

## **THE UNITING CHURCH IN AUSTRALIA NATIONAL ASSEMBLY**

**SUBMISSION DATED 13<sup>th</sup> February 2013.**

The Manager,  
Philanthropy and Exemptions Unit,  
Indirect, Philanthropy and Resource Tax Division,  
The Treasury,  
Langton Crescent,  
PARKES. ACT. 2600.  
AUSTRALIA

### **AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION DEVELOPMENT OF GOVERNANCE STANDARDS**

#### **Consultation Paper December 2012**

Dear Manager,

This submission represents the views of the Uniting Church in Australia in all its diversity of activities, locally and internationally, including our community services operations under the banner of UnitingCare who will be making a separate submission for their area of activities. Both UnitingCare Australia and the Uniting Church have worked collaboratively under the coordinating leadership of Joe Zabar, Nina McKenzie and Jim Mein AM and they are available to make a joint presentation if so required.

As a national Australian Church and one of the largest religious institutions, aged care and other community services providers and educational bodies, we have regularly provided government assistance advice and assistance and are happy to meet with our counterparts and the Treasury counterparts.

#### **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 22<sup>nd</sup> June 1977.

The Church is the result of the of many years of discussion to 22<sup>nd</sup> June 1977 of the Methodist Church in Australia and the majority of both the Presbyterian and Congregational Union Churches in Australia.

Enabling State and Territory Legislation created a statutory corporation in each of their geography but the “State” jurisdictions for the Church do not exactly follow those geographies. Additionally, the Church is a federated body but the main operational responsibilities are through the synods and their presbyteries. Most of the latter are limited to each presbytery’s regional geography but there are some 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 entities such as the synods, national Assembly, church constituted unincorporated bodies and congregations, companies limited by guarantee, incorporated associations, letters patent, public ancillary funds and trusts. This structural diversity covering well over 3,000 entities across Australia is expected to be greatly impacted by the recently passed legislation for Charities and Not-for-Profit entities which primarily appears to be built on companies limited by guarantee and incorporated associations. However we do appreciate the creation of the “basic religious charity” classification which is exempt from the governance standard disclosures.

It is extremely important to understand the diversity of the sector in its range of activities, entity structures, governance processes and accountabilities. In other words, one set of rules and requirements does not automatically work for all. Our mixture of unincorporated entities, companies limited by guarantee, incorporated associations, letters patent, trusts and public ancillary funds is not common to most charities and not-for-profit organisations, other than many religious institutions.

## **OVERALL OBSERVATIONS ON THE CONSULTATION PAPER**

The Church is surprised at the style and design of the proposed Governance Standards as they do not appear to reflect the general business practice and many of our entities are large organisations led by dedicated, experienced professionals who follow those practices.

By design, they appear prescriptive, legally constructed and therefore not statements of principle. We expected to see a list of priority principles of what are the areas of governance importance so that each charity would reflect those principles in an expanded text which befits their context. In turn, the ACNC would evaluate each charity’s statements to ensure they reach a desired level of compliance.

We also note that there are some omissions or understatements of importance of the following important principles:

1. There should be a definition to distinguish between what is meant by “Governance” and what is “Management” and how they link in terms of accountabilities, relationships and reporting. One of the issues in the sector, particularly with smaller charities, is that the governors do not understand the difference and do a lot of interfering in the management. As well, this leads to a lack of an objective perspective to appraise staff performance and see the organisation’s big picture governance strategy and context.

2. The importance of risk assessment and management frameworks is not mentioned. Risks such as loss of reputation, or licence to operate, or funding and operating losses, or failure to succession plan, are not seen as priorities to the ACNC.
3. Likewise, we have listed some other important governance standard omitted area in our comments under the heading “Draft Standard 4: Responsible management of financial affairs.”

## **COMMENTS ON POSSIBLE GOVERNANCE STANDARDS**

### ***Draft Standard 1: Purposes and NFP Character of a Charity:***

The only additional comment with draft Standard 1 is definitional.

