

**Submission to the Parliamentary Joint Committee on
Corporations and Financial Services *and* the Senate
Standing Committee on Community Affairs
on the *Australian Charities and Not-for-profits
Commission Bill 2012***

**Prepared by:
ANGLICARE Diocese of Sydney**

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INTRODUCTION

1. ANGLICARE Diocese of Sydney (ANGLICARE Sydney) is an agency of the Anglican Church. ANGLICARE Sydney is a large Christian organisation operating a wide range of community services and programs across the Sydney Metropolitan and the Illawarra regions of New South Wales; it embodies the Christian commitment to care for all people in need, as comes from Jesus' command to love your neighbour as yourself.¹ Our range of services includes: counselling and family support services; disability services; youth services; emergency relief for people in crisis; foster care and adoption for children; migrant and refugee services; aged care both through nursing homes and community services; opportunity shops; emergency management services; and chaplains in hospitals, prisons, mental health facilities and juvenile justice institutions.
2. ANGLICARE Sydney has previously made detailed submissions to Treasury about aspects of the proposed ACNC, including a response to the scoping study for a national not-for-profit regulator (February 2011), the ACNC implementation design (February 2012), not-for-profit governance arrangements (February 2012) and charitable fundraising regulation reform (April 2012).

GENERAL OBSERVATIONS

3. In previous submissions, ANGLICARE Sydney has supported the establishment of a national regulator for the charities and not-for-profit sector. ANGLICARE Sydney believes that the establishment of a new regulator should be part of a broader reform agenda of the sector, with a strong focus on capacity building and providing assistance to the sector, as previously outlined by the Productivity Commission in its wide-ranging review of the sector.²
4. In this respect, ANGLICARE Sydney noted in a previous submission that:

the Productivity Commission's review of the sector covered a far greater range of issues for reform than just regulation, including improving the knowledge base of the sector, access to capital, promoting productivity and social innovation, supporting evaluation and determining the best models of engagement with the sector. The Commission's report recommended not only the establishment of a regulatory body, but also two other bodies: a Centre for Community Service Effectiveness, to promote best practice approaches to evaluation, and an Office for Not-for-Profit Sector Engagement, reflecting a more balanced reform agenda. These other areas for reform do not appear to be acknowledged in Treasury's consultation paper; it is unclear therefore how the broader reform agenda will be driven to ensure that reform is wider than issues pertaining simply to the regulation of the sector.³

¹ The Gospel of Matthew, chapter 22 verse 39.

² Productivity Commission, 2010, *Contribution of the Not-for-Profit Sector*, Research report, Canberra.

³ ANGLICARE Diocese of Sydney, 2011, *Submission in Response to the Scoping Study for a National Not-for-Profit Regulator*, p3

5. Education could potentially play an important role in capacity building of the sector. However in the current Bill, there is a narrow focus upon regulation of the sector. For instance, in the Explanatory Memorandum accompanying the Bill, education is seen as having the function of achieving compliance and enforcement.⁴ ANGLICARE Sydney believes that the Government should now move swiftly to pursue the wider capacity building agenda, as outlined by the Productivity Commission in its wide-ranging review of the sector.

GOVERNANCE

6. In view of the diversity of the NFP sector, ANGLICARE Sydney supports a 'principles based' or educative approach rather than an approach that is overly prescriptive, that would result in increased regulatory burden and compliance.
7. It is noted that in a number of places in the Bill, it is envisaged that regulations will be developed to give shape to the exercise of the ACNC's regulatory processes and powers. It is noted that a set of governance standards that will apply to most entities will be developed⁵ as will regulations regarding private ancillary funds and the privacy of donors.⁶ It is therefore difficult to respond to the likely impact of this and other parts of the Bill, where there is uncertainty around its final operation.
8. In this respect, ANGLICARE Sydney previously raised concerns that many of the governance standards referred to in Treasury's *Review of Not-for-profit Governance Arrangements Consultation Paper* derive from the For Profit corporate model. ANGLICARE Sydney considered that more work needs to be done to determine the impact that such standards, which operate effectively in a for-profit environment, may have on the not-for-profit sector, and in particular, on the sustainability of smaller not-for-profits.⁷
9. In the same submission ANGLICARE Sydney noted that staged implementation of such governance arrangements is desirable in a context of considerable change in the sector, given the expected implementation of a National Disability Insurance Scheme, a proposed Gateway for Aged Care and significant changes in client directed care as distinct from bloc funding arrangements.⁸ The extent and rapidity of such change will impact the sector and require a considerable period of adjustment.

