

SUBMISSION FROM THE UNITING CHURCH IN AUSTRALIA
NATIONAL ASSEMBLY, DATED 20TH JULY 2012.

Committee Secretary,
Standing Committee on Economics,
PO Box 6021,
Parliament House,
CANBERRA, ACT. 2600
AUSTRALIA

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AUSTRALIAN CHARITIES and NOT-FOR-PROFITS COMMISSION
EXPOSURE DRAFT BILLS

Dear Committee Secretary,

This submission represents the views of the Uniting Church in Australia in all its diversity of activities, locally and internationally, including our community services operations under the banner of UnitingCare who will be making a separate submission for their area of activities. Both UnitingCare and the Uniting Church have worked collaboratively under the coordinating leadership of Joe Zabar and Jim Mein AM respectively and they are available to make a joint presentation to the Parliamentary Committee if so required.

Whilst the Uniting Church, hereinafter referred to as “the Church”, is generally supportive of the Government’s initiative in wishing to create the Commission (“ACNC”), it has a number of significant concerns about the Exposure Draft which we seek to have corrected:

1. The proposals for “a basic religious charity”.
2. Questions whether red tape reductions are achievable for Federal and between Federal and State and territory government departments and statutory bodies.
3. Financial reporting requirements.
4. Removal and suspension of “Directors” and “Responsible Entities”.
5. The definition of a “director, of a company” for unincorporated bodies.
6. Information on the ACNC portals encouraging “big league tables” and misuse.

We remain concerned about the possible unintended consequences to the operation of the ACNC Act and its associated regulations with regard to Governance and reporting requirements with the proposed introduction of a Statutory Definition of Charity and the Better Targeting of Taxation Concession- Unrelated Business Income Tax (UBIT) initiatives. Accordingly, we recommend that priority be given to sequencing the remaining NFP Reform legislative agenda with an emphasis on finalising the Statutory Definition of Charity, before the ACNC introduces new reporting and governance requirements for registered entities. It is also our view that the Exposure Draft cannot be fully evaluated without understanding the potential impacts of UBIT on the Church.

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BACKGROUND TO THE UNITING CHURCH IN AUSTRALIA

The Church is the result of the union on 22nd June 1977 of the Methodist Church in Australia and the majority of both the Presbyterian and Congregational Union Churches in Australia.

Enabling State and Territory Legislation created a statutory corporation in each of their geography but the “State” jurisdictions for the Church do not exactly follow those geographies. Additionally, the Church is a federated body but the main operational responsibilities are through the synods and their presbyteries, most of the latter being limited to each presbytery’s regional geography but there are some exceptions, being mainly because of indigenous and ethnic presbyteries. As well, each statutory corporation primarily has a nominee role and not one that is a trading or operational activity.

Being primarily an unincorporated association of religious individuals who are able to exercise a wide variety of ministries through the authority of national Regulations and synod by-laws, there are nonetheless many different structures including unincorporated entities such as the synods, national Assembly, church constituted unincorporated bodies and congregations, companies limited by guarantee, incorporated associations, public ancillary funds and trusts. This structural diversity covering over 3,000 entities across Australia will be greatly impacted by the proposed legislation for Charities and Not-for-Profit entities which primarily appears to be built on companies limited by guarantee and incorporated associations.

PROPOSALS FOR “BASIC RELIGIOUS CHARITIES” (“BRC”)

We acknowledge this proposition is a step in the right direction for the majority of entities which are predominately but not limited to local church congregations.

However, it is important to recognise that the introduction of any new reporting obligation on congregations, no matter how minor, will be another layer of legislative obligation and reporting for local members who are generally neither skilled nor trained for this burden. Any additional obligations will simply add to the already significant regulatory burdens faced by congregations who must also meet obligations such as child safety, workers compensation and work safety, insurance and risk minimisation, privacy and taxation. The list of legislated responsibilities and compliance has grown exponentially over recent years making it increasingly difficult to recruit leaders.

