

Draft Division 10 deals with registration. The Division is silent on if registration would be required once only or annually. Once-only registration is assumed, but ideally this might be confirmed in the Division.

Draft s10-55(1)(e) proposes to express as law, free of the application of the *Acts Interpretation Act 1901,* the new legal principle of "public trust and confidence." We have argued earlier against this proposal. Additionally, the proposed section proposes the Commissioner have a power to de-register an organisation if this "public trust and confidence" is to be "harmed or jeopardised." Harm or jeopardy are not defined in Draft s900, and are phrases open to legal challenge. Ideally,

the act would define the circumstances in which deregistration might occur.

Draft s10-55(2) proposes a provision of the *Corporations Act 2001* relating to insolvency have effect. We have no objection to this proposal. However, the inclusion of this provision raises the inference that no other provisions of the *Corporations Act 2001* would have effect for the purposes of the *Draft Exposure Bill.* This may or may not be intended. The point is that for entities proposed to be registered under the *Draft Exposure Bill,* it is at present unclear as to what body of law they would operate.

CHA has in its submission on the *Review of governance arrangements* expressed broad satisfaction with the operation of the *Corporations Act 2001* in relation to the governance of not-for-profit companies limited by guarantee. Draft s10-55(2) gives rise to the possibility of the approach of the *Corporations Act 2001* no longer being applicable to entities currently registered with the Australian Securities and Investment Commission. Just what the Commonwealth proposes here will ideally be resolved at the conclusion of the *Review of governance arrangements.* Until such time, the *Draft Exposure Act* will be incomplete and future legal certainty unclear.

Comments on Exposure Draft Chapter 3

CHA has no major objections to the proposed provisions of Chapter 3, with the exception that:

- Those Draft sections that would require provision of a financial statement by 31 October might be revised to reflect a more realistic approach to circumstances where many entities have varying year-end reporting dates, so as removing the need for a 'red tape' like application for exemption to be made by way of the proposed Draft s55-90;
- Draft s55-40(d) could be interpreted as requiring the auditor to form an opinion on matters considered beyond the present scope of audits for companies limited by guarantee, triggering both an increase in audit cost and compliance when compared to current costs and compliance;
- Draft s55-80(1) that proposes to grant to the Commission a power to require additional reports would ideally only be applicable where the Commissioner has "reasonable grounds" to require such material.

Comments on Exposure Draft Chapter 4

Draft s100-10 enables the Commissioner to maintain a register of entities. In relation to this section:

- It is not clear what benefit is served by retaining on the proposed register the details of each formerly registered entity in perpetuity;
- The impact of the publication and retention on the register of "warnings" proposed to be issued by the Commissioner to an entity warrants consideration prior to Draft s100-10(n) being enacted. Specifically, CHA suggests the listing in perpetuity of a "warning" on the register in circumstances where the matter about which the "warning" was issued has been remedied may be unreasonable;
- The Explanatory Memorandum at page 39 suggests the section might be utilised to require entities to publish "future activities and plans." The reason for such a suggestion is unclear. Importantly, asking not-for-profit health and aged care services to disclose future plans would result in market impacts. By way of illustration, not-for-profit hospitals or residential aged care providers seeking to expand their services require access to land. Requiring a statement of such an intention to be issued would possibly impact property prices in areas where developments were planned. Similarly, not-for-profit hospitals and aged care services may face greater regulation than for-profit hospitals and aged care operators if not-for-profit operators were required to publish details of their future activities and plans in circumstances where no such obligation was placed on for-profit providers. CHA notes that Draft s100-10 does not explicitly suggest future business

plans would need to be published, but the suggestion in the Explanatory Memorandum that publication of plans be considered has not been sufficiently argued so as to warrant Draft s100-10(p) and (q) being given that authority.

Draft s120 is draconian, and would impose on not-for-profit organisations regulatory obligations far in excess of those to which they are currently exposed. The section proposes several new powers that have as yet not been explained as to why they are needed. These powers are found at:

- Draft s120-10(1)(a) where the Commission may require "any" information. Ideally, the power to require information would relate only to the administration of the proposed legislation, and not to "any" matter;
- Draft s120(1)(b) and (c) where the Commission could require "an entity" to "give evidence" before the Commission and produce "any documents" that, by way of Draft s120-10(2)(a), might be required by oath;
- Draft s120-100(1)(b) where the Commission could investigate alleged contravention of any Australian law.

