

THE UNITING CHURCH IN AUSTRALIA NATIONAL ASSEMBLY

SUBMISSION DATED 29th April 2014.

The Secretary,
Senate Standing Committee on Economics,
PO Box 6100,
Parliament House,
Canberra, ACT. 2600.

Economics.sen@aph.gov.au

INQUIRY INTO THE Australian Charities and Not-for-profits Commission (Repeal) (No.1) Bill 2014

Dear Sir/Madam,

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 Australia and the Uniting Church in Australia have worked collaboratively under the coordinating leadership of Joe Zabar and Jim Mein AM and they are available to make a joint presentation if so required.

As a national Australian Church and one of Australia's largest religious institutions, aged care and other community services providers and educational bodies, we have regularly provided government assistance and advice. These have included presentations to the Senate Economics Committee as well as other Parliamentary Committee hearings on Charities and Not-for-profit reforms.

BACKGROUND TO THE UNITING CHURCH IN AUSTRALIA

The Church is an unincorporated body created by consistent State and Territory property trust legislation. That legislation was enacted on 22nd June 1977.

The Church is the result of the of many years of discussion to 22nd June 1977 of the Methodist, the Presbyterian and Congregational Union Churches in Australia. All of the Methodist and the majority of the Presbyterian and Congregational Union entities became the Uniting Church in Australia.

Enabling State and Territory Legislation created a statutory corporation in each of their jurisdictions although most of the Church's jurisdictions do not exactly follow those geographies. Additionally, the Church is a non-hierarchical federated body with the main operational responsibilities are through the synods and their presbyteries. Most of the latter are limited to each presbytery's regional geography but there are some exceptions, being mainly because of indigenous and ethnic presbyteries. As

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well, each statutory corporation primarily has a nominee role and not one that is a trading or operational activity.

The Church is 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, as well as companies limited by guarantee, incorporated associations, letters patent, public ancillary funds and trusts.

This structural diversity covering well over 3,000 entities across Australia is expected to be greatly impacted by the proposed Charities and Not-for-Profit Commission (Repeal) (No.1) Bill as considerable investment has been made into changed oversight and accountability procedures and related requirements. The proposed Bill and its possible impacts are expected to add to these investment costs without material benefit to our Church and its many diverse activities. These concerns will be expanded in this submission.

It is also extremely important to understand the diversity of the Charities and Not-for-profit sector in its range of activities, entity structures, governance processes and accountabilities one set of rules and requirements does not automatically work for all. The Australian Charities and Not-for-profit Commission (ACNC) has successfully grasped and accommodated this awareness which has been greatly appreciated by many in our sector. Previous understanding and the original thinking of the previous Federal Government, when particularly designing and drafting the reform legislation, was not so aware that much of their thinking was designed around trusts, companies limited by guarantee and incorporated associations.

EXECUTIVE SUMMARY

The Church was surprised that the current Federal Government wished to abolish the Commission and to separate various aspects, functions and roles of the current Commission which effectively threatens the benefits of one body being responsible for all. Additionally, we struggle to ascertain what will be the successor bodies, their roles and responsibilities, and how they will better benefit the sector and the Federal, State and Territory Governments. This situation does not help the Sector have confidence that the outcome of the Repeal Bill will surpass what the ACNC does and promises to do better when all State and Territory Governments agree to harmonise the goal of one stop registration, reporting and regulation and red-tape reduction.

The Church is also surprised that references to consultation by the Federal Government do not appear to have comprehensively covered the sector such that we contend that they are not representative of the sector's diversity. Churches are a particular group who are virtually unparalleled with their range of incorporated and unincorporated entities, the number of their entities, their diversity range of activities (including religious bodies, schools, welfare agencies, aged care, schools, child care,

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hospitals, foster care, overseas aid, theological colleges, etc) and range of technical skills and knowledge from the unqualified congregational treasurer for example to the highly qualified expertise of large entity leader, and the Church overall organisational structural diversity. We would certainly welcome such a consultation with the Government and the Committee.

