



20 July 2012

Committee Secretary  
Standing Committee on Economics  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

By email: [economics.reps@aph.gov.au](mailto:economics.reps@aph.gov.au)

Dear Sir/Madam,

**Submission to Exposure Draft  
Australian Charities and Not-for-profits Commission Bill 2012**


The purpose of this letter is to respond to the exposure draft referred to the Standing Committee on Economics on 6 July 2012.

I enclose the submission from Australian Baptist Ministries and associated entities and look forward to participating in this discussion as it continues.

Both myself and the National Ministries Director of Australian Baptist Ministries are available to meet with the Committee to discuss these matters further if it was felt this would be helpful.

If I can be of any further assistance or any clarification is required please do not hesitate to contact me.

Yours faithfully  
Australian Baptist Ministries

 Trevor Spicer  
National Treasurer



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

**Submission responding to exposure Draft released 6<sup>th</sup> July 2012**

**Submitted on behalf of:**

**Australian Baptist Ministries**

**Global Interaction**

**Baptist World Aid Australia**

**Queensland Baptists**

**The Baptist Union of Victoria**

**Baptist Churches of Tasmania**

**Baptist Churches of South Australia**

**Baptist Churches of Western Australia**

**The Baptist Union of the Northern Territory**

**The Baptist Union of New South Wales and Australian Capital Territory**

**1,000 Local Baptist churches throughout Australia**

**Contact:** Mr Trevor Spicer  
National Treasurer  
Australian Baptist Ministries

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

This submission is in response to the Exposure Draft titled “Australian Charities and Not-for-profits Commission Bill 2012” referred by the Assistant Treasurer on 6<sup>th</sup> July 2012 to the House of Representatives Standing Committee on Economics.

Australian Baptist Ministries, State Baptist Unions their associated agencies and organisations together with local Baptist churches welcome the opportunity to contribute to the discussion on this important issue by way of this submission and, if requested or required to attend and present to the Committee at their public hearings.

We look forward to the opportunity of continuing to interact with the Government as it further develops policies on these matters.

**Australian Baptist Ministries**, together with other Christian denominations, and leaders of other faiths, are deeply concerned that the continued increase in regulation (past and proposed) of faith based organisations will undermine, erode and eventually attack some of the fundamental freedoms that Australians hold dear; freedom of association and freedom of religion.

In our view, any proposed legislation that empowers government to control the activities, remove the leaders, enter and search the premises or in any other way restrict the operations of lawfully operating religious entities is unacceptable and may be seen by our members as a challenge to the freedoms of both religion and association; freedoms greatly valued, in our view, by all Australians.

While Australian Baptist Ministries commend the Government in seeking to provide a separate commission for the benefit of charities and not-for-profit entities in Australia, we are concerned that in addition to the issues around freedom of religion that religious organisations will have to bear significant additional administrative burden and associated cost in order to comply with the reporting and review and audit requirements.

We are also particularly disturbed that while the original exposure draft contained several sections where the proposed legislation was either not drafted at all or simply referred to the fact that it would be drafted ‘along the lines of’ other particular legislation the current exposure draft now indicates that significant issues such as Governance standards and External conduct standards will be “set out in the regulations”. We believe that it is most unreasonable for government to produce such legislation when previous submissions, from this organisation and others, have been extremely critical of such a vague and non-transparent approach.

## Who we are

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 regular attendance of around 150,000 people. At the 2006 census over 315,000 people listed their religious affiliation as Baptist.

Australian Baptist Ministries is a federated organisation, partnering with local churches through State Baptist Union entities.

While some local Baptist Churches are incorporated entities most operate as separate unincorporated entities. Many of our State Baptist Unions are incorporated by acts of state parliaments.

In many ways Australian Baptist Ministries would be seen by the community in general as the peak body of the Baptist movement in Australia.

While the Baptist ethos values the autonomy of the local congregation, there are many times, places and occasions where a national voice or opinion is sought from Christian denominations and other times and occasions where, in our view, a national statement on behalf of the Baptist movement in Australia can contribute significantly to the national debate or thinking.

## What we do

Together with the State Baptist Unions, Australian Baptist Ministries is committed to:

- supporting and equipping local churches,
- training and equipping individuals for professional and lay ministry,
- supporting overseas missions,
- assisting the disadvantaged within our own communities and overseas.

There are a number of ministries that operate under the auspices of Australian Baptist Ministries to provide these many and varied opportunities to serve the public amongst the many communities in which our congregations and agencies operate.

These ministries include:

- Approximately 1,000 local Baptist congregations of varying sizes,
- State Baptist Unions in all states and territories of Australia,
- Baptist Care Australia and State Baptist Care organisations in each state,
- Global Interaction,
- Baptist World Aid Australia,
- Crossover Australia,
- Remote Churches Ministry,
- Baptist Financial Services,
- Australian Baptist Insurance Services.

Local Baptist Churches and many of the above organisations commenced and continue to exist through the generosity and foresight of Australian Baptists. In many cases they have been contributing through the generosity of members to the social fabric of Australian communities and in an International setting for well over 100 years.

