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**ACFID Response to the  
*Australian Charities and NFP  
Commission exposure draft***

**27 January 2012**

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Submission to The Treasury

Information provided by: Australian Council for International Development

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*This submission was written by Dr Susan Harris Rimmer, Acting Executive Director at ACFID. It is an ACFID submission but the analysis and/or opinion presented does/do not necessarily reflect the views of all ACFID member agencies.*

## **1 Introduction**

1. The Australian Council for International Development (ACFID) welcomes the opportunity to make this submission to the Treasury regarding the Australian Charities and Not-for-profits Commission Exposure Draft (the ACNC Exposure Draft).
2. ACFID is the national association of Australian non-government organisations (NGOs) working in the field of international aid and development. ACFID has 76 members operating in more than 100 developing countries.
3. Since 1965, ACFID has assisted the Australian aid and development sector to promote sustainable human development so that people can enjoy the full range of human rights, fulfill their basic needs free from poverty and live in dignity.
4. Some of our members are large organisations with hundreds of employees and with revenues in the hundreds of millions of dollars while others are very small organisations with a handful of employees and supported by volunteers. The membership of ACFID is supported by the giving of over \$850 million dollars per year by over 2 million Australian households (2009/10). The Australian people are generous supporters of our sector and the work that it does to alleviate suffering in developing countries.
5. As the peak body for the aid and development sector in Australia, ACFID represents the experience and expertise of civil society operating in development contexts around the world.

## **2 Scope of this submission**

6. This submission is in response to the exposure legislation on the establishment of the Australian Charities and Not-for-profits Commission released by the Treasury in late 2011. We have already made a separate submission on the *Governance Arrangements Consultation Paper*.
7. The establishment of a national, independent regulator for charities and community services has been supported by ACFID members. We welcomed the Federal Government's announcement in May 2011 to establish the Australian Charities and Not-for-profits Commission and have continued to work with our members, Government and the ACNC implementation taskforce towards realising this objective. However, the draft ACNC legislation in its current form is unacceptable to us for reasons outlined below, which can be rectified in time for the Commission to commence on schedule.
8. We must place on the record our strongest objection to the consultation period over Christmas for such a pivotal piece of legislation. It is clear

to us that our members have not had the staffing capacity or time to engage as they would have wished to give the government the best feedback possible on this foundational piece of legislation. This lack of proper consultation will undoubtedly lead to the need for amendments in the future, and is not in the spirit of the stated desire to work with the NFP sector to get this exercise right.

9. We endorse the submission of the Australian Council for Social Services (ACOSS), and those submissions of our members. ACFID's submission to the Treasury focuses on issues relevant to the international development sector.

### **3 Recommendations**

10. ACFID makes the following recommendations:
  - a. We share the concerns of ACOSS regarding the exposure draft:
    - i. The over-reaching scope of the enabling legislation for the Commission;
    - ii. The lack of clarity about the independence of the Commission; and
    - iii. The proscriptive tenor of the governance arrangements proposed, which, for example does not adequately recognise the good practice already in place under the ACFID Code of Conduct. (**Recommendation 1**)
  - b. We support the drafting amendments suggested by the Not-For Profit Project of the University of Melbourne in their excellent submission dated 21 January 2012, available at [http://tax.law.unimelb.edu.au/files/ACNC\\_legislation\\_submission\\_FINAL.doc#\\_Toc188783242](http://tax.law.unimelb.edu.au/files/ACNC_legislation_submission_FINAL.doc#_Toc188783242). In particular, the drafting proposed by the University of Melbourne in relation to the objects clause of the Bill should be adopted. (**Recommendation 2**)
  - c. The next version of the bill to be tabled should focus on what is critical to have in place by 1 July 2012, and what can reasonably be established subsequently, allowing adequate time for proper consultation with the sector. (**Recommendation 3**)
  - d. The next version of the Bill should correct some anomalies that affect international development NGOs in particular, as outlined below. In particular, Chapter 2, Part 2.1 Division 5, Section 5-10 (Entitlement to Registration) should clearly include a category that reflects the mission of ACFID members as a subtype of charitable purpose that occurs outside Australian territory—for example, international relief and development assistance. (**Recommendation 4**)

## **4 Issues of concern to international development NGOs**

### **4.1 In Australia test (EM)**

11. We object to paragraph 1.44 in the Explanatory Materials. It reads:

*1.44 Amendments are also being made to restate and standardise the special conditions for tax concession entities (including the ‘in Australia’ special conditions), restate and standardise the special conditions applying to tax concession entities, to ensure that Parliament retains the ability to fully scrutinise those organisations seeking to pass money to overseas charities and other entities in order to address possible abuse of NFP entities for the purposes of money laundering and terrorist financing.*

12. We remain opposed to the exposure draft on ‘in Australia’ requirements for tax-exempt bodies, and maintain it goes much further than ‘restating’ the current law to the potential detriment of our sector. Our transparency and cooperation with authorities are regulated by our Code of Conduct to prevent any abuse. We continue to advocate that this Bill be completely withdrawn. Our previous submission on this point is available [here](#).

### **4.2 International Development NGOs absent from eligible categories**

13. Current discussions of charities by Treasury seem to consistently omit the category of Australian not-for-profit agencies working for the eradication of poverty in developing countries, such as ACFID’s many members. We have raised our concerns that the recent ‘definition of a charity’ consultation paper does not expressly include a charity which works outside Australia in our recent submission, available [here](#).

14. The eligibility for registration requirements for the ACNC laid out in Chapter 2, Part 2.1 Division 5, Section 5-10 (Entitlement to Registration) continues this omission of the mandate of our members. We applaud the inclusion of the promotion of human rights, and this does apply to much of our members work. However, the inclusion of the word international or overseas is crucial.

15. If the subtype *Advancement of social and community welfare (including the prevention of poverty)* was intended to apply to our sector it needs reform, as it:

- does not clearly state this work happens overseas;
- does not mention emergency relief;
- does not mention training for international development or humanitarian work;
- does not mention coordination of volunteers;

- and our agencies who receive AusAID funding are expressly prohibited from engaging in welfare activities.
16. We recommend that the next draft of the bill clearly recognise the category of international development and relief work, or does not set out detailed types and subtypes at all. Combined with the 'in Australia' issues, this represents cause for concern that the Treasury is only considering the NFP reforms from the perspective of domestic NGOs.
  17. Some of our members have had difficulty in obtaining tax concessions in recent years despite excellent standards in their work and a clearly charitable mission. The reforms should assist them to make their case afresh in the light of better understanding of NFPs, especially in light of the AidWatch case.

#### **4.3 *Sequencing affects companies limited by guarantee***

18. Many ACFID members are companies limited by guarantee, and we are aware that further consultations are coming soon on issues related to reporting. It is difficult for those agencies to know the consequences of this Bill without knowledge of how companies limited by guarantee will be treated in relation to reporting and other purposes. Our members also need more information on any change to the current law about 'commercial' activities of NFPs.

#### **4.4 *Definition of large entity***

19. Our members note the definition of a 'large' reporting entity for reporting purposes generates revenue over \$AUD1 million. We raise the question whether that threshold is too low. Many of our smaller agencies would have revenue of that level without large amounts of staff time to dedicate to extra reporting. This is a matter for further exploration.

### **5 Conclusion**

20. We stand ready to answer further questions on our submission or provide further evidence to The Treasury.