



27th 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

Dear Sir/Madam,

**Submission to Exposure Draft
Australian Charities and Not-for-profits Commission Bill 2012**

The purpose of this letter is to respond to the exposure draft 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



Australian Charities and Not-for-profits Commission Bill 2012

Submission responding to Exposure Draft released 9th 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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Australian Charities and Not-for-profits Commission Bill 2012 – Exposure Draft

This submission is in response to the Exposure Draft released by the Assistant Treasurer on 9th December 2011 titled “Australian Charities and Not-for-profits Commission Bill 2012”.

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, enter and search the premises or in any other way restrict the operations of lawfully operating religious entities is unacceptable and 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 provide a separate commission for the benefit of charities and not-for-profit entities in Australia, we are concerned that in addition to the issues around freedom of religion religious organisations will have to bear significant additional administrative burden and associated cost in order to comply with the reporting and review and audit requirements.

We believe that the governments own deadline of having the ACNC operational on 1st July 2012 has meant an enormous amount of proposed legislation, numerous consultation meetings and papers and various taxation rulings being produced in a relatively short time frame. This in turn, along with some extremely tight deadlines has created for the entire NFP and charitable sector an incredible amount of additional work responding to these enquiries. Whilst we trust that these consultations actually have a bearing on the final form of the ACNC we reiterate that it has come at considerable cost to the sector both financially and potentially in the diversion of effort from other matters associated with the mission of NFP organisations.

We are also particularly disturbed that the exposure draft contains several sections where the proposed legislation is either not drafted at all or simply refers to the fact that it will be drafted ‘along the lines of’ other particular legislation. We believe that it is most unreasonable for government to produce such an incomplete exposure draft, expect responses to such important (to the NFP sector) legislation in such short time frames, while at the same time claiming the (self imposed) deadline is driving the speed at which the reform process is taking place.

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 Exposure Draft

The concerns of Australian Baptist Ministries to matters raised in the exposure draft 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,
- The proposed powers of the Commissioner and their staff include the power to ‘enter and search premises’. In the case of a church operating lawfully, we would find this power to be excessive and totally unacceptable,
- The exposure draft contains an as yet unwritten section which indicates it will deal with the ‘suspension and removal of corporate responsible individuals’. Australian Baptists would find such powers granted to any government body invasive, an erosion of their religious freedom and a blurring of the separation of church and state especially where they were they to be applied to a entity otherwise operating lawfully,
- There is an assumption of proportionality in the reporting arrangements proposed. If this does not eventuate the impact, financial and otherwise, on most churches of any denomination within Australia will be significant,
- There is also an assumption of state uniformity and co-operation in various parts of the proposed legislation. If this does not eventuate the result will be an additional compliance burden for charities and not-for-profit organisations, particularly those 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

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.

We believe that any legislation requiring registration with Government of religious 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.

In our view registration of religious entities with the ACNC 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.

Proportionality

In the Final report *Scoping study for a National Not-For-Profit regulator* recommendation 21 states:

“Each entity should provide information for reporting purposes but the content should be proportional to the size of entities, risk factors and receipt of public and government assistance. Small entities should be required to provide no more than a post card of information.

This principle of proportionality forms part of the context for this exposure draft, the current Governance Consultation paper and the discussion paper on the implementation design of the ACNC.

In our view the potential reporting requirements 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.

Reporting & Audit

Australian Baptist Ministries is concerned that the reporting requirements contained in the proposed legislation will be extremely onerous on the majority of Baptist churches in Australia. Currently 850 or 89% of Baptist churches in Australia are unincorporated associations. These unincorporated associations would typically prepare financial reports and other reports purely for use by their members.

Approximately 20% or 170 of the Baptist Churches in Australia would, we believe fall into the proposed categories of medium or large entities. While we would anticipate that many of these would prepare financial reports for their members, most are unincorporated associations and so currently are not required to have their accounts audited and those accounts prepared in accordance with Australian Accounting Standards.

Many churches currently find it difficult to enlist the services of a volunteer treasurer and in our view this additional requirement will only serve to exacerbate that situation. The requirements of auditors of any registered entity under the proposed legislation will require professional audit firms to carry out the audit rather than, as is the case for some of our churches, the task being undertaken by a member who is a retired accountant.

In terms of these 170 churches being required to have their accounts and financial reports audited it is our estimation that for those who currently do not prepare financial reports according to Australian Accounting Standards to do so and for all of these churches to have audits that would meet the requirements of the proposed legislation would incur an additional cost approaching \$1 Million per annum including costs of property valuations etc. Unfortunately if this money has to be spent on compliance matters to satisfy government requirements, it cannot be spent in the service of others, on the disadvantaged in the community or for any other purpose for the public benefit.

In our view it is virtually pointless to publish publically financial information relating to religious organisations, particularly local churches. We believe that the information may be used in public campaigns against religious entities and against their long standing receipt of tax concessions.

