



Australian Charities and Not-for-profits Commission Bill 2012

Submission by UnitingCare Australia

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1. Introduction

UnitingCare Australia is the Uniting Church's national body supporting community services and advocacy for children, young people, families, people with disabilities and older people. The Uniting Church's commitment to community services is an expression of the Christian vision of inclusion and equality of opportunity for all people and communities regardless of age, gender, sexuality, ability, class, colour, creed or cultural origin.

UnitingCare Australia takes up community service issues within the theological framework of the Uniting Church, particularly the Church's social justice perspectives. We develop and reflect on the policies and practices of the Uniting Church in community services. We pursue appropriate issues within the Uniting Church, with Government and the community sector, with the Australian community and with other parts of the Church.

UnitingCare Australia represents the network of UnitingCare community services operating nationally across more than 1300 sites. The UnitingCare network is one of the largest providers of community services in Australia, providing services to over 2 million people each year, with an annual turnover in excess of \$2 billion and employing 35,000 staff and 24,000 volunteers nationally.

UnitingCare agencies provide services across Australia to people living in urban, rural and remote communities. Services delivered by our agencies employ a holistic approach to supporting individuals and communities to access the resources, support and opportunities needed to live a decent life. The building blocks of which are being able to access appropriate food, clothing and healthcare; safe and secure housing; meaningful work, education, rest and enjoyment, and; the opportunity to participate in and contribute to communities. UnitingCare agencies, through their community linkages are also able to provide people of goodwill – either as individuals or as organisations – a vehicle to make their own contribution to improving the wellbeing of people and communities that are disadvantaged and vulnerable. We partner with Governments, other organisations, communities and people of goodwill to ensure all people have access to the means and opportunity for a decent life.

UnitingCare Australia welcomes the opportunity to comment on the exposure draft of the Australian Charities and Not-for-profits Commission Bill 2012 and associated materials.

2. Overall Assessment of the Draft Bill

The Australian Charities and Not-for-profits Commission Bill 2012 (ACNC Bill) provides the platform for long awaited reforms which have the potential to benefit Governments, the Not-for-profit (NFP) sector and the Australian community as a whole. This Bill offers, for the first time, a legislative vehicle to recognise the NFP sector as an important contributor to the social and economic fabric of our society. With this recognition comes an obligation that the sector will operate in a manner which is transparent and accountable to those in the community it supports as well as those who support the sector through the donation of their time and money.

For UnitingCare Australia the term accountability is not simply an issue of reporting and compliance but rather the effective utilisation of often scarce resources in the fulfilment of purpose or mission. As such we have long held the view that the Australian Charities and Not-for-profits Commission (ACNC) must operate in a manner that promotes the ongoing transparency and accountability of the sector while at the same time eliminating the unnecessary administrative, reporting, acquittal and compliance costs imposed by Government.

We have assessed the draft ACNC Bill against the same parameters applied in our assessments of earlier drafts of the Bill and outlined in our submissions¹ to the Treasury. The parameters are:

- Will implementation of the draft Bill negatively impact on the current diversity of the sector?
- Will the Uniting Church and/or its entities be required to change their structures or operations in order to meet the new compliance and/or reporting requirements?
- Will implementation of the draft Bill bring additional costs both in terms of immediate compliance and longer term administration?

It is our assessment that in terms of the overall regulatory role and framework the draft ACNC Bill is workable. However, we believe that implementation of the Bill will impose additional compliance and reporting costs on the sector. As such, we believe that the Bill needs to be strengthened to include a clear commitment to address the unnecessary administrative, reporting, acquittal and compliance burden placed on the sector by the Government and its agencies.

3. Specific Comments on the Draft Bill

We believe that the current draft of the ACNC Bill marks a significant improvement on the first exposure draft. We also acknowledge the difficulty in drafting a Bill which seeks to establish a National Regulator for a diverse sector while simultaneously addressing a range of complex and competing priorities and in an environment of often conflicting expectations. It is therefore important to note that the Government has accepted and acted on feedback from the sector, including:

- Agreeing to delay the introduction of the ACNC
- Commencing the ACNC as a Registrar
- Agreeing to further consultation on governance and financial reporting obligations
- Rewording of the Objects of the Act to better reflect the diversity of the sector and to acknowledge the existing public trust and regard of the sector
- Clarifying the grounds for revoking registration of an entity
- Increasing the notification period to respond to a 'show cause' notice

Nonetheless, there is room to improve the Bill and we would ask the Committee to consider our following suggestions when it makes its recommendations on the Bill to the Government:

¹ UnitingCare Australia 2012, Submission - Australian Charities and Not-for-profits Commission Bill 2012, p.4
Uniting Care Australia 2012, Comment - Australian Charities and Not-for-profits Commission Bill 2012, attachment A

3.1 *Giving force to the Object*

In our submission² to the Treasury on the Scoping study for a national not-for-profit regulator we stated that “the regulation of the not-for-profit sector must enhance and support the reputation and capacity of the organisations operating within it”. As such we supported the position adopted in the scoping paper³ that NFP regulation should:

- place minimal costs on not-for-profit entities in order to allow better direction of not-for-profit resources to philanthropic objectives;
- remove current regulatory duplication;
- streamline requirements, including reporting, so as to provide consistency and minimise compliance costs;
- be simple, transparent and flexible;
- provide not-for-profit entities with certainty as to their rights and responsibilities; and
- be proportional to the size and complexity of not-for-profit entities, and to the public monies and risks associated with those entities.

