



27<sup>th</sup> January 2012

Manager  
Philanthropy and Exemptions Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [NFPReform@treasury.gov.au](mailto:NFPReform@treasury.gov.au)

Dear Sir/Madam,

**Submission to Consultation Paper  
Review of not-for-profit governance arrangements**

The purpose of this letter is to respond to the consultation paper released in December 2011.

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

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



## **Review of Not-for-profit Governance Arrangements**

**Submission responding to Consultation Paper released 8<sup>th</sup> December 2011**

**Submitted on behalf of:**

**Australian Baptist Ministries**

**Global Interaction**

**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**

**In excess of 950 Local Baptist churches throughout Australia**

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## **Review of Not-for-profit governance arrangements**

This submission is in response to the Consultation Paper released by the Assistant Treasurer on 8<sup>th</sup> December 2011 titled “Review of Not-for-profit governance arrangements”.

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. 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 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.

While Australian Baptist Ministries commend the Government in seeking to improve governance arrangements across all sectors in Australia, including the not-for-profit and charitable sector we are concerned that for religious organisations there will be significant additional administrative burden and associated cost required to comply with the requirements of even the potential minimum governance arrangements.

We are especially concerned that there is a very real possibility that the proposed governance arrangements will not be proportional to the size or complexity of a particular organisation. The not-for-profit and charitable sector is clearly made up of organisations diverse in both size and complexity. Our concern is that the governance requirements will be so similar for large not-for-profit organisations and smaller entities, such as small local churches, currently unincorporated, that the costs to comply will be prohibitive. Furthermore we believe that because if the proposed requirements of “responsible individuals” attracting voluntary leaders within small churches or other small charities will become increasingly difficult.

In addition it is unlikely, in our view, that there are many religious organisations, including those incorporated by acts of parliament or royal charter whose founding documents do not adequately outline some basic governance requirements for the operation of the entity. Many Baptist organisations including State Unions and Global Interaction have been operating effectively under current arrangements for over 100 years. While some of these entities may currently ‘fall outside the current regulatory system’ we believe that imposing a further regulatory burden on these organisations may result in a negligible improvement in governance arrangements at best while imposing significant additional administrative and compliance costs on them.

## 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 Consultation Paper**

The concerns of Australian Baptist Ministries to matters raised in the consultation paper relate to the following issues:

- The continuing regulation of the charitable sector, particularly religious organisations. We believe some current proposals border on challenges to the notions of freedom of religion and freedom of association as we have known them in Australia,
- An assumption of proportionality in the governance arrangements likely to be proposed. If this does not eventuate the impact, financial and otherwise, on most churches of any denomination within Australia will be significant,
- An assumption of state uniformity and co-operation. If this does not eventuate the result will be an additional compliance burden for charities and not-for-profit organisations that operate in multiple states,
- The proposed responsibilities of ‘responsible individuals’ 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**

In general and subject to concerns listed above, Australian Baptist Ministries favours the improvement of governance arrangements within the not-for-profit and charitable sector in Australia.

However we, 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 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

## Proportionality

In the Final report *Scoping study for a National Not-For-Profit regulator* recommendation 35 states:

*“Organisational governance rules should be proportional to the size of entities, risk factors and receipt of public and government assistance”.*

This principle of proportionality forms part of the context for the current Consultation paper.

In our view the potential governance arrangements 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 view the thresholds (particularly for religious entities) are far too low and 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.

## Responsible Individuals

We are concerned that, as has been the case with other consultation papers of recent times, the current consultation paper contains terms (particularly “responsible individuals”) undefined in the consultation paper, but which are defined in other consultation papers, exposure drafts or legislation yet to be finalised.

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.

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.

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

## **Responses to Consultation questions**

### Question 1. Considerations of responsible individuals

In our view the legislation must be clear about all the responsibilities of responsible including who responsible individuals should consider when exercising their duties.

### Question 2. Who should responsible individuals consider?

In addition to the groups listed NFP's should also consider their members (if they have a membership), all of the staff and other volunteers of the entity and any other stakeholders where they exist.

### Question 3. Duties of responsible individuals

The core duties of responsible individuals could be based on those outlined in the ASIC legislation or similar to those of incorporated associations.

### Question 4. Minimum standard of care

In our view the minimum standard of care should be the same for all those termed responsible individuals within an entity. If there is a variation of the requirements in terms of standard of care members of Governing Bodies should be required to exercise the highest standard.

### Questions 5. Qualifications of responsible individuals

In our view educational qualifications are less important than the breadth of skills present across an entities governing body. It is probable that a smaller, less complex entity may require less expertise than a larger or more complex organisation; we believe there should be some recommendations from the ACNC regarding an ideal mix of skills, recognising that when seeking volunteers for roles on a governing body this would not always be possible to achieve.

### Questions 6. Some or all responsible individuals

In our view the minimum standards of care should apply to all responsible individuals of an entity.

### Question 7. Standardisation of duties of responsible individuals

We believe that there is no issue with standardising the general core duties of responsible individuals provided our recommendation contained in the response to question 10 is adopted, namely that the core duties of responsible individuals recognises and is proportional to the size and complexity of the entity.

### Question 8. Other obligations of responsible individuals

In our view there are no other obligations, considerations or other issues that we have not mentioned.