For many not-for-profit organisations not currently subject to the *Corporations Act*, these powers would impose new obligations. For most large registered entities, the obligations would not necessarily be overly burdensome, but the question not addressed is as to why such powers are needed, and why they would need to operate across all not-for-profit bodies. The inclusion of such broad powers within the Commission risk setting a tone for the Commission's interaction with not-for-profit bodies as being more interested in 'policing' the sector than 'promoting' it.

Placing such powers in the Commission would require it to be sufficiently skilled as an investigatory body. As other agencies of the Commonwealth, State and Territory Governments already possess capability to investigate breaches of the law, it may be best to give to the Commission a power to refer matters for investigation to other competent bodies, whenever the Commission finds a need for an investigation arises.

Draft s120-200 proposes the introduction of another new power whereby warnings could be issued to not-for-profit organisations. The circumstances in which warnings could be offered are very broad; Draft s120-200(1) suggests they could be issued where there are "reasonable grounds" that "misconduct…mismanagement" or the contravention of "an Australian law" is "believed" to have occurred.

We assume the power to issue warnings is based on intent to protect donor and tax concessions from being subject to consequences of misconduct, mismanagement and illegal actions. Whenever the Commission believes an illegal action has occurred, the Commission would be expected to have a power to refer the matter to a competent body for that illegality to be investigated and, if appropriate, charges laid and then tested by way of prosecution. The introduction of a new power that would draw public attention to allegations without them first having been tested through the justice system should be approached with caution.

Similarly, "misconduct" and "mismanagement" are not defined in s900, and are subjective in nature such that it is not clear in the section as to what might warrant conduct that might trigger a "warning". These words, being uncertain in their meaning and application, should not be expressed in legislation without sufficient meaning being ascribed.

The issuing of a "warning" will likely take the form of a public sanction, and will generate public awareness and media commentary of why a "warning" was issued in relation to a not-for-profit body. Once issued, particularly if incorrectly issued, the not-for-profit organisation's public standing will be impacted in ways not yet tested. If such a power were to be created, at the very least the legislation should:

- Clearly articulate the set of circumstances in which such a "warning" could be issued;

- Provide for a period of at least 60 days within which a not-for-profit organisation should have opportunity to remedy the issue triggering the possibility of a "warning" being issued, such that the "warning" might not be issued where the matter has been remedied;
- Expunge from the register of organisations the "warning" at a time when the matter triggering the making of the "warning" has been remedied, in contrast to the proposal at Draft s100-10(1)(n) that would retain "warnings" on the register in perpetuity.

Draft s140-10 and 15 introduce the potential power of the Commissioner to give directions to not-for-profit entities. The power proposed is akin to that of a company administrator appointed to a corporation placed into receivership. Unlike a company administrator, the Commissioner would not necessarily have the depth of experience in not-for-profit management to direct an entity in the manner that a company administrator is skilled to address a corporation's financial position. A direction could be given in circumstances where among other things the Commissioner "believes":

- "direction is necessary to advance the purpose" of the not-for-profit organisation;
- the not-for-profit organisation is "conducting affairs improperly."

The type of directions that Draft s140-15 would enable include:

- the ability to exclude an individual from taking part in the "conduct of the activities" of the not-for-profit organisation;
- the ability to prohibit an entity from entering a transaction;
- "anything else as to the way in which the affairs" of the not-for-profit organisation are to be conducted.

Current law relating to not-for-profit organisations allows directors, members or trustees to determine "direction necessary to advance the purpose" of an organisation. Similarly, current law allows directors, members or trustees to assess and act in relation to the proper conduct of affairs. No regulator currently has an open power to do "anything else as to the way in which the affairs" of a not-for-profit organisation are conducted. No argument has been advanced as to why such new and wide-reaching powers are needed, or should be given to the Commission. Nor has consideration been given to how such powers would change the nature of civil society. In essence, Draft Division 140 would give the ability to government, through the Commission, to control not-for-profit organisations. We do not see why a government would want such a power, or what justification exists for giving government such a power.

Draft s 143-125 details circumstances in which the Commission may suspend a trustee. We note firstly that the section is not proposed to operate in relation to trusts established by way of State or Territory law. In circumstances where it does propose to operate, a trustee could be removed where "public trust and confidence" may be harmed. This submission has argued earlier as to why this concept of "public trust and confidence" could not easily operate.