REPORTING

10. The objects of the Australian Charities and Not-for-profits Commission Bill are: to maintain, protect and enhance the public trust and confidence in the NFP sector; to support and

⁴ *Explanatory Memorandum*, paragraph 9.10

⁵ *Explanatory Memorandum*, chapter 5

⁶ *Explanatory Memorandum*, paragraph 4.38

⁷ ANGLICARE Diocese of Sydney, 2012, *Submission to Treasury Regarding the Review of Not-for-Profit Governance Arrangements – Consultation Paper December 2011*, p3.

⁸ *ibid*, p2

sustain a robust, vibrant, independent and innovative NFP sector; and to promote the reduction of unnecessary regulatory obligations on the NFP sector. [Subsection 15-5(1)] ANGLICARE Sydney welcomes the inclusion of the reduction of unnecessary obligations on the NFP sector ('red tape') as one of the objects of the Bill.

11. However ANGLICARE Sydney remains concerned that while initiatives such as the *Charity Passport* are to be welcomed in reducing 'red tape', gaining the co-operation of the States and Territories will be essential in making substantial reductions in 'red tape' overall. In this respect, it is unclear to ANGLICARE Sydney what progress has been made in achieving this, in order to avoid the requirements of the ACNC becoming another layer of 'red tape'. ANGLICARE Sydney's view is that previous regulatory systems need to be fully replaced with a new national system of regulation rather than existing alongside previous systems.
12. Even if the support of the States and Territories is obtained, a lengthy transition period will be needed to enable legislative harmonisation and operational changes to take place after the establishment of the ACNC. Coupled with the need to continue separate reporting for grant acquittals, it is of concern that the quantum of reporting can only increase, at least in the short-term.
13. Apart from the costs associated with any additional 'red tape', there would be costs for charities in providing more detailed information when requested by the ACNC and significant costs associated with a charity bringing its accounting practices into line with SCOA or SBR.
14. The issue of 'red tape' for the NFP sector is significant. ANGLICARE Sydney believes that the following reforms are generally needed in relation to information provided by NFPs to government:
 - streamlining of funding applications, tenders and accreditation processes to provide common information gathering and administrative requirements
 - improved transparency and input from NFPs in the development of contracts
 - removal of multiple reporting and contractual arrangements across departments
 - implementation of a common acquittals process
 - standardisation of reporting requirements for Commonwealth and State government departments
 - access to service providers to their own data collected by government on-line, to avoid costly double data entry
 - consolidation of government databases
 - provision of regular reporting by the government back to the NFP's in relation to data gathered. Currently government departments gather vast amounts of information which are never analysed or reported back to the sector.

MONITORING AND ENFORCEMENT

15. Some aspects of the regulatory framework contained in the current Bill appear to be more far-reaching than necessary. For instance, the wide spectrum of enforcement powers conferred upon the ACNC Commissioner and its officers under the Bill, are acknowledged in the Explanatory Memorandum accompanying the Bill as representing an expansion of powers over those exercised by the current default regulator, the ATO.⁹ Yet it is unclear to ANGLICARE Sydney what current situations in the sector justify the need for this degree of expansion, particularly in the light of Treasury's previously stated assumption that "charities operate for charitable purposes, and overwhelmingly most aim to comply with their regulatory requirements."¹⁰
16. In addition, it is noted that many of the activities typically undertaken by the sector, such as health-care, aged-care, welfare and education, are already subject to a high degree of Government regulation and accountability. Charities receiving Government grants are already subject to extensive reporting and acquittal requirements and stringent conditions around the use of such funding. Commensurate high standards of corporate governance, risk management and financial reporting mean that there are already high levels of accountability, particularly for larger charities.

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⁹ *Explanatory Memorandum*, paragraph 9.25

¹⁰ Commonwealth of Australia, 2011, *Australian Charities and Not-for-profits Commission: Implementation Design*, Discussion paper released by the Treasury, Canberra, p5.