However welcome the introduction of the BRC, it falls well short as a solution to our concerns and we offer the following comments:

1. The Exposure Draft’s BRC proposal fails to achieve its purpose of reducing red-tape for such entities because the status is lost if the BRC receives “a grant (however described) by an Australian government agency”, no matter how small the grant is. A good example would be congregation which receives a

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miniscule amount such as a \$400 grant from the local elected member of a parliament, without any accountability or acquittal being required.

While we share UnitingCare Australia's view that a grant is not the correct trigger to require a BRC to report to the ACNC, we believe that the following option may be a more pragmatic solution to our concerns with the limitation of the BRC: an entity will no longer be a BRC if the annual income of the congregation exceeded \$250,000 and where the sum of any grants exceeds say 25% of its annual income. Likewise, the existence of a deductible gift recipient fund in that congregation should not require the whole congregation to financially report, only the DGR. By using the percentage approach, the monetary value can also keep pace with inflation which a fixed sum does not.

2. It would be helpful if the Bill could confirm what, if any, impact a BRC classification would have on the "GST religious group" concession for transactions within the Church between the its constituent entities, irrespective of whether they are PBIs, DGR's, BRCs, or no longer are classified as BRCs.
3. We also recommend that the definition of "an Australian government agency" explicitly exclude local government bodies.

ACHIEVEMENT OF RED TAPE REDUCTIONS

The achievement of such outcomes would be greatly welcomed but it is hard to imagine that being achieved without total harmonisation within each layer and between Australian, State and Territory jurisdictions. The absence of certainty of that happening, and by when, is causing considerable anxiety and is expected to add layers of red tape cost with additional financial reporting and accountability to the proposed ACNC whilst harmonisation is work in progress.

A solution is to introduce a transition financial reporting arrangement for the take up of the legislation as each state and territory government comes on board with the ACNC. In this way, the Church would not be financial reporting to both the ACNC and its home State or Territory whilst awaiting the full harmonisation of all States and Territories.

The absence of any substantive and meaningful commitment to require the government to reduce red-tape for the sector, coupled with the reliance on State and Territory Governments to agree to harmonisation of registration, fundraising, reporting and compliance obligations, makes us question the likelihood achieving an absolute one stop for financial reporting. The absence in the Bill of any substantive measure which will drive the implementation of a "one stop shop" in relation to the financial acquittal of government funding brings into question whether the promise of such an arrangement can ever be realised. It is hard to imagine the Federal Department of Education, Employment and Workplace Relations relinquishing its MySchool website project nor getting all of its information for that purpose from annual audited financial statements. The Exposure Draft does not give certainty for the federal arena when the Federal Parliament has legislative capacity to do so.

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Accordingly, we recommend the ACNC's power to collect annual information, including financial reports, not be activated until such time as this Bill or some related Bill around Government finances contains meaningful and tangible red- tape reduction obligations on government agencies that fund and interact with the NFP sector.

FINANCIAL REPORTING REQUIREMENTS

There are many questions and concerns:

1. Fixing the three reporting tiers of annual income as fixed amounts should be replaced by annual indexation to maintain monetary value relevance. Otherwise there will be an increasing number of entities required to report in each successive year, thereby increasing the red tape and compliance costs.
2. The absence of an accounting standard for financial reporting, for the audit of charities and the review of middle tier financial reports presents another area of uncertainty for the sector as a whole but especially for unincorporated charities.
 - a. Current accounting standards are for practitioners, financial analysts, lenders and accounting literate members of the public. They are not understandable to the majority of the donating public which the Government seeks to protect, educate and inform. Additionally, we contend that the accounts should be in lay, secular language for the intended audience and should have an extra section to show how the profit is essential to charities and other not-for-profits, namely for repayment of loans, acquisition of non-current assets and other costs that are not treated as expenditure in arriving at the profit/surplus or loss/deficit. In other words, not-for-profits need to make profits in order to sustain their long survival and infrastructure.
 - b. We need an undertaking from Government that there will be consultation on these standards before they come into force as we contend that the sector has a better understanding of what the donor needs and/or understands than the Government does. Likewise, with regulatory powers to be given to the ACNC Commissioner for the financial reporting accounting standards, we seek a requirement that a defined consultation process be embodied in the legislation.
3. Not evident in the Exposure Draft is the certainty that all will relate with the ACNC as the Regulator and how this will happen. Similarly we recommend that the Government legislate that the submission of such audited or reviewed financial statements will satisfy all acquittal needs of all government agencies.

