

30 August 2012

Committee Secretary

Parliamentary Joint Committee on Corporations and Financial Services

PO Box 6100

Parliament House

Canberra ACT 2600

By Email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Committee members,

**Re: Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012,  
Australian Charities and Not-for-profits Commission Bill 2012**

Australian Baptist Ministries is the trading name of The Baptist Union of Australia. The Baptist Union of Australia is a voluntary association of State Baptist Unions and is incorporated under the Australian Capital Territory Associations Incorporation Act 1991.

Australian Baptists are a multi-cultural and multi-generational movement of people serving communities in metropolitan, regional, coastal, rural and remote Australia through a network of approximately 1,000 churches with a regular combined attendance of around 150,000 people.

There are a number of ministries that operate under the auspices of Australian Baptist Ministries. These ministries include:

- State Baptist Unions in all states and territories of Australia,
- Baptist Care Australia,
- Global Interaction,
- Baptist World Aid Australia,
- Crossover Australia,
- Remote Churches Ministry,
- Baptist Financial Services,
- Australian Baptist Insurance Services.

This submission is made on behalf of Australian Baptist Ministries, its constituent State Unions and churches together with Baptist organisations within Australia.

### **Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012**

While Australian Baptist Ministries generally supports the reforms proposed by the above Bill, in our view the potential impact on donor entities has not been adequately anticipated, or else has been ignored, by the Treasury Department.

Australian Baptists, as noted above, in addition to local congregations has a number of ministry organisations that operate in serving the Baptist Denomination within Australia and providing overseas Aid and Development as well as providing opportunities for Australians to serve people in other countries.

Global Interaction, the Baptist Mission organisation which has some 150 staff serving in overseas postings, is currently a member of Missions Interlink (together with many overseas missionary organisations within Australia) and therefore itself is prescribed under Income Tax Assessment Regulation 1997 - Regulation 50.50.02.

In our view the expectation made of by the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 that a donor organisation will be in possession of such information is neither practical nor reasonable. In our view this will place an unrealistic and unfair burden on (particularly) small entities to understand the tax exempt status of all recipient organisations and in particular their status in relation to the 'In Australia' requirements. In our view this will particularly disadvantage smaller local church congregations as well as small charities that operate outside of Australia but who may not be aware of the option for them to become a prescribed organisation.

The flow-on impact of this Bill has the potential, in our view, to put at risk the Income tax Exemption received currently by local church congregations and parishes if they inadvertently donate to an organisation that does not meet the 'In Australia' requirements of the legislation. Organisations should be able to direct funds to entities and individuals as part of their normal operations.

Furthermore local churches of all denominations rely on volunteers to fulfil significant roles within their organisation, be it the roles of Secretary, Treasurer or other roles. With the increase in requirements for specialised knowledge, increased penalties and, in our view unfair expectations imposed by this legislation, volunteers will be harder to find for these roles (as was Australian Baptist Ministries' experience following the introduction of the GST) which could in turn reduce the positive impact that churches, parishes and other faith based groups are able to have within local communities around Australia.

In our view, these proposals would significantly impact Australian Baptist churches from being able to act in accordance with their religious convictions which do not have an “in Australia” limitation.

In our view the donation of Income tax exempt funds to another organisation should not put at jeopardy the Income Tax Exemption that is received by Religious organisations within Australia.

### **Australian Charities and Not-for-profits Commission Bill 2012**

While Australian Baptist Ministries acknowledge the improvements that have been made since the initial consultation regarding the proposed operation of the Australian Charities and Not-for-profits Commission in our view there are still several issues that are of significant concern.

- Increased administrative workload and costs
- Basic Religious Charities
- Governance Issues
- Regulatory Powers
- Public Trust and Confidence

#### Increased Administrative Workload and Costs

Australian Baptist Ministries are concerned that despite improvements made in the Bill there will be duplication and increased red tape as a result of the Bill. We are particularly concerned that the House of Representatives Standing Committee on Economics recommendation 1 stated:

*That the objects of the Australian Charities and Not-for-profits Bill 2012 explicitly include the reduction of red tape.*

In actual fact, the Bill introduced to the House of Representatives lists as objective c (Division 15-5):

*To promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.*

In our view the Government is being disingenuous in suggesting that it has implemented all of the recommendations of the House of Representatives Committee when the first recommendation of the Committee is watered down to such a great extent.

