



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

General Secretariat

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Dr Kathleen Dermody
Committee Secretary
Senate Economics Legislation Committee
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Dear Dr Dermody

Inquiry into the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014

The Australian Catholic Bishops Conference (ACBC) is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The Catholic Church contributes in a wide variety of ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people experience the fullness of life. It is concerned with all that impacts on human wellbeing. It comprises many thousands of different entities which have different purposes and modes of governance.

Summary

The ACBC supports having light touch national regulation by an expert body (agency) to determine charity status, ensure accountability, promote transparency and help reduce the burden of regulatory compliance (red tape).

The ACBC notes the intention of the Government to repeal the *Australian Charities and Not-for-profits Commission (ACNC) Act 2012*. There has been public debate arguing for and against the continuation of the ACNC. The ACBC respectfully proposes to the Committee that this Inquiry should focus more on the nature of regulation and less on the identity of the agency.

The current regulatory regime has meant additional reporting and red tape especially in view of the duplication with state and territory legislation. Unincorporated entities now have new reporting obligations which are particularly burdensome for those that are heavily dependent on volunteers. If allowed to continue these higher compliance costs will inevitably have a detrimental effect on the delivery of services without any material benefit.

The sector needs stability so that charities can operate without further disruption and plan ahead with certainty, providing an outcome which supports charities to undertake their positive work in the community for the public benefit.

The ACBC suggests a useful way forward would be to have a body which determines charitable status, oversees development of a centre of excellence, removes unnecessary duplication of regulation and obliges charities to publish a minimum level of information on their websites for the information of their members or donors.

The ACBC supports the *Charities Act 2013*.

Registration of charities

There should be a process for endorsement or registration of entities as charities and to access tax concessions. This process should be as simple as possible. If there is to be a register, there is a strong case that new charities should be able to secure simultaneous Australian Business Number (ABN) and ACNC/Australian Taxation Office (ATO) endorsement/registration.

A national agency has an important role to assess an entity's status to access Commonwealth tax concessions and issue the unique charity identifier. If this function is returned to the ATO, as has been suggested, there should be clear statutory independence to overcome perceptions of conflict of interest.

The ACBC supports a central register, similar to the Australian Business Register (ABR), available for searching by the public, as a starting point to ascertain whether a charity exists, but able to direct an enquirer to other destinations for more detailed information eg the Australian Securities and Investments Commission (ASIC), ABR or ATO.

Reporting obligations; "one stop shop"; "charity passport"

Reporting to stakeholders regularly occurs and rigorous and detailed reporting to Government of education, welfare and health activities is well established.

The ACBC believes charities are willing to be, and already are, accountable and transparent. Additional reporting obligations are, in many instances, unnecessary, costly and burdensome for many charities in the sector, particularly smaller ones staffed primarily by volunteers.

The detailed content for the Annual Information Statement (AIS) goes beyond what is necessary for maintaining a searchable register. For example, in compiling the AIS, it has proved very difficult for a parish to accurately measure the number of volunteers. In addition, questions relating to those who have benefitted from the parish's activities and a description of its purpose are likely to result in standard and somewhat artificial answers, to no practical benefit.

No charity, regardless of its corporate form, should be required to establish itself or report on its affairs in the same way to two or more different regulators. The continued requirement for associations to report to their State or Territory regulator as well as the ACNC should cease, with reporting to one body satisfying a requirement to the other.

The premise of the ACNC was that it would be a single reporting point for charities, with co-operation from other Commonwealth, State and Territory agencies. Co-operation has not been secured and this object is yet to be fulfilled. Neither the current nor the former Government has adequately explained why the Commonwealth and State Governments have not adequately overcome this duplication. If the States and Territories do not co-operate to reduce red tape, the ACNC simply increases red tape as a result of duplication of reporting requirements and the introduction of new reporting requirements.

In the case of fundraising regulation some national charities are subject to eight different reporting and regulatory regimes. Numerous previous inquiries have urged national harmonisation in this area, yet to no avail. Of all the areas where charities operate, fund raising may be more likely than other areas to risk eroding public trust and confidence. There is wide agreement that centralised regulation rather than the current separate regimes, would be more effective and efficient, in addressing this potential risk.

Financial reporting should be restricted to large charities, consistent with former ASIC reporting with which they are familiar. There is no basis for establishing a Government-sponsored portal and making this information accessible in a way that could lead to Government-sanctioned "league tables". Charities might be more usefully encouraged to publish this information on their own websites for the information of their supporters, potential donors and the private philanthropy sector.

Notification of change of name, constitution and responsible persons, could remain with the agency to centralise register information, and provide more transparency than existed prior to the ACNC. For this purpose, mandatory annual updates should be sufficient but more regular optional updating ought to be encouraged. Annual updates are a practical response to satisfy community expectations for transparency without imposing unnecessary and costly reporting.

Volunteers

Many charities, and especially those conducted by the major religious organisations, are privileged to have the volunteer services of professionals who give of their time and expertise to assist those responsible for governing the entity. Increased regulation and reporting requirements have tested the goodwill of a large number of volunteers. Some

have concerns about the implications for them of the “responsible entity” regime of the ACNC, with the potential legal liability this might entail. Contrary to fostering an environment in which entities can grow through utilisation of skills of volunteers, the ACBC is concerned that inappropriate regulation could prove to be a significant deterrent to their participation and a great loss to the sector.

