



ea Engaging Australia in global mission

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27 January 2012

Manager
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The Treasury
Langton Crescent
PARKES ACT 2600
Email: nfpreform@treasury.gov.au

Submission re consultation on:

Australian Charities and Not-For-Profits Commission Bill 2012

Dear Sir/Madam

Missions Interlink welcomes the opportunity to respond to the Treasury's consultation paper on the proposed Australian Charities and Not-for-profits Commission Bill 2012.

1. About Missions Interlink

Missions Interlink is a network of 167 Australian organisations that are involved in cross-cultural mission. It is not a mission agency, but rather the peak body representing cross-cultural mission organisations within Australia and exists to link, support and provide training to its members and associates. The size and income of Missions Interlink members varies greatly with 48 organisations at the lowest membership level (up to 2 personnel or donation income less than \$200,000), and 14 at the highest level (50 or more personnel or donation income above \$5,000,000). All are currently Tax Concession Charities and some are public benevolent institutions with DGR status.

Missions Interlink works with its members to facilitate good practice and compliance with all applicable regulatory requirements. It seeks to promote and maintain high standards of accountability and governance through its application processes, Standards Statement, compliance checks and education. Each constituent member must have a governing instrument and written policies that clearly define its organisational and accountability structures within Australia and demonstrate good accountability and governance principles.

2. Affirmation

Missions Interlink supports the government in its commitment to strengthening the NFP sector, including the establishment of the Australian Charities and Not for Profits Commission (ACNC). We strongly affirm the intent of the draft legislation and believe that the ACNC will play a very significant role in the Not-For-Profit (NFP) sector in Australia.

We would like to urge that the Commonwealth progress as a matter of urgency the harmonisation of NFP-related legislation, so that State based fundraising and incorporated associations legislation can complement the changes, which are proposed in the Draft Bill for the Australian Charities and Not for Profits Commission.

3. Annual Returns

We are concerned about the limited time allowed for lodging a registered entity's annual return. The Corporations Act allows four months for the submission of reports, usually prior to the AGM. The forms in ACNC's *Implementation Design* require lodgment after the AGM due to the presumption of a change in officer-bearers (refer to Item 4 on the Annual Return form). However the requirement is to lodge the Returns within four months of balance date.

We ask that the ACNC Bill provide a period of five months for holding the Annual General Meeting and six months for filing the Annual Reports of Tier 1 and Tier 2 entities.

4. Financial Reporting – Financial Statements

We note that financial reports are to be prepared in accordance with Australian Accounting Standards, and the implication that Special Purpose Financial Reports (SPFR) as allowed in the Australian Accounting Standards would be normally acceptable. This would depend upon the size of the entity and its reporting obligations under the same Standards. However the EM at 1.72 on page 28 states that revenue is to be calculated in accordance with the relevant Accounting Standard. The implication is that all recognition and measurement principles in Australian Accounting Standards need to be applied. In paragraph 107 on page 20 of Treasury's Governance document, it seems to be emphasising different requirements will apply at the different Tiers. However it also states that ACNC will be introducing a "General Purpose Reporting Framework".

We do not support any move to introduce General Purpose Financial Reporting as currently mandated by Australian Accounting Standards because of the onerous and unnecessary obligations this would place on NFP organisations.

For many entities, including many of our members, a requirement to prepare 'general purpose financial reports' would be onerous and inconsistent with current practice. Many charities, particularly those receiving large amounts of public money, are likely to be producing 'general purpose financial reports' currently. However, those with a narrower or smaller supporter base may currently prepare 'Special Purpose Financial Reports' tailored to meet their users' needs. Special Purpose Financial Statements are prepared using fewer requirements than those used in preparing General Purpose Financial Statements. The entity's directors determine the most applicable recognition, measurement and disclosure requirements of accounting standards that will meet the need of the users of the financial statements. The auditor as part of the annual audit report then confirms this basis of accounting.