We have noted that the government intends to issue a discussion paper on the definition of a “charity” within the next three months but it will be helpful for that paper also to define what is meant by “not for profit.” For more than five decades of working with charities and not-for-profits, I have continually had to explain what the not-for-profit purpose means. This should also be included in the ACNC’s full and helpful education to the donating public.

### ***Draft Standard 2: Accountability to Member***

There are several areas for comment:

- i. An explanation is needed as to why this governance standard is only applicable to charities and not for “not-for-profits” as well. It appears as though charities fail to do this but the NFPs do, which is not always the case.
- ii. The reference to the constitution being a governance document is valid but for incorporated entities, there are the statutory incorporation documents. It is a legal requirement, not a standard.
- iii. This deals with accountability to members but does not appear to be a standard for accountability to donors. Has that been considered, other than regular reporting in Draft Governance Standard 1?
- iv. Whilst the draft standard is tailored around incorporated entities, what will the ACNC expect from the unincorporated bodies? The COAG Regulatory Impact Statement does not help answer this question either.

### ***Draft Standard 3: Compliance with Australian Laws:***

The Church does not see the need for this draft standard as all citizens know that they must obey the laws of their country and indeed those of other countries where they have overseas activities. That cannot be a standard as it is a legal requirement. What the ACNC proposes is more a process or policy whereby it may act if there is a “serious breach of law.”

We are also concerned that at times we might strongly feel that a statute is unjust, detrimental to a person's human rights and requiring advocacy which is tantamount to the considered need for civil disobedience. Does this draft standard deny us these rights?

#### ***Draft Standard 4: Responsible Management of Financial Affairs:***

We are surprised at how few examples are given as to how the ACNC will assess such a governance standard. It is our view that there are critical areas such as the following which either need a governance standard or be included in sub-areas of this draft governance standard:

- Human resources.

- Risk management.

- Strategic direction setting as one of the most critical aspects of effective governance is long term survival.

- Governance skills capacity of the governing body and regular performance Appraisal.

#### ***Draft Standard 5: Suitability of Responsible Entities***

Whilst we agree that a disqualified person should not be a "responsible entity" as defined in the Act, we are concerned at how the ACNC will develop the Register. A logical starting point would be the long established ASIC register.

Secondly, the governance standard should be more about the selection and appointing of the governing body and key management staff who would also be deemed "responsible entities." This would be more appropriate as a positive and beneficial standard than the proposed negative standard as the most important objective should be ensuring the best available people are engaged to be and remain effective responsible entities.

A further concern is for the ACNC to explain how they will conduct their investigations and determine whether a responsible person should be adjudged as a "disqualified responsible person." It is important to be assured of the process' fairness and delicacy to ensure that there is minimal damage to affected entity.

#### ***Draft Standard 6: Duties of responsible entities:***

Whilst these duties are acceptable, we are concerned with the variety of those identified in the COAG RIA as there are inconsistencies. These inconsistencies will mean additional compliance costs whilst there is no national uniformity.

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**TIMING ISSUES:**

We welcome the eighteen months to ensure our constitutional documents, governance standards and related documents are reviewed, submitted to the ACNC and changes mutually negotiated. However, we need assurances of the processes, the contact persons and the expected time turnaround for our planning purposes to manage this special project.

***REDUCTION OF RED TAPE CONCERN:***

We also need to express our concern that the Regulatory Impact Assessment of the Council of Australian Governments document has added to our assessment that the reduction of red tape will most unlikely be achieved, unless all states and territory governments embrace the one stop reporting principle of the ACNC concept.

Particularly with governance and with financial reporting, the COAG RIA leaves us with the firm view that there are more areas of duplication between the ACNC and the State and Territory Regulators than the Commonwealth and State and Territory Regulators. We do however acknowledge that the Commonwealth Government is committed to red tape reduction through a number of the initiatives such as the Charity Passport and by improving the Commonwealth Grants Guidelines, and hope that the States and Territories accept the national regulation of charities before the extra compliance costs hit the NFP Sector.

In the mean time, exercises such as governance standards to the ACNC' s likely expectations is yet another burden we will need to bear for those of our entities who will be required to submit their governance standards.

Yours faithfully,

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