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09:TC:JB

25 January 2012

The Manager
Philanthropy & Exemptions Unit
Personal & Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2000

Dear Sir,

The Uniting Church in Australia expresses its utmost concern with the haste of the consultation process which the Government has set to meet its own goal of submitting its proposed "Australian Charities and Not-for-Profits Commission Bill 2012" for the first session of Parliament in 2012 and wishes to convey some of its concerns to you through the following remarks.

CONCERNS FOR CLARIFICATION

These concerns are rooted in the following which we raise at the outset of this submission in response to both your invitations to comment on the Exposure Draft of the ACNC legislation and the Consultation paper on the governance framework which are so inter-related and connected:-

(i) **Harmonisation**

The consultation Paper entitled "Review of not-for-profit governance arrangements", paragraph 23, states "the aim is not to impose additional requirements on top of any existing governance requirements". We support that intention but cannot be assured that the Government's negotiation process with the states and territories and Commonwealth Departments can be achieved in time for the 1st July 2012 establishment of the Commission. That challenge is expected to lead to additional compliance overload during the transition stages.

(ii) **One-Stop Lodgement and Compliance Register**

Similarly, the Government's intention for a one-stop lodgement and compliance regime appears not to have been fully explored, as personal representations have led us to believe that some requirements of the Commission (for example with lodgements of annual financial reports), potentially will be a further imposition. Our best example would be a Church School which can lodge up to three figure financial forms and sets of information to satisfy annual reporting, acquittals and statistical demands of State & Federal Government Departments.

(iii) Our Structural Complexities and Diversity not catered for

The Uniting Church is primarily an unincorporated body with five types of inter-related councils in a non-hierarchical structure. These Councils are for National activities, "state" based defined roles, regional structures, and local congregations, as well as there being many institutional activities which are generally unincorporated, or if incorporated, are associations or companies limited by guarantee under various state and territory legislation or corporations under Federal Law. However, the extent of incorporation varies from Synod to Synod as each Synod is allowed by the Church's Rules to structure its Synod's activities as it can afford and desires for optimal resourcing its congregations, presbyteries and institutions/ agencies.

Our structural complexities and diversity have not been adequately covered by the proposed Bill, the associated explanatory memoranda, discussion papers or the Treasury produced Newsletters. Financial reporting in particular has not been adequately researched for the organisational and structural diversity of the sector. They seem predicated on a corporate model encompassing most, if not all, its activities within one corporate structure.

(iv) Incomplete Exposure Draft

Sections of the Exposure Draft have yet to be drafted and several areas seem not to have been considered. A simple example is "breach reporting". This will be expanded further in this submission. Other absences include reviews and appeals, criminal penalties and the duplication of the Act to certain non-legal entities (which could relate to the Church). We understand the whistle-blower section has since been withdrawn, an action with which we agree.

(v) Object of the Act

The Exposure Draft in Division 2 states that the "Object of this Act is to promote public trust and confidence in not-for-profit entities that provide public benefits", implying that they do not have the public's trust and confidence at present. Nowhere is such a statement made in Corporations and Incorporated Associations Legislation. Our sector needs to understand why we are being singled out and then be able to use that explanation to understand what the government is trying to achieve. This kind of openness will enable the sector to cooperate more completely with objectives that can be agreed and shared with the Government.

(vi) Audit

Our Sector relies very heavily on voluntary efforts yet the apparent scope and requirements of the incomplete Exposure Draft and the "Governance arrangements" document expect a high level of compliance and in particular, financial reporting and auditing, which is not possible in such a diverse structure and activities as the Church. This is especially noticeable with the requirements that all large audits must be performed by a registered company auditor. Many rural locations already have difficulty finding a qualified accountant to do their audit and a fewer number are registered Company auditors.

As with tiering of financial reporting lodgements, the Uniting Church has had to tier their audit requirements, based on congregational income. An internal review by Synod is conducted as a reasonableness check. There should be an option for the ACNC Commissioner to dispense with such audits.

(vii) Understanding of Volunteerism?

The Government does not appear to fully understand the nature, extent and supervision issues of volunteerism:

- (a) We understand the Governance document comment in Section 4, paragraph 54, that "volunteers have to be recruited, trained and monitored". In smaller church entities, all leaders are volunteers other than the ministry leader who is not the chief executive officer. Workshops are provided by the Synods which also monitor financial performance but our resources and systems of authority cannot cope with or require central recruitment, formal training and supervision.