We note that the Objects of the Bill reflect some of these principles but suggest that the body of the Bill requires further strengthening to meet them all. Many of the implied ‘red-tape’ reduction benefits of a single national NFP regulator are predicated on State/Territory Government cooperation. While this may eventuate over time we believe that the Government must, at the very least, identify and outline measures within its authority to streamline requirements, including reporting, in the ACNC Bill in order to provide consistency and minimise compliance costs. In Section 4 of this submission we offer some ideas that could be incorporated in the Bill to help the Government meet its objective to minimise compliance costs on the sector.

3.2 *Classification and thresholds*

The thresholds defining small, medium and large entities do not reflect the full remit of entities within the sector and do not adequately account for the impact on public confidence and trust should a breach of the Act occur. It is our view that the thresholds could be expanded considerably to better represent the size and shape of the sector, the associated risk and to be more proportional to the impact of failure of an entity on public perception of the sector.

In our submission⁴ to the ACNC Interim Taskforce we noted the complexity of determining an appropriate threshold for, and proportionality of, reporting and suggested a new category of *Micro entity* be included in the reporting and compliance schedule. This category would cover a class of entity that would be registered with the ACNC but would not be required to lodge annual reports, similar to a “*basic religious charity*”.

In relation to the exempt class of “*basic religious charity*” we would make the following comments. While we welcome the introduction of this class exemption we believe that the trigger to remove the exemption, namely Section 205-35 (5) *receipt of a government grant* is flawed and should be removed. Using the receipt of a government grant as a rationale for reporting to the ACNC highlights one of the ongoing concerns we have with the architecture of the Bill that is a failure to recognise the already significant accountability obligations placed on any NFP entity that receives funding from a Commonwealth agency.

² UnitingCare Australia 2011, Submission - Scoping study for a national not-for-profit regulator, p.4

³ The Treasury 2011, Consultation Paper - Scoping study for a national not-for-profit regulator, p.7

⁴ UnitingCare Australia 2012, Submission - Australian Charities and Not-for-profits Commission: Implementation design p.6

Any entity, whether it is for-profit or not-for-profit, that receives money in the form of a grant from a Commonwealth agency is subject to an assessment and acquittal process. Indeed, the guidelines for the current *Volunteer Grants 2012* program require the completion of a 12 page application form, an obligation to acquit the funds spent (returning any unspent money) and to maintain records, including original receipts for purchased items. The maximum value of the grant is \$5000. Further, as a result of the *Auditor-General Amendment Act 2011* the Auditor-General may conduct performance audits of any entity that receives Government money.

It is our view that the receipt of a Commonwealth grant should not in principle trigger the additional compliance obligation of reporting to the ACNC. If it is a matter of publicly disclosing whether an exempt entity has received a grant then we would argue that the relevant Commonwealth agency should notify the ACNC of the details which could then be linked to the entity's registration. This would be consistent with the principle of a "one-stop-shop". This arrangement could equally be applied to any *Micro entity* to address issues of public disclosure should such a category be created.

3.3 *Educational role of the ACNC*

The educational function of the ACNC is set out in Section 15-10 (c). The Explanatory Memorandum at paragraph 1.83 states that:

"...The ACNC will thus be a platform for greater engagement between the NFP sector and the Public and vice versa."

UnitingCare Australia does not support any move, deliberate or otherwise, which enables the ACNC to become in effect a "shop front" for the NFP sector. We recognise that the ACNC will use education as a means to maintain and enhance public trust and confidence, but that responsibility must be exercised with due care so as to ensure that the ACNC does not become the primary interface between the public and the NFP sector. We recommend that an explicit statement be made in the Bill which prohibits the ACNC from acting or promoting such services or activities which undermines the independence of the sector from Government.

On a separate but related matter, the ACNC portal will be a searchable website containing information on each entity registered. It will include information about notifications of non-compliance issued to an entity and any steps that an entity has taken to address the warning. The draft Bill does not appear to stipulate the duration for which a warning notice should remain on the ACNC website. We recommend that the warning notice be removed from the public website once an entity has completed action to comply.

3.4 *Powers of the Commissioner and ACNC staff*

The Bill will provide the Commissioner and ACNC staff with a range of powers to address issues of non-compliance and contraventions of the Act. It includes the power to take action if an entity is "likely" to not comply or "likely" to contravene the Act (Section 35-10 9 c i & ii). While we recognise the need for the Commissioner to have such powers we believe it is prudent to include some safe guards (criteria) in the Bill, or in subsequent Regulations (such as those mentioned in the Explanatory Material) which the Commissioner must satisfy prior to revoking an entity's registration under this Section of the Act.

