

Supplementary Submission 10.1

John Church

The Chairperson
House Standing Committee on Economics.
Economics.reps@aph.gov.au

Dear Committee Members,

Thank you for the opportunity to make a submission on your inquiry into the Australian Charities and Not-for-Profit Commission (ACNC) Bill and Associated Transitional and Consequential Amendments Bill.

There are several general observations I wish to make about the process.

1. The failure to notify all parties of the timing for making submissions to the consultation process. It should have been realised that most of the entities are small and do not have full time employees to attend to this especially over the short time frames imposed by Treasury. I understand that notification did not start until March/April and that was done by the Australian Taxation Office .

2. None of the submissions have been made available by Treasury.

3. It is interesting to note that the number of submissions was less than half the number of the number received by the Charities Definition Inquiry of 2001.

4. One of the stated aims of this proposal is to simplify process and provide clarity for charities. I would invite the Committee to look at the following:

- A small Incorporated Association in NSW has some 44 pages of legislation to deal with, the Bill you are considering has 152 pages before the regulations come out.
- The small incorporated association would probably have volunteers only so now they will be faced with an additional 152 pages of legislation plus an unknown number of pages of regulations.
- It is very hard to believe that this Bill represents simplification that leads to efficiency and clarity
- The result of this will require 2 levels of regulation not a simplification.

5. In spite of oral indications that organisations created by Letters Patent were to be covered. I am not clear that they are covered by this Bill.

Section 15-10

(f) I note that there is no obligation to ensure co-operation with States and Territories. As States and Territories are a fundamental part of this aspect of the Law it would seem essential that the Commissioner have duty to work with them to achieve the objects of this legislation. Why has this been omitted from this Bill?

Section 30-25

Why isn't the Commissioner required to give written reasons for the Commissioner's decisions. This I would submit the proposal is not good policy for a Government department in dealing with the public

Chapter 3

This section is totally vague and creates uncertainty as it merely refers to "Regulations" which will effectively determine many of the duties and obligations of any of the entities. Will they be subject to comment, review or comment by the entities involved in this proposal?

Section 45.10 (5) This to the first time in Australia introduces a concept of classes of religious entities. My question why and why has this not been publicly discussed? It did not appear in any of the papers produced by the Taskforce.

Section 60 C

There is no specific discussion of a small registered entity obligations and duties. Regulations are again unknown. Will they impose obligations and duties by way of regulation?

60-30

I realise the argument for a registered company auditor (i.e. qualification) unfortunately as I understand this provision it means they are bound by the AASB standards which seem to change annually and have not yet been developed for Not for Profit Entities. This section therefore merely leads to uncertainty and possible ambiguity. I think these requirements should be dealt with the ACNC not an external body. My understanding also implies that the professional bodies of company auditors also make determinations there by adding another layer of complexity to this issue. This will clearly add to costs of Charities and add to lack of clarity for no real purpose.

60-35

This is a fundamental flaw the ACNC should set its own standards and not have an external body determining them. The AASB still has not determined standards for not for profit entities and it seems to change definitions and meanings of ordinary words on a regular basis which could create issues for understanding by donors and the public unless they are aware of these changes and have access to another body that determines standards. This does not lead to simplicity and clarity. These standards and provisions should completely under the control of the ACNC.

60-60

This definition will lead to discrimination problem, as I understand the position, there are many small incorporated small religious organisations within Item 1 Column 2 yet they will be denied the benefit of this provision. Why is the government proposing this discrimination of religion based on structure ?

The provisions of the Constitution Section 116 clearly states the power of the Commonwealth, this proposal seems to go beyond this and discriminate on the basis of structure.

The Committee should clearly satisfy itself to this proposed discrimination of religious bodies on the basis of their structure and that it is within the powers of the Commonwealth.

Division 75

I note that there is no obligation on the ACNC officer to furnish a copy of the material taken or copied from anyone. Surely the concept of natural justice requires that a copy of information to be made available to the party from whom the information is taken.

Chapter 7

Division 150.

If the intention of this legislation is to provide simplicity and clarity it is hard to reconcile the provisions of 150-20 with this intention.