#### Question 9. Higher risk NFP cases

It is possible that entities that receive government funding directly in the form of grants or allocations could have higher requirements made of them.

#### Question 10. Basis of core duties

In our view the core duties should be based on the size of the entity as outlined above. We would favour core duties for large entities (income \$5 Million + per annum) to be based on the Corporations Act and for small and medium entities (income up to \$5 Million per annum) to be based on the office holder requirements applying to incorporated associations.

#### Question 11. Disclosure for good governance

In our view the information registered entities should be required to disclose should be based on the size of the entity and its complexity. In our view related party disclosures and accounting for government grants and disclosure of government assistance would be an acceptable standard.

#### Questions 12. Disclosure of remuneration of responsible individuals

In our view most non-staff responsible persons of NFP and charities serve on a voluntary basis. This is certainly the case within Australian Baptist organisations. It may be appropriate to disclose if there is any remuneration of governing body individuals but in our view disclosing the remuneration staff, such as the local Baptist pastor, who would most times be deemed a “responsible individual” under the act would achieve little by way of public benefit.

#### Question 13. Conflict of Interest criteria

In our view the issue of the correct handling of conflicts of interest is one of good governance. We believe the suggested criteria listed in paragraph 126 are appropriate.

#### Question 14. Specific conflict of interest requirements

In our view responsible individuals of any entity should avoid conflicts of interest and should, when acting as part of the governing body of an entity, put their duties to the entity above their own personal interests.

#### Question 15. Disclosure and management of conflicts of interest

In our view the basis of ‘material personal interest’ contained in the Corporations Act gives appropriate coverage of the types of conflicts of interest that should be disclosed and managed.

Question 16. Additional Risk Management requirements

In our view the most important areas of risk management for NFP's are risks to staff and volunteers, financial risks and reputational risks. These include, but are not limited to occupational health and safety, fraud, mismanagement and conflicts of interest. Policies could be recommended by the ACNC to mitigate these risks.

Question 17. Any particular mandated requirements

In our view any requirements that are mandated should only be broad requirements. The diversity within the NFP and charitable sector would make mandating particular requirements appropriate to all entities almost impossible while also maintaining proportionality.

Question 18. Mandate minimum insurance coverage

In our view it is only appropriate to mandate insurance requirements for registered entities. It should be noted that most responsible individuals will ensure adequate insurance to mitigate their personal risk and that of the entity as far as is possible.

Question 19. Indemnity insurance for responsible individuals

We believe it would be advisable for responsible individuals to have indemnity insurance however as many volunteer their services, perhaps there is a role for government to subsidise or provide, where it is mandated, the indemnity insurance.

Question 20. Internal review procedures mandated

In our view the minimum standards currently applicable to incorporated associations in Victoria and New South Wales would be appropriate provided they are tiered based on our recommendations of entity size. This will, in our view, ensure sufficient transparency for the public, government and other interested parties.

Question 21. Core minimum requirements in governing rules

In our view the only minimum requirement that should ever be mandated for a NFP or charity, particularly a religious organisation is the requirement that profits or assets may not be distributed for the benefit of members or other particular people both while it is operating and on winding up. In our view even this could be problematic for member based organisations depending on the definition given to the word "distribute". We are strongly of the view that neither the ACNC nor any other part of government should have a role in determining the beliefs or activities of a lawfully operating entity.

Question 22. Should ACNC have a role in mandating governing rule requirements?

In our view, and especially regarding religious organisations and entities the ACNC should have no role in mandating requirements of the entities governing rules for the reason noted in response to question 21. We also believe that if the ACNC did have a role our earlier discussion regarding religious freedom would again be raised in response to this issue.

Question 23. Who should enforce the rules?

We strongly believe, for the reasons noted above that in regards to religious entities, it should be the entity, or their overarching organisational structure that should be the one to enforce any rules. We are strongly of the view that no government agency should be able to enforce the rules, wind up, de-register or remove the responsible individuals of a lawfully operating religious organisation.

Question 24. Should ACNC have a role in enforcement, alteration of rules?

As noted in our response to question 23 above we strongly believe that no government agency including the ACNC should be able to enforce the rules, wind up, de-register or remove the responsible individuals of a lawfully operating religious organisation.

Question 25. Model rules

Whilst we believe model rules are helpful they often do not take into account the enormous diversity within the NFP and charitable sector.

Question 26. Governing rules related to membership mandated

As noted in our response to question 23 above we strongly believe that no government agency including the ACNC should be able to enforce the rules, wind up, de-register or remove the responsible individuals of a lawfully operating religious organisation.

Question 28. Compulsory meeting requirements for registered member based entities

As noted in our response to question 23 above we strongly believe that no government agency including the ACNC should be able to enforce the rules, wind up, de-register or remove the responsible individuals of a lawfully operating religious organisation.

## 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) 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.
  
- (3) We believe that governance arrangements legislated through the ACNC must be proportional to the size (see recommendation 2) and complexity of the entity.
  
- (4) We believe that responsibilities and duties of “responsible individuals” must also be proportional to the size (see recommendation 2) and complexity of the entity.
  
- (5) We believe that for registered entities designated as small, only one ‘responsible individual’ should be required to provide their details to the ACNC.

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