Other “red tape”

A major complaint of many Catholic charities, especially those operating in the area of social services is the red tape associated with government tenders, contracts and acquittals. A high priority for a national regulator or any centre of excellence should be the investigation of unnecessary reporting and excessive compliance obligations in relation to contracting and tendering.

In relation to aged care, for example, it appears that little thought has been given to how harmonisation across various Departments might work. It is likely that each will still have “good reasons” why they need different information presented in a different way.

As a foundation principle, entities operating enterprises that are already heavily regulated (health, education, aged care) should not have additional burdens as a consequences of national regulation.

Non-government schools

Australian Catholic schools already report to multiple agencies in multiple ways, particularly for educational and financial outcomes. They are highly regulated through other instruments which are not necessarily associated with charitable status including a high level of accountability through State and Territory and Australian Government funding arrangements and school registration requirements. In addition, there are significant accountabilities, educational and financial, formalised in the *Australian Education Act 2013* and the *Australian Education Regulation 2013*.

The extent of the burden of regulation on Catholic schools can be demonstrated by the case in NSW.

As at March 2013, the Catholic Education Commission of NSW identified over 40 Acts of the NSW Government and over 20 Acts of the Australian Government that impact on Catholic schools, including:

- (i) *NSW Education Act 1990*, including Board of Studies school Registration requirements and section 21A Not-for-Profit requirements;
- (ii) *NSW Institute of Teachers Act*;
- (iii) *Commonwealth Education Act 2013* and Regulation 2013;
- (iv) *Australian Curriculum, Assessment and Reporting Act 2008*.

Most states and territories make a list of registered schools available. Both financial and non-financial information about the school is publicly available on the MySchool website as regulated by law by the Australian Curriculum, Assessment and Reporting Authority (ACARA). The Commonwealth Department of Education has access to Financial Questionnaire information/data for all non-government schools.

Under Section 10 (3A) and (4) of the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*, the ACNC must accept a school's Financial Questionnaire and any other financial information provided to the federal Education Department as satisfying the ACNC's financial reporting requirements (up to and including the financial year 2014-15). If changes are not forthcoming to the legislative framework, then in 2016, Catholic schools will become subject not only to duplicated financial reporting to several government agencies but also a reporting regime requiring quite different detailed formats for the same amounts of public funding. The National Catholic Education Commission (NCEC) is unaware of what is proposed with regards to duplicated financial reporting for non-government schools when the provisions of the transitional arrangements described above are due to expire in 2016.

Including schools within the national regulatory regime is a clear example of added red tape and additional compliance cost. The NCEC would like to see the elimination of all duplicated reporting requirements of both financial and non-financial information which the ACNC currently imposes.

The current requirement for ACNC to accept school reporting to both ACARA and the Commonwealth Department of Education in satisfaction of ACNC requirements should be maintained in any new regulatory regime so as not to add any new burden to schools.

Hospitals and Aged Care

Charitable hospitals and aged care services are subject to a similar level of regulatory scrutiny and public reporting to non-government schools. The submission of Catholic Health Australia to this Inquiry details the regulatory obligations placed on Catholic charitable hospitals and aged care services.

Governance Standards and powers of the ACNC Commissioner

Corporations law should govern not-for-profit (NFP) corporations established as companies. State based Associations' law should govern NFP incorporated associations. Trusts law governs proper administration of trust funds. The general common law and criminal law apply where relevant. No extra Commissioner powers are needed to safeguard the public, as the pre-ACNC law provided sufficient safeguard. Additional governance standards are unnecessary.

It is imperative that the proper role of State Attorneys-General, under the common law, with respect to administration charities, be harmonised with any new agency.

The Centre for Excellence

A centre for best practice or excellence could be a modestly sized organisation with a governing structure that is representative of all parts of the sector, established with independence from Government and provided with Government assistance to cover its establishment costs. The centre's role could be to promote charity capacity building by dissemination of information and leading a research agenda. Such an organisation should contain staff members who are well qualified and have a clearly positive and "user friendly" culture and who are responsive to the sector's questions and anxious to minimise red tape. It would be helpful to the sector if these qualities could be incorporated in any re-structured arrangements.

Statutory definition of charity

In general, the new statutory definition of 'charity' has been well received by the sector. The ACBC would be concerned about the ramifications and unintended consequences arising from any reversion to the position prior to the enactment of the *Charities Act 2013*. The ACBC supports the *Charities Act 2013*.

Uncertainty

The current state of uncertainty is a cause of major concern with some charities uncertain of their compliance obligations. Church entities and other charities need to plan for compliance over the coming months. Such planning for compliance may involve changes to information systems, training of administrators, costly engagement of lawyers and consultants to advise on changes to governing rules and allocation of resources to completion of Annual Information Statements and financial reports.

The Government should specify the minimum reporting requirements consistent with its policy of reducing red tape to assist charities until changes to the regulation of charities have been finalised.

I would be happy to answer any questions the Committee may have.

Yours sincerely

Rev Brian Lucas
General Secretary