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20th August 2014.

SUBMISSION BY THE UNITING CHURCH IN AUSTRALIA

On the Department of Social Services Options Paper for
Replacement Arrangements following the Abolition of the
Australian Charities and Not-for-profits Commission:

consultationwithcharities@dss.gov.au

Civil Society and Programme Delivery Policy Branch,
Department of Social Services PO BOX 7576,
Canberra Business Centre, ACT. 2610

I write on behalf of the Uniting Church in Australia as the National Coordinator of Responses to Charities and Not-for-profits Reform Proposals of Government, particularly those entities which are not under the national community services oversight of UnitingCare Australia. I work in collaboration with Mr Joe Zabar of UnitingCare Australia and we are both available to meet with your appointed personnel if you have any difficulties or uncertainties in understanding how the Uniting Church is structured, functions, accounts and complies with existing legislation.

BACKGROUND TO THE UNITING CHURCH IN AUSTRALIA

The Church is an unincorporated body created by consistent State and Territory property trust legislation. That legislation was enacted on 22nd June 1977. The Church is the result of many years of discussion to 22nd June 1977 of the Methodist, the Presbyterian and Congregational Union Churches in Australia. All the Methodist and the majority of Presbyterian and Congregational Union entities became the Uniting Church in Australia.

Enabling State and Territory legislation created a statutory corporation in each of their jurisdictions although most of the Church's jurisdictions do not exactly follow those geographies. Additionally, the Church is a non-hierarchical federated body with eth main operational responsibilities are through synods and their presbyteries. Most of the latter are limited to each presbyteries regional geography but there are several exceptions, being mainly because of indigenous and ethnic presbyteries. As well, each statutory corporation primarily has a nominee role and not one that is a trading or operational activity.

The Church is primarily an unincorporated association of religious individuals who are able to exercise a wide variety of ministries through the authority of national Regulations and synod by-laws. There are nonetheless many different structures including unincorporated structures such as the National Assembly, the synods, church constituted bodies and congregations, as well as companies limited by guarantee, incorporated associations, letters patent, public ancillary funds and trusts.

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The structural diversity covering well over 3,000 entities across Australia is expected to be greatly impacted by legislated changes. It has already been impacted by considerable investment in responding to changes resulting from the current Commission and related legislation through the development of changed oversight and accountability procedures and related requirements. Any future legislated changes are expected to add considerably to our costs without material benefit to our Church and its many activities. Our activities include religion, health, community services, education (pre-school primary, secondary and tertiary), theological colleges, overseas aid, investment banking and disability services.

It is also extremely important to understand that one set of rules and requirements does not suit automatically or work well for all of us because of the diversity of the charities and not-for –profits sector. This is particularly so for the Uniting Church. This was not readily understood by the previous Government and indeed the Parliament when designing and drafting their previous reform legislation. Much of their initial work was centred on models of incorporated entities and on trusts.

THE ATTACHED SUBMISSION

Whilst I have answered the questions in the Options Paper in the format obtained from your Department's website (Appendix 1), I need to raise significant application concerns which that format does not enable us to comment. In other words, the attachment fails to adequately address and explain the issues we have identified as important with regard to government oversight of the Church and its diverse range of activities, legal structures, accountabilities and the like. These are detailed and explained under the following headings:

- A. The Government's proposals should achieve the sector's much stated needs of a one stop accountability point, reducing red tape, improved promotion of the sector, flexible financial reporting (as one type will never assist the sector with its vast diversity of activities, sizes, legal statuses and governance needs) which doubles up as acquittal of government funding, and transparency to the public donors. To date, this has not been achieved because the previous Government failed to engage COAG to take action to secure the necessary support of all State and Territory governments to the ACNC legislation. The challenge for the current Government is to secure total support through COAG to the one-stop contact and oversight point for all sector oversight and needs. This would negate the costly, complex and time consuming process to develop new legislation and the related restructuring and compliance costs for those organisations subject to the new legislation.
- B. The Government's proposals should not seek to "throw the baby out with the bathwater". The existing ACNC Act provides a critical legislative framework that preserves the fundamental rights of charities and NFPs around their independence, diversity and right to political advocacy. A serious omission in the Options Paper is that it does not seek to continue this vital legislative commitment. Nor does it seek to make clear provision for regulation of the sector to be proportionate and appropriate with proportionate and appropriate enforcement powers granted to regulators.

