

SUBMISSION FROM THE UNITING CHURCH IN AUSTRALIA
NATIONAL ASSEMBLY, DATED 29TH AUGUST 2012

Dr Ian Holland,
Committee Secretary,
Senate Community Affairs Legislation Committee,
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Parliament House,
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AUSTRALIA

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AUSTRALIAN CHARITIES and NOT-FOR-PROFITS COMMISSSION BILLS

Dear Dr Holland,

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.

The Uniting Church, hereinafter referred to as “the Church”, generally supports the key thrust and objectives of the Government’s broader NFP Reform agenda, including the establishment of a dedicated national NFP sector regulator.

We also wish to acknowledge the significant improvements that have been made to the legislative framework for the establishment of this new regulator, the Australian Charities and NFP Commission (ACNC). However as we believe that the improvements do not fully address a number of our outstanding concerns, which if addressed would give us the level of certainty we need to move forward with the NFP reform agenda. As such we believe that the Bills need to address further:

1. Achieving genuine red-tape reduction at both the Commonwealth level and between the Commonwealth and State and Territory government departments and statutory bodies.
2. The Charities Accounting Standards to measure the value of Financial reporting requirements to the ACNC.
3. Removal and suspension of “Directors” and “Responsible Entities”.
4. The definition of a “director, of a company” for unincorporated bodies.
5. Management of information on the ACNC portal to discourage misuse of that data e.g. league tables and.
6. The possible unintended consequences to the operation of the ACNC Act and its associated regulations with regard to Governance and reporting requirements with the yet to be introduction of a Statutory Definition of Charity and the Better Targeting of Taxation Concession- Unrelated Business Income Tax (UBIT) initiatives.

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BACKGROUND TO THE UNITING CHURCH IN AUSTRALIA and THIS SUBMISSION:

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.

ACHIEVEMENT OF RED TAPE REDUCTIONS

We applaud the inclusion of red tape reduction in the objects clause of the ACNC Bill but that does not of itself give the certainty we seek at both Commonwealth Government level of reduction, and in the Commonwealth and State/Territory harmonisation. We recognise the reality that it will take time for the Commonwealth, States and Territories to harmonise procedures and processes which will deliver a reduction in red-tape. However, the Commonwealth government has both the means and the authority to put into immediate effect decisions around Commonwealth agencies financial reporting, accountability and acquittal procedures for the receipt of Government funding which could deliver immediate relief from unnecessary and burdensome red-tape on the sector. Action in this area as part of this legislative process will be seen as an offset while the other red-tape initiatives around the one-stop shop, Charity passport and legislative harmonisation are negotiated.

FINANCIAL REPORTING REQUIREMENTS and THE ABSENCE OF A CHARITIES ACCOUNTING STANDARD:

Whilst the Church acknowledges the financial reporting to the ACNC has a deferred start and that the congregational area of our activities will benefit from the “basic religious charity” provisions (because the latter do not receive public donations such that their income is “mutual” under normal taxation principles), the absence of an accounting standard for financial reporting is still of concern. We seek a formal process of consultation to ensure such a standard will be meaningful and workable in the wide range of our non-basic religious charity activities, especially to those in the public who donate funds, in kind, indirectly and voluntarily to the achievement of the

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charity purposes. Current accounting standards are not helpful especially to the donating public citizens who are often not conversant with the peculiarities of financial and accounting standards and protocols, which may lead to financial statements being misunderstood to the detriment of the sector

DEFINITION OF A “DIRECTOR, OF A COMPANY”

The Bills do still do not address the Church’s concern in 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?

POSSIBLE UNINTENDED CONSEQUENCES OF THE BILLS AND OTHER CONCERNS:

The Church still is concerned with the outstanding NFP Reform issues such as the Statutory Definition of Charity and the Unrelated Business Income Tax (UBIT) and their detrimental financial and organisational impacts on Church funding, cash flow, decision making, governance and compliance.

We continue to seek a timetable and for priority to be given to sequencing the remaining NFP Reform legislative agenda with an emphasis on finalising these, before the ACNC introduces new reporting and governance requirements for registered entities.

CONCLUSION

The Church is supportive of the “one-stop shop 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.

Yours faithfully,

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