

20 July 2012

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**BY EMAIL:** economics.reps@aph.gov.au

The Secretary  
House Standing Committee on Home  
Economics  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam

**Inquiry into the Australian Charities and Not-For-Profits Commission Exposure Draft Bills**

We are a law firm based in Sydney which has a proud history of having provided professional advice to the Charities and Not-For-Profits (**NFP**) sector since the firm's inception in 1859.

We act for a large number of Church bodies, community groups, welfare associations and others involved in the NFP sector.

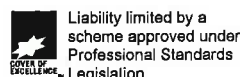
We have had the opportunity to review the draft Australian Charities and Not-For-Profits Commission Bill 2012 (**ACNC Bill**) and the Australian Charities and Not-For-Profits Commission (Consequential and Transitional) Bill 2012 (**Transitional Bill**). We make the following brief comments in respect of the ACNC Bill and Transitional Bill.

1. One of the stated rationale behind the ACNC Bill was to reduce red tape and to eliminate duplication of reporting requirements. The ACNC Bill will add to the burden of the vast majority of charities who will now have to provide an Information Statement and in many cases a Financial Report each year. In most cases, there will be a need for an auditor or other professional person to review or audit financial statements. This will not reduce red tape but rather add to it.
2. The stated aim of a "charity passport" which would involve a "report once, use often" concept in dealing with Government departments is laudable. Nevertheless, the sector can have no confidence that this will be achieved based on the contents of the ACNC Bill, the requirement for sector specific reporting in various areas (eg social



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welfare, education, etc) and the failure at this stage to get co-operation from States and Territories to adopt the standard reporting and the charity passport concept. In our view, agreement between the States and Territories and the Commonwealth at the very least should be gained prior to commencement of the ACNC Bill otherwise the impact will simply be an increase in red tape, an increase in administration costs and a resulting reduction in funds available to be applied towards the charitable purposes of the entities.

3. There are a number of other reforms proposed for the sector which should be clarified at this point so that the proper impact of the ACNC Bill and Transitional Bill can be assessed. In particular, the governance standards should be specified and the statutory definition of "charity" should be clarified at the same time as the ACNC Bill and Transitional Bill are considered.
4. The recognition of the special place that Churches hold within our community by inclusion of the definition of "basic religious charity" is welcome. However, the definition in section 205-35 requires revision as follows:
  - (a) Many entities which would have been expected to be basic religious charities, eg parishes, conduct activities in the furtherance of their religious mission which might result in them being entitled to endorsement for an additional sub-type of entity. For example, a parish could run a school building fund to allow the parish community to support the parish school and this activity alone may entitle the parish to be registered as the sub-type in column 2 of item 2 of the table in section 25-5(5) as an entity with a purpose that is the advancement of education. In that event, the parish would be disentitled to the exemptions associated with being a basic religious charity. We submit that sub-section 205-35(1)(c) be deleted.
  - (b) The method of incorporation of an entity should not be relevant in considering whether it qualifies as a basic religious charity. Instead, the emphasis should be upon its purposes, ie if it is registered as a sub-type of entity with a purpose that is the advancement of religion then, subject to satisfying other requirements, it should qualify as a basic religious charity. We submit that clause 205-35(2) should be removed.
  - (c) In the example above, if a parish operates a school building fund under its ABN then it would also be disentitled to be a religious charity under section 205-35(3) as it would be a deductible gift recipient (DGR). We accept that there needs to be special scrutiny in relation to DGRs. However, we note that DGRs with turnover less than the amount required to qualify as a medium registered entity are exempt from providing a financial statement. In the circumstances, we suggest that section 205-35(3) is amended to provide that an entity is not disentitled to be a basic religious charity in the event that the aggregate of its DGR revenue is less than that required for a medium registered entity.
  - (d) Similarly, the receipt of small grants should be subject to the same qualification. We therefore submit that section 205-35(5) should refer to grants equal to or above the limit for medium registered entities.
5. Basic religious charities are not required to lodge a financial report. However, basic religious charities are required to lodge an Information Statement. We are concerned that paragraph 6.37 of the Explanatory Materials indicates that one of the likely pieces of information that a basic religious charity will be required to provide includes

"finances". The requirement for a basic religious charity to provide financial information should be removed entirely which is clearly the intent of section 60-60. We submit that the ACNC Bill should make it clear that financial information will not be required to be included in any Information Statement unless sub-division 60-B of the ACNC Bill applies..

Whilst we recognise considerable improvement in the latest draft of the ACNC Bill, we submit that the above issues should be addressed prior to the ACNC Bill and the Transitional Bill being read in the House.

Yours faithfully

  
**Makinson & d'Apice**