Division 160

Again one has no idea of the regulations. This makes it very hard to comment. However in view of the nature of Charities it should be mandatory for the Commissioner to be liable for any proper costs incurred by any party to proceedings and not left to the discretion of any Tribunal or Court where the Commissioner is unsuccessful ,

Division 165

These provisions seem to be over onerous on a small entity that relies on volunteers. If one looks at the limited information provided in the reports so far it is clearly they are in the majority .Should there be some provision for who pays the costs especially if the Commissioner is unsuccessful?

Division 175-50

I raise a question of drafting why is the Commissioner given no gender then is given a gender in other parts of the same section.

Division 185

I note that this does not address Section 116 of the Constitution is there any reason for this?

Division 195-5

It should provide that the Commissioner should address and send documents for service to all addresses it holds not a selective choice of the Commissioner. This maybe particularly relevant in small entities which are staffed by volunteers.

Chapter 8
Subdivision 205
205-10

(b) This definition may give rise to additional obligations to members of the unincorporated association. Does it mean they will be subject to the Corporations Act in some sections if so this means the unincorporated associations could have responsibilities to ASIC? I assume not but the legislation should be drafted clearly to say so and not left in an ambiguous situation as is presently drafted.

Section 205-25

(4) The concept of Accounting Standards referred to here is ambiguous. It is I believe essential that the Accounting Standards be determined by the ACNC not the AASB. At present several issues arise if a "charity" takes over the assets of another it is require to show that as a profit not an acquisition of assets. The current standard clearly creates a misleading statement to donors and the public who are supposed to be a beneficiary of this Bill. Donors and the public surely expect to receive information that is understandable in lay terms. The AASB has not determined its views in respect of not for profit entities therefore the result of this will be uncertainty and it is currently reviewing the "profit" statement referred to above. You should also note that the AASB is considering service /performance reporting yet has not developed a standard for this issue Why is the ACNC incapable of doing this? This will be become for those entities another obligation in addition to the requirements of the ACNC .This is not the stated purpose of this legislation as I had been lead to believe it was simplicity, clarity not a perpetual moveable feast determined by another body.

There will be occasions when a small entity could become a medium sized entity one year and then a large entity and then a small entity the next year the way the legislation is drafted it would seemingly impose considerable accounting obligations for one year especially in the light of the current AASB rules .Is this the intention of this legislation? I acknowledge the provision of (5) but this power is limited to the Commissioner without any clarity as to the exercise of this power, perhaps it may be set out in the unknown regulations.

Section 205-35

The definition of "Basic Religious Charity" seems to be discriminating against certain religious bodies that have been established under the provisions of the Acts specified in *subsection (2)*. Why is the Government making this distinction on the basis of structure ? I have noted that while the Taskforce has published gross numbers of charities it has not published any detailed analysis of the groups that it proposes to cover.

It would appear to me that these bodies will again suffer additional reporting requirements and it is not clear whether they will be able to maintain their existing Tax Exempt Status unless there are special provisions made each time again this seems to be contrary to simplicity.

Subsection (5) There is no definition of grant and on some views of the definition an organisation that receives a Tax Exemption could be considered as receiving a grant

this aspect should be clarified and not left to Courts to determine. It would also appear that if a “grant” is received from a State or Territory Government this section would not apply.

General

A key aspect of this legislation is to simplify the reporting function of this class of not for profits, to provide efficiency for all and to provide clarity for donors and lay persons.

As I understand the legislation it will merely add to these roles and unless the States and Territories co-operate this will merely add a layer of costs and regulation for no material benefit.

Therefore the legislation should provide for an independent review after 5 years as to its effectiveness and benefits and be prepared to recommend changes to amend the legislation to achieve it purpose.

I would urge you to ensure that a provision is incorporated in this Bill especially as so much power has been delegated to the “unknown” Regulations which may or may not be subject to public comment and depends on the co-operation of States and Territories

I do not have the time or the resources to provide more detailed comments on this legislation.

A few further observations:

- 1 Will the Regulations be submitted for public comment?
2. Will your Committee review the regulations by a public inquiry?
3. The Treasury Taskforce promised a review of companies limited by guarantee and this has not been released. This could add another layer of complexity.
- 4.It has also been indicated that there will be further review of PAF’s public and private yet there appears to be no discussion or details of these indications.

Yours Faithfully,

.....

19th July 2012 ▾