Comments on Exposure Draft Chapter 5

Chapter 5 deals with the establishment of the Commission itself. The proposed sections appear sufficient to satisfy the requirements of the Commission's establishment.

Comments on Exposure Draft Chapter 6

Chapter 6 deals with the establishment of the Commission's advisory board. The proposed sections appear sufficient to satisfy the requirements of the advisory board's establishment. We do not see that Draft s170-10(b) suggesting the Board should comprise people holding law, tax or accounting qualifications is necessary. If the Advisory Board is to play a role in advising the Commission on the nature and needs of the not-for-profit sector, the advisory board should be comprised of people skilled in the not-for-profit sector as proposed by Draft s 170-10(b).

Comments on Exposure Draft Chapters 7 and 8

Chapters 7 and 8 deal with administrative and matters of definition that appear sufficient to satisfy the requirements of the Commission's affairs.

This submission has already addressed deficiencies relating to the definition of some wording of the proposed legislation. Draft s900 could be revised to address some of these uncertainties.

Draft s210-15(1)(c)(iii) proposes to apply the *Corporations Act 2001* principle of shadow directors to the definition of who a "responsible person" is. The proposed section would include within the definition of a "responsible person" a person "in accordance with whose instructions or wishes" decisions of the not-for-profit organisation were made. The principle of shadow directors currently operates in relation to companies limited by guarantee, but not to all other legal forms in which not-for-profit organisations might exist. Where it does operate, it is not widely understood, and is enforced only be way of complicated legal action. Under current arrangements, organisations can determine by selection of their legal form as to if they wish to operate subject to this principle. The inclusion of Draft s210-15(1)(c)(iii) would remove this choice. As no argument has been made as to why such a provision should be required, and given lack of awareness as to how the principle operates, there appears to be little to support the inclusion of Draft s210-15(1)(c)(iii) in the legislation.

An alternative proposal for the objects and functions of the proposed Bill

CHA supports the removal of 'red tape' from the administration of not-for-profit organisations, and supports efforts to increase the way in which service consumers, service funders and service owners can assess transparently the operations and impacts of not-for-profit organisations where they receive significant government or public funding. We argue these two objectives can be achieved without the need for many of the proposals contained in the *Exposure Draft Bill.*

Our alternate view to that expressed in the *Exposure Draft Bill* is that the ACNC be tasked with becoming the administrator of all not-for-profit registration, reporting and fundraising oversight on behalf of all Governments in Australia, but that this administrative function be in relation to a nationally harmonised framework capturing existing legal and governance requirements of not-for-profit organisations, as opposed to the often new and uncertain proposals detailed in the *Exposure Draft Bill.* Put simply, we support all State and Territory Governments ceding these responsibilities to the ACNC as there is at present legal certainty and few complaints about the way in which health and aged care not-for-profit organisations are established and operate. Whilst supporting national harmonisation, we do not see a case for this certainty of approach to be disturbed by some elements proposed in the *Exposure Draft Bill*.

CHA supports the establishment of an ACNC, but not with the purposes currently proposed. We see an opportunity for an ACNC to:

- be tasked to enhance the governance capacity of the sector through capacity development, in those circumstances where such improvement might benefit the sector's contribution to the Australian community. We see the bulk of the health and aged care community as being currently well regulated, governed and transparently scrutinised to protect the interests of service consumers, service funders and service owners. We wonder what value the ACNC as currently proposed will deliver to this health and aged care sector;
- help identify and resolve challenges that not-for-profit organisations encounter in their dealings with Governments, particularly in relation to challenges associated with power imbalances not-for-profit organisations face in negotiating and administrating service contracts on behalf of government agencies. This could be achieved through the expansion of Draft s2-5(2)(a)(ii) that proposes reduction of regulatory duplication and simplification of interaction with governments. The

opportunity exists for the Commission to become an 'educator' of government on essential elements of contractual and operating agreements of not-for-profit organisations. Similarly, the Commission could be an 'educator' for the not-for-profit sector, detailing for not-for-profit leaders the essential elements of successful interaction with government.

Our summary assessment of the Exposure *Draft Bill* is that it is not yet in a form that should proceed to the Parliament as its purpose does not yet sufficiently reflect priorities that should drive not-for-profit sector reform. The proposals that it does contain are in many cases likely to create legal uncertainty and impose new and unreasonable burdens.