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- C. Much of the public debate seems strongly centred on incorporated entities and the financial reporting standards. These generally do not help nor give confidence that they understand the issues of unincorporated entities, their limited skills and capacities, their generally volunteer leaderships and their limited other resources are clearly understood by government decision makers. For example, each of our three thousand plus entities, including congregations, presbyteries, synods and the National Assembly are unincorporated. Our institutional work is conducted through both unincorporated and incorporated entities with different reporting obligations. Particularly (but not totally restricted) the first group is generally the religious institution category which is most likely not required to be audited. To us, this diversity underscores the problems and issues with general applications of legislation on a one size fits all basis for regulating the sector which can be damaging and costly.
- D. Although we believe that the ACNC itself could have made further red-tape reduction gains for the sector, our experience of dealing with the ACNC as a regulator has been positive. Most important is that the legislation underpinning the ACNC has guided its work to undertake the large and worthwhile set of tasks of bringing greater standardisation, governance and accountability, and risk management, as well as the introduction of better controls, awareness and confidence to the sector. The ACNC'S quick service and the relationships it has developed with the sector have been extremely helpful, healthy and beneficial to us. By splintering the various compliance and registration aspects to different bodies, we are concerned that this will increase red-tape for the sector. The Options Paper presents no evidence that the proposed changes are in the best interests of the sector. That has not been seen to date and our concern is that a return to fractured regulation of our sector will also be a return to increased red-tape and increased compliance costs.
- E. Standardised /harmonised fundraising legislation has still not been addressed and we wonder when this will happen. This is critical for charities operating nationally and across state and territory borders.
- F. A special importance of the ACNC Act is its provisions of legislative protections around our rights to independence, diversity and advocacy as they gave us the flexibility to decide what structures best suit our governance and structures, our mission and how best to advocate on issues important to us. We have yet to see what the Government intends in these areas.

If you have any questions or need amplification of any comments, please do not hesitate to contact me.

Yours faithfully,

Jim MEIN AM, National Coordinator

APPENDIX to the Uniting Church in Australia's submission regarding the proposed replacement/abolition of the Australia Charities and Not-for-profits Commission (compiled in the Department's limited required format):

Name: James S. Mein AM

Name of Organisation: Uniting Church in Australia

Stakeholder Category: Religious Institution of 3,000 plus entities including the National Assembly, Six Synods, Presbyteries, Congregations, Parish Missions, schools, United Aboriginal and Islander Christian Congress and its entities, UnitingWorld Relief and Development, and many other activities but excluding community services activities which are part of UnitingCare Australia's submission which has been referred to in the covering letter to which this appendix has been attached.

State/Territory: Nationally and all states and territories of Australia.

Contact email address: jimm@nsw.uca.org.au.

RESPONSES TO THE QUESTIONS RAISED IN THE OPTIONS PAPER:

1. Proposed New Reporting Arrangements:

1.1. "Do you believe that these proposed requirements will be less time consuming than current arrangements?"

No.

Firstly, to whom will the unincorporated entities report? Likewise the incorporated associations which are currently mainly established under state and territory legislation? Will the reporting exemptions for basic religious charities (BRCs) be maintained? Will BRCs be required to put their financial information on a website when their income is primarily mutual, and why should they?

If BRCs are required to report, there will be considerable time, cost and resource (both people and IT) issues.

Self reporting could minimise the issue but no details have been expounded by the current government. Self reporting would result in thousands of different variations and interpretations within the Church alone, thereby negating any consistency of approach or usable data. We will also have difficulties with congregations as many do not have websites.

There is also the area of reporting when an entity receives State/Territory and Federal funding. How will the Federal Government achieve the one report to satisfying all governments proposal? The Options Paper refers to the independent schools reporting to the "Department of Education." However independent schools currently report to State/Territory and Federal and yet there are still many other financial and statistical reports required of them which are not required of government schools. We were expecting a rationalisation through the cessation of unnecessary reports when an annual set

of accounts and associated reports is all that is necessary to assess their responsible reporting and acquittal of government funding.