In our view it is unwise to proceed on the basis that the object of the Bill is to ‘promote the reduction of unnecessary regulatory obligations’ given the lack of clarity in the objective, the lack of definition of ‘unnecessary’ as contained in the objective and the lack of any State and Territory agreement to avoid duplication of reporting arrangements.

## Basic Religious Charities

While we welcome the exemption provided in the Bill to “Basic Religious Charities” in our view the definition {205-35} of such an entity is far too narrow. At least 100 local Baptist congregations around Australia are incorporated associations which under the proposed Bill exclude them from this definition.

Our understanding from meetings that other Christian denominations have had with Minister Bradbury is that there was no intention by the Government to disadvantage Religious organisations through the introduction of this Bill.

That this version of the Bill will still disadvantage local church congregations, Baptist as well as other denominations due to this definition, is most unfortunate. The churches that have become incorporated associations have done so for good reason; purchase or lease of property, in order to receive grants from Local, state or federal governments or simply to ensure that their governance practices are held to a higher standard. Now for pursuing these endeavours they are disadvantaged under this legislation.

In our view sections 205-35 (2), (3) and (4) should be removed from the Bill as they will cause differentiation between various local congregations and they will potentially lead to churches moving to undo their Incorporation despite there being good reasons for seeking it in the first instance.

## Governance Issues

Australian Baptist Ministries remain very concerned that the proposed Governance Standards are to be introduced by regulation rather than being spelled out in the Bill. While we are pleased the Bill now includes Section 45-10 (5) in terms of Basic Religious Charities that governance standards will be set (and changed) by regulation mean that the governance standards will be subject to the political and social climate of the day, rather than being detailed in the Bill and therefore subject to the scrutiny of the Parliament.

Australian Baptist Ministries is also concerned that if the issues we have raised regarding the definition of Basic Religious Charities are not addressed it will mean that many local church congregations would be subject to the direction of the ACNC Commissioner in respect of how they should act, or not act, in a specified manner. In our view it is not, nor should it ever be, the role of Government to direct a religious organisation in how it should or should not act provided it is otherwise acting in a lawful manner.

For Australian Baptists, and people of other Christian denominations and other faiths the Bill in its current form in this area is unacceptable.

## Regulatory Powers

Australian Baptist Ministries believe that the regulatory powers contained in the current Bill are too excessive. They are much broader in scope than those of the Australian Taxation Office (the current regulator) and in our view are far too excessive for a body (the ACNC) that is supposed to be focussed on education and of the promotion of the Charitable and Not-for-profit sector.

There is little guidance available in the explanatory memorandum or from the Treasury department as to the reasons that it is seen (as stated in the explanatory memorandum) to be advantageous to emulate the charitable regulator and reporting regimes in Canada and the United Kingdom.

## Public Trust and Confidence

Object 1 of this Bill Section 15-5 (1) is;

*To maintain, protect and enhance public trust and confidence in the Australian Not-for-profit sector.*

There is no clear definition of 'public trust and confidence' contained in the Bill, the explanatory memorandum nor has one been provided by the Treasury department. The explanatory memorandum on page 18 paragraph 1.85 states:

*The terms 'public trust' and 'confidence' have their ordinary meaning and are used throughout this Bill to refer to the positive ways in which the Australian public views the NFP sector.*

In our view this the material contained in the explanatory memorandum does not provide sufficient clarity regarding the definition of 'public trust and confidence'.

Such a lack of clarity regarding this definition has the potential to create uncertainty for many within the Charitable and Not-for-profit sector. In our view and in the view of other major Christian Denominations the concept is too uncertain and too subjective to provide any real guidance and certainty to the sector.

Yours Sincerely,

Trevor Spicer  
National Treasurer