If the present Government wishes to persist with the abolition of the ACNC, we strongly argue that the successor body must beneficially have the following features:

- i. Independence from the Australian Taxation Office because of the conflict of interest between revenue collecting and regulatory oversight.
- ii. The full support of all State and Territory Governments before legislated as that has been seen as a significant contributor to the failure to achieve the red-tape reductions and the much needed national harmonisation of fundraising laws.
- iii. Recognition of the diversity of constitutional structures such that the body enhances the operations rather than imposing costly extra compliance, provides reporting and compliance flexibility for smaller and unincorporated entities and provides a high level of efficiency, processing turnaround, effectiveness and beneficial support to the sector. Some other regulators such as the Australian Prudential Regulating Authority applies a one-size-suits-all approach to entities in the superannuation sector which results in a disproportionately higher compliance cost per member in smaller funds.
- iv. Provides long term sector stability, support and certainty.
- v. Readily accessible to the sector and individual entities.
- vi. Provides reliable and publicly accessible and publicly interpretable financial and related reporting.
- vii. Supports the Charities Act 2013 and its retention.

COMMENTARY

The following commentary covers our many issues of concern and support our above Executive Summary:

1. The ACNC has a far better turnaround for processing, advising and exercising support to the sector. Its independence and working with the sector has been clearly effective and helpful.
2. The Church has invested extensively in developing our compliance processes, updating and centralising our controls and risk management systems, and ensuring local compliance and awareness of the ACNC requirements. Any change of compliance through the movement away from a single regulatory body and from the current regulatory environment will impose considerable distress and probable further costs.
3. One of the significant concerns and need for larger charities requires State and Territory Governments support for the harmonisation of fundraising laws, particularly with nation wide appeals. This was raised with the previous government, but has not as yet been achieved. This should be a priority for the current Government.

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4. A similar priority is to expand the regulatory work to Not-for-profit organisations, now that the set up work with registration etc of charities has been done.
5. The Church has yet to see a well-researched justification for abolition of the ACNC and its replacement by a successor body or arrangement. Certainly the “the Charity Navigator Model” in the USA is not a workable model here as its application is to very large charities and not to the majority of the sector. Australia has far more small and medium size entities and an argument has yet to be seen as to how it will work in the Australian context. Similarly, it is hard to assess the Bill when no structure is defined and developed within it. Similarly we have yet to see how “the basic religious charity” concept will be picked up. This concession by the previous Parliament was of significant assistance to the Churches yet is not mention in the Bill nor elsewhere.
6. The Church welcomed other features of the ACNC including the governance standards, the revised processes for investigations and enforcement powers, and the central register.
7. We remind the Government that the Committee of Inquiry into the Definition of Charity and Related Organisations 2001 strongly recommended a single regulating body.
8. The Government needs to detail how it will reduce red tape, achieve one stop reporting for annual financial statements as well as ensuring that each report is the acquittal document for Government funding recipient charities. We do not know at this stage whether COAG is supportive of the Bill. Furthermore, the Federal Government needs to get all its departments and other organisations to provide red-tape reductions such there will no longer be the excess reporting required for entities such as non-government schools who have been excessively overloaded, especially in comparison to Government schools.
9. We are concerned at piecemeal legislation and regulation which would keep causing compliance fatigue, overload and cost. It would be far better to have the ACNC approach as it now than a regulated body or bodies as seems to be the current Government’s intention.
10. For incorporated entities, they are still required to report to ASIC or their state and territory body with incorporated associations which is another reason why the Federal Government should already be moving to one stop reporting for corporations.
11. It is also interesting that a recent forum of international charity regulators saw many qualities in the ACNC model with support for both the concept of a single regulator comparable to the ACNC, the registration processes and the Commission’s proposed ways of red-tape reduction. This draws further support for a single body regulator and questions what will be the cost of abolishing the ACNC and what will be the benefits of doing so.

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CONCLUSION

The Church is concerned that the Federal Government appears to desire breaking up the single regulating body concept which will neither assist the Governments (federal, state and territories) nor the sector. Hence our comments endorse the single body concept, preferably the ACNC as it already exists and is working well, but if the Federal Government's ideology is anti the ACNC, there needs to be more open and wider dialogue on the best way to maintain the single body concept.

Yours faithfully,

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