Likewise the comment that "the high use of volunteers and the lack of resources to check on their credentials and supervise their activities is also a risk factor" is acknowledged. However, both the Exposure Draft and the discussion paper seem to be framed for the charity and/or not-for-profit organisation that is virtually a single entity or structure, thereby not allowing for diverse Church structures and activities.

- (b) **Current accounting standards** are very difficult to apply to Church dioceses, and more so, to non-diocesan church structures such as ours. Just one Synod, that of New South Wales and The Australian Capital Territory has around 650 congregations, 15 presbyteries and more than 100 community services and 9 schools. To supervise, monitor, audit and consolidate these will not increase transparency and accountability, will be most costly to produce and audit, and will be too complex to understand. Consequently there needs to be a power for the Commissioner to vary and/or exempt certain organisations from financial reporting. For example, a congregation whose members donate most of its funds, approve an annual budget and receive at least annual financial statements, is not in the same category as an entity whose income relies primarily on public appeals and should be able to be exempted. Their accounts should not be public as the members are the "donors".

- (c) Additionally, **consolidation or group accounts** pose significant issues:

- a. The need for different balance dates for different activities, particularly due to government funding and activity programmes. Schools work with calendar years yet many other posts follow a fiscal year end.
- b. No argument has been presented for getting the Commissioner's approval.

- c. We concur with the discussion paper comment in Section 4, paragraph 61, which states:

"A balance needs to be struck between rules to deter malfeasance with a culture which promotes compliance, self-regulation and transparency, and the compliance burden placed on NFP entities".

The church is unable to see that reflected adequately in the Exposure Draft.

- d. **Training of Volunteers** will be a significant additional burden on the various parts of our organization if they are to understand the accounting standards imposed by the Commission. It raises the challenge for Government to provide funding and do they expect centralised accounting and at whose cost as they are not affordable.

(viii) Unincorporated Associations

The comments in the discussion paper regarding Unincorporated Associations, Section 5.5 on page 12, are of concern to the Church as we are ostensibly an unincorporated association whose Constitution, National Regulations and Synod by-laws are given legal recognition through State and Territory Acts of Parliament. The Regulations and By-Laws are effective governance and management statements with explicit accountabilities and provide office bearers with indemnity comparable to corporations.

Mitigation of risks is sophisticatedly covered by our Synod insurance arrangements as well as extensive risk assessment and management frameworks. These contradict much of points 73 and 74 in Section 5.5 but there is to us no sufficient recognition of unique situations such as ours in the Exposure Draft. Furthermore, there is some recognition in Section 5.8 of the Discussion Paper but again not in the Exposure Draft.

(ix) Charity Infrastructure Entities

The Exposure Draft does not recognise nor adequately deal with our infrastructure entities such as treasury, insurance and fundraising arms and that lack of clarity is not helping our planning. This is also relative to the "Unrelated Business Income Tax" matter whereby we are still awaiting the new Government proposal.

The "Explanatory Materials" document for the Exposure Draft states in Section 1.42 on Page 10 that:

"That Government will reform the use of tax concession by businesses run by NFP entities. The reforms will encourage charities to direct profits generated by unrelated commercial activities back to their charity's altruistic purpose".

Then in 1.43:

"The Government will also introduce a statutory definition of 'charity' applicable across all Commonwealth Agencies from 1 July 2013".

This is unhelpful if the provisions of the Exposure Draft were to become legislated and operative from 1 July 2012 for it effectively could cause two stages of restructuring for a charity to be compliant (and at great cost).

(x) Powers to Suspend and Remove

We note that the ACNC will have the power to suspend and remove trustees or corporate responsible individuals as well as appoint acting trustees in the case of suspension or removal. For the Church, we need to know how such an arrangement would be enacted under the governance structures of the Church, including its congregations, agencies, etc. which are unincorporated. The Church Regulations provide a more effective and timely intervention than can be achieved by working with Corporations and Incorporated Association Laws. As well, de-registration of a small church such as a congregation begs many concerns as to how the Commission will act. Our view is that much more work needs to be done to define the processes and circumstances which would lead to de-registration.

(xi) Uniformity of Relating Legislation?

There appears to be a conflict between the Exposure Draft's intention for an entity to have multiple activities yet there are areas which the Income Tax Assessment Act restricts to one entity. This raises the question about uniformity of relating legislation.

