

John Church
Unit 12, Northwood
25 Tryon Rd
Lindfield NSW 2070

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

Submission re Australia Charities and Not for profits Commission Bill
Exposure Draft .

Dear Sirs,

I must express my concern at the limited time for the 600000 parties affected and also the lack of advice given to them...

I think this limited time frame will mean that comments will not be representative.

I have been unable to find a definition of Not for Profits in the legislation. My question is why? Effectively this creates uncertainty for all. The published intention is clarity.

The timetable commencement date is totally inappropriate and perhaps should 3 years because it is clear that there will be no proper consultation before this will come into effect let alone the 600000 being given an opportunity to understand the effects of the proposals. The short timeframe means that much of the requirements will never be known till it is in force.

I note that Act purports to bind the bind the Crown yet is not subject to any penalties. One could argue that all government departments are not for profit. Is that the intention? I doubt it but the drafting is not clear.

The Object 2-5

It is pity that it does specifically a duty to assist Not for Profits and Charities.

Notifying outcome of application for registration

10.25 (b). This should be amended to require the Commissioner to provide reasons.

Review of Refusal of registration

There should be a provision to provide funding for small organisations that were registered at the commencement of this Act whose registration is being disallowed. Many of these organisations would not the funds to contest any decisions.

Financial Statements and notes

It does not state who sets the standards I have no confidence that AASB would design standards appropriate for these entities it is a power that should be given to the ACNC. I note that the AASB has no intention in complying with your deadlines and is still proposing Service Reporting at a future date . Surely this is a matter for the ACNC. The ACNC should ensure that standards are clear and designed for all persons to understand simply and not with continuing changes of meaning to ordinary words and allowing discretion in interpretation which means that entities would be subject to auditor's interpretation of the standards which then creates an inability for the public to rely on them for comparison.

Audit 55-40

There is no discussion of what you require for "small" entities . I see difficulties and inconsistency for entities that change from year to year being a small entity to a medium entity and the next year a medium entity and the following year being a small entity .These provisions as expressed here will merely add cost and create uncertainty.

Audit 55-45

My understanding is that there are no specific standards for auditing not for profits . To have consistent basis for comparison it would be proper to have a specific standard .

Accounting Periods.

What is mystical about 31st October this implies the 30th June year ended. I would suggest that for many of small/medium entities this often not appropriate. Could this section be amended to give to give entities a choice of 31st April as well.

Regulatory Powers

There should be an obligation on ACNC to notify all the 600000 entitles in writing that have been identified with details of this legislation.

196-50

It is a pity that you have not given any indication of what you will require in “approved forms” and that this will not subject to any consultation.

210-65.

The definition of Responsible individual seems not cater rationally for small organisations. On one interpretation it could include all members which can be a regularly changing number. The definition is clearly inadequate.

In the aged care and education sector this could cover a huge number of persons. The whole section should be redrafted to cover all the problematic issues especially in the light unincorporated associations.

This also leads to problems with the “solvency “requirements

Where do Advisory board fit in with definitions especially in religious organisations as there advice may or may not be binding.

General outline and financial Impact

Regulation Impact on not for profits

On what basis do you make this claim as initially it will another level of cost imposed on not for profits and is dependent on the States and Territories to agree? How long will this take surely this should be part of your estimate of compliance costs.

Chapter 1.

It seems to be a very muddled approach to only deal with section of not for profits and not all.

I note that you have not released your promised paper on Companies limited by guarantee . Is there any reason ?

1.34.

Am I correct in assuming that you have not dealt with PBI's as a separate entity.

Chapter 2

Context

2.9 How accurate is this statement my understanding is that ATO approval is required.

Registration Process

1.17 Why are government agencies exempt from this Act it seems to be inconsistent with binding the Crown and then exempt it.

Chapter 3

1.56. I think this needs further thought. If they are small unincorporated associations such as sporting team associated through fellow workmates that run a bank account and have TEC status and purely depend on the player's subscription .It has a turnover of say \$3000.00. You will create a new set of obligations, duties and reporting for no real purpose.

1.69. I think the size of small registered entities needs some refining .Take a church that has 2 or 3 employees and its income is 270,000 receives only an income tax exemption and is subject to the control of its members who subscribe the funds. Why should it have to incur the huge additional costs of auditor? The end result of your proposal is to increase its costs for no purpose.

1.122. Many unincorporated associations would often have their accounts audited voluntarily by a member of the association who is not party to any of the monetary transaction of the organisation. Would you regard that person as not being independent?

Chapter 4

1.158. I have some concern about the definition of an individual as it seems too wide I would suggest a redrafting to express it as relevant office holders under the constituent documents and for those in unincorporated associations those acting as director or trustee.

Chapter 5

1/169. It would be desirable for the ACNC to take control of all the entities you are referring to and be the determining body rather than have these external bodies interfering and adding to complexity.

Chapter 6

It is a pity that all the emphasis is on compliance and enforcement and not on the educative aspects. Fundamentally the Act should provide proactive obligations on the ACNC to assist those bodies affected by the Act.

As it is now your deadline for this I apologise if it is not as well laid out as I would like but being an individual that has only limited time to devote to this. I feel sure that there are many matters I have not commented on.

General

There is no mention of Paves and Private Ancillary Funds which have their own specific legislative Acts and regulations. Will the ACNC be imposed on top of them?

Yours Faithfully.

A handwritten signature in black ink that reads "John Church". The signature is written in a cursive, flowing style.

John Church
27th January 2012