We are concerned about section 55-80 of the proposed legislation which allows the commissioner to *“determine, in writing, that a particular entity must prepare a report in addition to any other statement or report the registered entity is required to prepare”*. In our view this section is too vague. There is no indication of the potential reasons the commissioner may determine this request, not is there any definition of a ‘particular registered entity’.

In addition to this the proposed legislation allows for the determination to be made no later than 6 years after a financial period while section 50-5 (4) requires registered entities to retain financial records for a period of 5 years. We believe the two periods should be identical otherwise the commissioner may determine that a report must be prepared after the time the records have been destroyed lawfully under the legislation.

Accounting Periods – Subdivision 55-E

Australian Baptist Ministries do not require that all of our churches and entities operate to the same financial year. Therefore many have financial periods that end on dates other than 30th June. In our view it would be an additional unrealistic burden on those entities (should they choose to register) to be required to formally apply to be able to operate a different financial year than one with a 30 June end.

Many of our churches operate to a 31 December financial year end as this it is far better than 30 June in fitting with the natural rhythm of the church activities for the year.

In our view the legislation should provide transitional arrangements allowing entities choosing to register to continue to operate on their current financial period without the impost of the formal application process.

Responsible Individuals

Australian Baptist Ministries is extremely concerned that subdivision 143-A is ‘yet to be drafted’. In the context of the discussion earlier in this submission regarding religious freedom, we believe this is a vital part of the legislation which we are asked to review, yet it is not drafted.

While we cannot comment on undrafted proposed legislation, if subdivision 143-A does not contain an exemption at least for clergy, but preferably an exemption for religious entities, we believe it will be vigorously opposed by all major Christian denominations and major faith based organisations within Australia as it erodes the important concept or the separation of church and state to an unacceptable level.

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.

Whilst the responsible individuals’ declaration is in and of itself not onerous, in the case of unincorporated Baptist churches, of which there are 850 in Australia, it is a new and additional requirement and one which, if signed erroneously would no doubt attract legal liability.

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. If this was to be the case, for small entities, section 100-10 (l) of the proposed legislation could be modified to refer to one responsible individual for small registered entities.

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

Investigation powers – Subdivision 120-A

We assume that section 120-10 refers only to the Commissioner's power in respect to registered entities. Currently this is not clear in the proposed legislation as currently it simply refers to 'an entity' rather than 'a registered entity' as is the case in many other parts of the legislation. In our view it would be entirely inappropriate for the commissioner to have the powers noted in subdivision 120-A over entities that have chosen not to register.

In our view section 120-10 (1) (c) of the proposed legislation should contain a requirement that the commissioner prove the relevance of the document(s) requested to the investigation. We are also concerned that there may be documents resulting from counselling provided by clergy that would currently be considered as confidential 'as from the confessional' but which may be requested by the commissioner under the proposed legislation.

In our view the inspection powers contained in the proposed legislation (section 120-415) are unacceptable when applied to places of worship. We believe that, in certain circumstances, these powers could be used to intimidate and frighten members of religious entities. We are concerned that, once consent to enter has been given, there are basically no restrictions on the ACNC officer, no requirements to leave the premises in the same condition in which it was found and no requirement to respect any items which may be held with particular reverence by the entity.

Commissioner's power to give directions – Subdivision 140-A

Australian Baptist Ministries is also concerned about the powers granted to commissioner to give direction to registered religious entities. In particular we are concerned that in section 140-15 (1) (b) the commissioner may give a direction for a responsible individual not to *"...take part in the management or conduct of the activities of the registered entity except as permitted by the Commissioner"*. In our view this power could be used to restrict the activities or clergy or lay people within a religious entity, a possibility which we find to be unacceptable and a direct challenge to the notion of religious freedom.

Similarly in our view section 140-20 which allows the registered entity to comply with the commissioner's directions despite anything in its governing rules is also unacceptable particularly in the instance the commissioner's direction requires a religious entity to do something which is against their beliefs, which are often contained in the governing rules.

Application of the Act to certain non-legal entities – Part 7-3

Australian Baptist Ministries believes that this section needs to be outlined in detail before we will respond to it. Does it refer to unincorporated associations and if so what parts of the Act would be applied to them particularly if they are not a registered entity with the ACNC.

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 entities associated with recognised religious denominations and faiths within Australia should only be required to disclose information for one responsible individual.

- (4) We believe that religious entities with income under \$5 Million per annum should be treated, for reporting and audit purposes as small entities under the Act.

- (5) We believe that the legislation should provide transitional arrangements allowing entities choosing to register to continue to operate on their current financial period without the impost of the formal application process.

- (6) We believe that entities associated with recognised religious denominations and faiths within Australia should be granted exemption from the following parts of the proposed legislation:
 - a. Subdivision 143 –A once it is drafted,
 - b. Section 140-15 (b)
 - c. Section 140-20

- (7) We believe that a second exposure draft in its entirety should be drafted for comment before any final legislation is drafted and presented to parliament.