3.5 *Relationship between the ACNC and other regulators*

The draft Bill goes some way to outline how the ACNC will interact with the ATO and ASIC and the impact this will have on registered entities, including the suspension of tax concessions in certain circumstances. However, there is no detail as to any recourse an entity may have in terms of lost tax concessions in the event of an adverse decision by the ACNC being overturned on appeal. Accordingly we recommend that in such circumstances the entity be entitled to the concession as if there was never a break in the entitlement to the concession.

We understand that the Consequential Amendments Bill will seek to link and, as required, amend conflicting requirements placed upon a registered entity subject to obligations of another Commonwealth Act. This issue goes to the very heart of the Government's NFP reform agenda and is one that needs to be resolved quickly at both the Commonwealth and State/Territory level. While we are aware that the issue of registration as a charitable entity is being discussed at the COAG level for the purposes of mutual recognition and simplified reporting, many UnitingCare agencies are subject to service specific regulators - for example Aged Care and Child Protection which add significant additional regulatory, compliance and reporting obligations on them. These regulators operate at both a national and state level.

We are keen to have clarity around the relationship between the ACNC and these regulators. Particularly in relation to their respective investigative and sanctioning powers as well as the management of any potential conflict or overlap with the respective investigative processes. Resolution of this issue is both urgent and critical to avoid disruption to service delivery.

4. Furthering the Government's NFP reform agenda

The Government has labelled action to reduce unnecessary, duplicative and burdensome administrative, reporting and compliance obligations as the "foundation stone" of its NFP reform agenda.

In the Explanatory Materials accompanying the draft ACNC Bill, the Regulatory Impact Statement outlines the "inappropriately high regulatory and compliance burden" placed on the NFP sector. It acknowledges that NFP entities which work across multiple jurisdictions and receive grants and contracts for the delivery of Government services are required to provide additional general and specific financial reports to Government agencies, resulting in duplication of reporting. It estimates that in order to comply with the governance requirements of each agency an NFP in receipt of a Government grant would generally be required to get each report audited separately, which the sector has indicated costs, on average, \$1000.

It is important to note that many of the administrative "savings" outlined in the Bill are predicated on State/Territory Government cooperation, which at this stage we have seen little progress on. Equally, we have seen little direct action by Commonwealth agencies in addressing some of the key administrative burdens faced by the sector when applying for, negotiating, monitoring, reporting and acquitting Government funding.

Other "savings" outlined in the Bill are for a reduction in the information which NFP entities must report to the ATO and ASIC. This is not a true reduction because NFP entities will instead be required to provide similar reporting to the ACNC.

We believe that the Commonwealth should act to at least address the red-tape issues within its own jurisdictional authority. Therefore, we recommend the following provision be included in the Bill or relevant Regulation as appropriate:

- Any entity which is required to submit an audited financial statement as part of their annual returns to the ACNC is no longer required to undertake financial acquittals of any Commonwealth grant.

We believe that there is opportunity and room within the ACNC Bill to further consider the type of information that NFP entities are already required to report to Commonwealth agencies against the new reporting requirements of the ACNC. In keeping with the Objects of the Act, the Bill should seek to avoid, where possible, duplicating requests for information already provided to Government.

5. The way forward

UnitingCare Australia acknowledges and appreciates the Government's commitment to the NFP reform agenda and we support the establishment of the ACNC as a new National Registrar for the NFP sector. However, there are a number of significant gaps in the Bill in relation to addressing the unnecessary regulatory and administrative burden on the sector; indeed a number of elements of the Bill will place additional and duplicative reporting requirements on the sector.

We suggest that the Bill commits the ACNC to identify opportunities to reduce red-tape in consultation with those Commonwealth Agencies that provide grants/contracts to the sector and also with regard to State/Territory Government programs.

We remain concerned about the possible unintended consequences to the operation of the ACNC Act and associated regulations with regard to governance and reporting requirements with the introduction of the proposed introduction of a Statutory Definition of Charity and the Better Targeting of Not-for-profit Tax Concession – Unrelated Business Income Tax initiatives. Accordingly we recommend that priority is given to sequencing the remaining NFP reform legislative agenda, with an emphasis on finalising the Statutory Definition of Charity, before the ACNC introduces new reporting and governance requirements for registered entities.

6. Conclusion

We believe that the NFP sector should demonstrate levels of transparency, accountability and governance which are beyond reproach, particularly when they are dealing with the most vulnerable in our communities and utilising funds from the public to deliver their services. The regulatory framework to ensure these conditions are met must be appropriate, coherent and effective.

Therefore, we ask the Committee to take this opportunity to recommend changes to the Bill that will both deliver a new National NFP regulator and place in legislation an obligation on Commonwealth agencies to reduce the unnecessary administrative, reporting, acquittal and compliance costs for any NFP entity required to interact with the Government. Without this legislative mandate in place we fear that the opportunity to address the long-standing issue of reducing red-tape, a principle supported by Australian Governments at all levels and of all persuasions, will be lost. This is an opportunity for the Committee to recommend changes to the Bill which preserve transparency and accountability and enhance the capacity of the sector to focus on the mission for the betterment of our society.