While some of the above organisations operate solely within the Baptist community of churches, many of them have a far-reaching impact on Australian communities and each of them contributes to the public benefit of Australians and Australia. For example Baptist Care Australia encompasses 2,700 packaged community aged care places, over 4,400 residential aged care places, family services, refugee services, employment services, youth services, low cost housing, chaplaincy, counselling, disability and mental health services and other diverse programs to meet community need.

The international ministries listed above (Global Interaction and Baptist World Aid Australia) provide humanitarian, development, medical and educational support services and capacity building amongst some of the world's most disadvantaged people.

## General Comments on the Exposure Draft

The concerns of Australian Baptist Ministries to matters raised in the exposure draft relate to the following issues:

- The continuing regulation of the charitable sector, particularly religious organisations. We believe some of the current proposals, whilst an improvement on the initial exposure draft, still border on challenges to the notions of freedom of religion and freedom of association as we have known them in Australia,
- While we welcome the exemption provided 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 exclude them from this definition. In addition, our international Mission organisation and many of our Theological colleges around Australia are incorporated associations, again precluding them from being defined as a “Basic Religious Charity”.
- The exposure draft contains an as yet unwritten section, which will be detailed in the regulations that will deal with the ‘suspension and removal of responsible entities’. Australian Baptists would find such powers granted to any government body invasive, an erosion of their religious freedom and a blurring of the separation of church and state especially where they were they to be applied to a entity otherwise operating lawfully,
- There is an assumption of proportionality in the reporting arrangements proposed. The explanatory materials indicate that there will likely be a “minor compliance burden’ for small entities that have no reporting obligations. We believe that many local Baptist churches and churches of other denominations will fall into this category. In addition, in our view, the reporting requirements for medium sized entities are too onerous. In our view the increase in compliance obligation will make it more difficult to fill volunteer roles within local congregations as well as requiring more time to be spent on compliance matters and therefore less time on matters that will provide a benefit to the community,
- There is also an assumption of state uniformity and co-operation in various parts of the proposed legislation. If this does not eventuate the result will be an additional compliance burden for charities and not-for-profit organisations, particularly those that operate in multiple states,
- The proposed responsibilities of ‘responsible entities’ will make it more difficult for organisations to attract voluntary leaders of competence and commitment,
- The potential removal of long standing charity concessions for organisations that choose not to register with the ACNC but who still meet the public benefit test.

## Freedom of Association and Freedom of Religion

Australian Baptist Ministries, together with other Christian denominations, and leaders of other faiths, are deeply concerned that the continued increase in regulation (past and proposed) of faith based organisations will undermine, erode and eventually attack some of the fundamental freedoms that Australians hold dear; freedom of association and freedom of religion.

We believe that any legislation requiring registration with Government of religious entities must be voluntary, must still allow religious entities, whether registered or not, to lawfully operate without any government interference and must not penalise (be it by impost of penalties or withdrawal of current concessions) religious entities that may choose not to register in any way.

In our view, any proposed legislation that empowers government to control the activities, remove the leaders or in any other way restrict the operations of lawfully operating religious entities may be seen by our members as a challenge to the freedoms of both religion and association; freedoms greatly valued by all Australians.

In our view registration of religious entities with the ACNC should:

- a. Be voluntary,
- b. Allow for lawful activity without government interference,
- c. Be without penalty (based on current arrangements) for entities that choose not to register.

## Proportionality

In the Final report *Scoping study for a National Not-For-Profit regulator* recommendation 21 states:

*“Each entity should provide information for reporting purposes but the content should be proportional to the size of entities, risk factors and receipt of public and government assistance. Small entities should be required to provide no more than a post card of information.”*

This principle of proportionality forms part of the context for this exposure draft, the current Governance Consultation paper and the discussion paper on the implementation design of the ACNC.

In our view the potential reporting requirements run the risk of negating this recommendation, in regards to the proposed reporting requirements and particularly in the proposed sizes of small, medium and large entities.

In our submission to the initial Exposure Draft we indicated that we thought the thresholds for the determination of small, medium and large entities were too low. Unfortunately these thresholds have not changed, however we reiterate our previous recommendation that the thresholds should be reconfigured to be:

- Small - Income up to \$1 Million per annum,
- Medium - Income between \$1 Million and \$5 Million per annum,
- Large - Income in excess of \$5 Million per annum.

We believe that whilst there are probably many religious entities and other charities with income under \$250,000, there are also a large number whose income is between \$250,000 and \$1 Million and whose complexity and risk, in our view, does not warrant the governance or reporting requirements likely to be proposed for a medium entity.

### **Reporting & Audit**

Australian Baptist Ministries is concerned that the reporting requirements contained in the proposed legislation will be extremely onerous on the majority of Baptist churches in Australia. Currently 98.84% of Baptist churches in Australia would be categorised as small or medium entities under the proposed legislation. While we appreciate the exemption in the reporting area granted to “Basic Religious Charities”, we reiterate that the definition of this type of entity is too narrow. Under the current proposed legislation over 100 local Baptist churches would be excluded from this exemption purely because they are incorporated associations.