Financial Reporting

We acknowledge verbal advice that Division 55 (Reporting) is based on the Corporations Law requirements for Companies Limited by guarantee.

Similarly, references are made to "financial statements" complying with Accounting Standards and audited by a "registered company auditor (within the meaning of the Corporations Act 2001)".

We refer you to our following comments in particular group accounts to any requirement to present consolidated or financial reports.

Accounting Standards

There is **no set of accounting standards** in place at this stage that cover the diversity of the sector, except for corporations. Likewise, at present, there is a choice in many cases for less onerous special purpose financial reporting rather than general purpose accounts. By requiring "entities" to lodge audited financial statements with the ACNC, all such reporting will become general purpose accounts with additional costs, without improving the reporting transparency.

There are also **limitations of accounting standards** which need to be addressed to give comfort for the sector for most donors will not understand finance reports prepared

in accordance with accounting standards. A good example is the requirement of the standards for all government subsidies and grants to be brought to account as income on receipt, irrespective of the purpose of that government assistance.

If that assistance is for capital expenditure such as for construction and real estate acquisition, the surplus or the profit for the reporting period will be overstated as costs of construction and acquisition are not brought to account as operating costs.

Nowhere in the standards is there a succinct statement showing the difference between the normal operating result and the standards' accounting result so that uninformed, unskilled readers know that the organisation is extensively distributing their donations and not making inflated profits/surpluses.

Furthermore, **lodgement of the financial reports within four months** after the year end will not be possible with the Church's structures, if group or consolidated financial reporting is to be required by the ACNC. That is not covered in the Exposure Draft.

The Exposure Draft is also not clear on **what is the reporting entity**, say for groups such as the Church. We understand the intent is that only an entity is audited and that there will not be group or consolidated accounts. We would support that premise.

If the **Accounting Standards** refer to consolidations and group accounts which are based on **definitions of "control"**, the Uniting Church will have a physical difficulty for a Synod to consolidate all of its diverse activities, let alone have them audited as a set of group accounts because of the daunting size of the Synod. Similarly, the standards need to be pre-circulated early for comment and to enable the year ended 30th June 2012 figures to be audited so that there will not be a qualified audit report on the 2013 year-end figures. The 2012 figures will be the comparative figures in the 2013 financial reports and are required to be consistent with the basis of preparation of the 2013 figures.

Breach Reporting

The Church was present at a Treasury briefing in Canberra in December 2011 which better helped understanding of the timing pressures for the introduction of a Bill to Parliament in the first session of 2012.

However, the explanations for the draft clauses for the Commissioner's investigation and inspection powers requires public disclosure of such actions without necessarily completing the reviews and examination of the veracity of the complaints. Such disclosure can cause irreparable reputational damage. That damage could also apply if breaches are elsewhere alleged or disclosed, yet the entity is not required to disclose them to the Commissioner. We understand this section is being reviewed such that no report will be made unless the investigation proves an allegation.

We contend there is a need for more review of these powers and failure to report breaches such that the rights and reputation of the entity are respected.

ADDITIONAL COMMENTS ON GOVERNANCE:

There are aspects of the proposed Bill which we can support such as:-

- (i) The Requirement for a minimum governance framework. A framework is preferred to prescribed governance documents as the diversity of the Not-for-Profit Sector and the Churches makes it impossible to achieve generic constitutions.
- (ii) Matters such as conflicts policy, risk management processes, winding up distribution requirements, and dispute resolution procedures are indeed essential governance features.

CONCLUSION

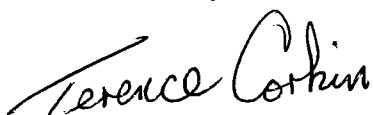
The Church is concerned that the Exposure Draft is so incomplete that to comment on it can be deemed to be qualified support when a complete Exposure Draft should have been the starting point for consultation on the Bill and the associated governance arrangements.

Accordingly, the Church must await the Government's answers to our issues and concerns and failure to do so, may necessitate public voicing of opposition to the proposed legislation. Deferring the starting date of the legislation to 1 July 2013 would be a more appropriate timing.

We would prefer giving support but cannot do so at this point of time.

If you have any queries on this submission, we suggest you contact me or our submission co-ordinator, Mr. Jim Mein AM, on 0408 660 591 or on jimm@nsw.uca.org.au

Yours faithfully,



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Uniting Church in Australia