1.2. “What changes would your organisation need to make to meet new requirements?”

This is impossible to answer as the new requirements have not been spelt out. For the Church, the changes will be substantial because of the many aged and unskilled volunteers who have no IT skills. We will have to purchase thousands of computers and arrange internet access, create many websites and train the volunteers in IT and website skills. Not only will be initial costs but a higher level of recurrent costs. The nearest parallel to this scenario was the introduction of GST for which the then government granted \$750,000 for the whole Uniting Church in Australia and Lifeline. Will the current government do this in the current situation?

1.3. “Do you foresee any impediments to charities complying with these requirements?”

Yes, as stated above, particularly about websites and schools. We also request the continuation of reporting exemptions for BRCs and other small charities. We would also see difficulties for the public accessing each of our thousands of websites to find the entities they seek to explore. Such extensive information trawling would be a hindrance for public transparency. The single register is a superior alternative.

1.4. “ Do you believe these requirements will provide transparency? If not, what changes would you make?”

The limited disclosures about leaders and key staff and the physical registered office and business place could be in an expanded Australian Business Registry (ABR) website such that individual websites for registered entities would not be necessary. However, we are mindful that the current ABR is dysfunctional and that it would need to be significantly modified and its useability and capacity greatly enhanced for it to act as an alternative to the ACNC register.

2. Determining Charitable Status -Administrative Options:

2.1“Which of these options do you believe best guarantees the independence of the decision making process?”

We would opt for option two provided that there is a quick turnaround in establishing the “separate area within the ATO” and in the Administrative Appeals Tribunal. Maybe a legislated decision making time could be prescribed as the ACNC has a good turnaround record. However, we believe that this option can only be pursued in conjunction with action to continue to preserve those elements of the ACNC Act that provide legislative protection for the independence, diversity and right to political advocacy for the sector and which bind the government to proportionate and appropriate regulation of the sector with the regulator(s) granted proportionate and appropriate powers.

2.2 “Are there any other considerations that should be taken into account when

these functions are undertaken?”

None other than those mentioned in answer 2.1 above.

3. Proportionate Compliance Framework:

3.1 “Are there any reasons why this approach may not work?”

Whilst appreciating the intent against the more potentially punitive ACNC powers and procedures, we would need to understand how the Australian Prudential Regulating Authority (APRA) would work in this sector as experience in the banking, finance, insurance and now superannuation sectors has been extremely exacting, costly and restrictive. APRA’s cost recovery levies imposed on those sectors quite severely cost the smaller operators more than the larger ones in terms of per member costs. We therefore must reserve our opinion until those issues are explained and satisfactorily answered, especially for unincorporated entities.

3.2 “Do you foresee any risks in this approach?”

APRA costs will be a major concern and how they will exercise their compliance oversight. Until these are spelt out, we reserve our opinion. Also, we are concerned that unincorporated entities might fall between the gaps as they are not covered by the Corporations Act.

4. Transitional Arrangements:

4.1 “What other transitional arrangements might be required?”

The main ones are the costs of website development and maintenance and self-reporting, particularly for smaller charities. With websites, we will need to identify how to make these affordable for hundreds of entities across Australia and we will need extra time to establish them.

4.2 “Are there things the Department could undertake to assist charities with this transition?”

Elimination of website requirements for BRCs and smaller charities and the inclusion of the matters raised in 1.4 above. The essential need for government funding raised in 1.2 is a critical concern for the Church. Another challenge for the Government will be the need to educate the public about what is meant by “not for profit” and how to read and understand financial statements as well as the taxation requirements for different types of charities.

4.3 “What factors should be considered in relation to the timing of the new arrangements?”

Other than those already mentioned above, the only timing issue will be the time between the passing of legislation and its assent on the one hand and the implementation deadlines set by Government. We see the suggested time frame as unrealistic if we are required to acquire computers, establish computer systems and websites, train volunteers and comply with the supply of the required information

We would also not want to see any gap in the legislative protections that we need to help preserve the fundamental rights of the sector as listed in 2.1.