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REMOVAL AND SUSPENSION OF “DIRECTORS” AND “RESPONSIBLE ENTITIES”

The Church has Regulations and By-Laws to manage its governance and management of all constituent entities. Whilst legislation applies to all incorporated entities amongst those entities, they nonetheless need to interface with the Regulations and By-Laws.

For unincorporated entities, the Church either applies the Regulations and By-Laws as governance requirements, or it has powers vested usually in the Synods to constitute entities and give delegated authority to the appointed governing councils, committees or boards. The processes should satisfy all governance requirements under the regulatory powers afforded to the Commissioner. However the Church needs assurance of collaborative approach to all investigations as it is easier and far more expedient for the Church to effect removals, suspensions and remedial action than the Commissioner can take. If we fail to work with the ACNC/Commissioner, we would have to accept the Commissioner’s intervention as a last resort process.

Such a collaborative approach to a complaint or concern not assured by the proposed legislation, nor does this appear to give the Commissioner power to accept our Governing Regulations and By-Laws as satisfying the Commissioner’s governance requirements as applicable to all our constituent entities as a standard governance document, particularly for our congregations and other smaller entities, irrespective if they are deemed to be “BRCs” or not.

DEFINITION OF A “DIRECTOR, OF A COMPANY (Section 900-5)

The Church’s concern is how this will apply to unincorporated entities within the Church’s structures, particularly the supposedly differentiating words: “or an individual who performs the duties of such a member,” where the “member” means “a member of a committee of management of the company”. Does this mean an employee acting under an authorising delegation of the committee member becomes responsible and thereby liable to some penalty, suspension or removal as an employee for example?

INFORMATION ON ACNC PORTALS BEING MISUSED

While we have no issue with the principle of transparency, the Church is concerned that information provided to the ACNC is made available to the public in both an appropriate and contextualised manner. The diversity and complexity of the sector, differing compliance and reporting obligations, and associated costs will affect the comparability of data about a given entry. An example of misuse of data is the media’s use of information provided to the Department of Education, Employment and Workplace Relations to form league tables. Published league tables and commentaries evidence the adverse and unfair impact on the reputation of schools.

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OTHER CONCERNS

1. We still are to sight the legislation detailing the statutory definition of Charity which should have preceded this exposure draft in order to give it a measurable context.
2. The middle and larger reporting tiering is understood to have been based on that for incorporated associations in the State of New South Wales. We contend that they should be doubled to at least \$500,000 and \$2,000,000 to reflect changing monetary values and that company limited by guarantee structures are the preferred corporate structure for those larger and often national organisations.
3. Accessibility to registered company auditors is limited in non-urban areas and the costs of city based auditors can tend to be prohibitive to them, especially where a small DGR is rurally based. Surely as was previously discussed at some forums, that membership of the Institute of Chartered Accountants or CPA Australia might be acceptable in certain circumstances.

CONCLUSION

The Church is supportive of the “one stop reporting and regulation” concept. We have invested considerable time and cost in working with each discussion paper, the ACNC Implementation Task Force, Treasury and others with the hope that a workable structure and framework can be realised to the benefit of the public and the whole sector.

However we remain yet to be convinced that the proposed legislation will work for the sector and its donors, eliminate the red-tape overload, and be adequately reflect the sector’s diversity in terms of compliance requirements. An understanding of entities that are not companies limited by guarantee or incorporated associations, and the achievability of government harmonisation, appear to the biggest hurdles to date in realising the dream.

Yours faithfully,

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