Approximately 20% or 170 of the Baptist Churches in Australia would, we believe fall into the proposed categories of medium or large entities. While we would anticipate that many of these would prepare financial reports for their members, most are unincorporated associations and so currently are not required to have their accounts audited and those accounts prepared in accordance with Australian Accounting Standards.

Many churches currently find it difficult to enlist the services of a volunteer treasurer and in our view this additional requirement will only serve to exacerbate that situation. The requirements of auditors of any registered entity under the proposed legislation will require professional audit firms to carry out the audit rather than, as is the case for some of our churches, the task being undertaken by a member who is a retired accountant.

In terms of these 170 churches being required to have their accounts and financial reports audited it is our estimation that for those who currently do not prepare financial reports according to Australian Accounting Standards to do so and for all of these churches to have audits that would meet the requirements of the proposed legislation would incur an additional cost approaching \$1 Million per annum including costs of property valuations etc. Unfortunately if this money has to be spent on compliance matters to satisfy government requirements, it cannot be spent in the service of others, on the disadvantaged in the community or for any other purpose for the public benefit.

In our view it is virtually pointless to publish publically financial information relating to religious organisations, particularly local churches. We believe that the information may be used in public campaigns against religious entities and against their long standing receipt of tax concessions.



We are concerned about section 60-75 of the current exposure draft which remains unchanged from section 55-80 of the initial exposure draft which allows the commissioner to “*determine, in writing, that a particular entity must prepare a report in addition to any other statement or report the registered entity is required to prepare*”. We reiterate our view that this section is too vague. There is no indication of the potential reasons the commissioner may determine this request, not is there any definition of a ‘particular registered entity’.

## **Accounting Periods – Subdivision 60-85**

While we are grateful for the concession in the Explanatory Materials {6.56} which allows entities to notify the Commissioner within six months of the ACNC’s commencement that they currently operate under a financial period other than one ending on 30<sup>th</sup> June, in our view, it would be more helpful if this was noted in the exposure draft.

Australian Baptist Ministries do not require that all of our churches and entities operate to the same financial year. Therefore many have financial periods that end on dates other than 30<sup>th</sup> June. In our view it would be an additional unrealistic burden on those entities (should they choose to register) to be required to formally apply to be able to operate a different financial year than one with a 30 June end.

## **Responsible Entities**

Australian Baptist Ministries is extremely concerned that the salient details of both division 45 and division 50 are effectively unknown as this submission is being made as they are to be “set out in the regulations. While we are appreciative of the section 45-10 (5) which provides some level of comfort for “basic religious charities”, we reiterate our earlier point highlighting, in our view, the deficiencies of the entities included as “basic religious charities”.

We are concerned that the responsibilities determined for ‘responsible individuals’ will be too onerous and again, not proportional to the size and complexity of the organisation.

Whilst the responsible individuals’ declaration is in and of itself not onerous, in the case of unincorporated Baptist churches, of which there are 850 in Australia, it is a new and additional requirement and one which, if signed erroneously would no doubt attract legal liability.

In our view, it would be far more preferable, especially for small entities, for there to be one person designated as the responsible individual in terms of these legislated requirements, similar to the position of public officer within incorporated associations in most state jurisdictions. If this was to be the case, for small entities, section 40-5 (1) (c) (i) of the proposed legislation could be modified to refer to one responsible individual for small registered entities.

Otherwise, our view is that voluntary leaders in governance roles within small entities, especially charities will become increasingly difficult to find.

## Recommendations

- (1) In our view registration with the ACNC for Religious entities should:
  - a. Be voluntary
  - b. Allow for lawful activity without government interference
  - c. Be without penalty (based on current arrangements) for entities that choose not to register.
  
- (2) In our view the definition of “Basic Religious Charities” {205-35} is far too narrow. At least 100 local Baptist congregations around Australia are incorporated associations which exclude them from this definition. In addition, our international Mission organisation and many of our Theological colleges around Australia are incorporated associations, again precluding them from being defined as a “Basic Religious Charity”. We are vehemently opposed to any legislation which gives government power to remove pastors or clergy from their position or which provides the capability of government to direct churches and religions institutions in any way in their lawful activities.
  
- (3) We believe the thresholds for determining the size of entities should be:
  - a. Small                   Income up to \$1 Million per annum
  - b. Medium                Income between \$1 Million and \$5 Million per annum,
  - c. Large                   Income in excess of \$5 Million per annum.
  
- (4) We believe that entities associated with recognised religious denominations and faiths within Australia should only be required to disclose information for one responsible individual.
  
- (5) We believe that religious entities with income under \$5 Million per annum should be treated, for reporting and audit purposes as small entities under the Act.
  
- (6) We believe that all entities associated with recognised religious denominations and faiths within Australia should be granted exemption from the following parts of the proposed legislation:
  - a. Chapter 3, part 3-1,
  - b. Chapter 4, part 4-1,
  - c. Chapter 4, part 4-2, division 100

Given the enormous change that this legislation brings to the sector, in our view a further exposure draft should be released for comment before the legislation is introduced to parliament.