5. Financial Reporting – Auditing

We are concerned that organisations and the accounting profession will be unable to cope with the proposed reporting and auditing environment. Many of our members have their audits conducted by retired accountants on a pro bono basis. While many of our members come under the Tier 1 umbrella, the change from voluntary audit for churches in the Tier 2 category will be significant in itself.

The only recognised endorsement for an auditor is currently that for a Registered Company Auditor.

We consider there is an important role for the ACNC to develop a special class of auditor, such as the *independent examiners* who are appointed to charities in the United Kingdom. Of course such an auditor would need to be able to demonstrate knowledge and experience in accounting, in audit (as in the UK) and also in the special requirements of the NFP sector (not just Charities). Given that there is lack of awareness of the NFP accounting and auditing requirements within the wider accounting professions, this would meet a significant need in Australia.

6. Financial Reporting - Period

We ask that the Draft Bill be significantly amended to ensure that the financial year for an entity would be such a period as meets the needs of the entity. Reference to a specified year-end date should be deleted so that NFP entities and their auditors are able to meet their obligations and operate efficiently and effectively.

The proposed standard 30 June balance date (Division 55) imposes an impracticable burden upon the NFP sector and the accounting profession as well.

NFP entities operate on a range of reporting periods and it would be difficult and inappropriate for them all to be standardised. Many mission organisations and colleges report on the calendar year as this fits their activities. A standardised reporting date would impose an unworkable burden on the accounting profession to cope with an audit load that was concentrated in a four-month period.

We note that the Charities Commission of England and Wales accepts the usual financial year-end of the charity entity without difficulty and recommend that the ACNC does the same.

7. Portal

We recommend that the Portal only display the names and positions of the executive of the governing body.

8. Definition of “Entity”

We suggest the definition of “entity” needs to be expanded. The Goods and Services Tax Act at 184.1 (1) includes the term “A body corporate” which we consider should be included in the Bill. We also recommend that the Bill definition be widened to include an entity incorporated under a Private Act of Parliament and also to joint ventures.

We recommend that the current practice of preparing Special Purpose Financial Reports, and cash-based Statements of Receipts & Payments for smaller entities, be continued whereby charities will each identify the Standards they consider to be applicable to their entity.

9. Education

We refer to the Assistant Treasurer’s Media Release Number 167 in paragraph 6, where he stated, “An education role for the NFP Sector will be a core function of the ACNC and is an inherent power of the regulator.”

The Draft Bill, at Section 2–5 (2) states that the Objects include the provision of educational information. Chapter 4 of the Draft Bill deals with the regulatory powers of the ACNC. Chapter 6 of the Explanatory Material is headed “Education Compliance and Enforcement”. However

the heading “Education” for Chapter 6 is misleading, as there is nothing in the Chapter at all about education apart from the comment at 1.193 that “education will be an inherent role of the ACNC”.

We believe that education of the sector has been a critical role for a new regulator to include in its objectives and activities and therefore a primary function of ACNC.

We believe that a great many of our members do not have the resources or expertise to handle the changes needed. This will also be the position for many other charities. An education role for ACNC is therefore vital for the good governance and compliance of thousands of smaller not form profit organisations.

10. Miscellaneous

There appear to be a number of legislative drafting anomalies and contradictions which probably have more to do with rushing this legislation through a Parliamentary timetable than it has to do with practical and sector-sensitive reform. We list a number of such matters that have come to our attention:

- 10.1 Para 5–10 (1A) (d) seems to be saying that an entity that has previously been a registered entity is no longer eligible to be registered. If registration is lost, it is lost once and for all.
- 10.2 Para 5–10 (1A) (a) requires an entity to be a not-for-profit entity. The same terminology is used in the EM at 1.4 on page 15. The term “not-for-profit entity” is not defined in the Bill. A definition needs to be identified in the Dictionary with the appropriate references in place.
- 10.3 The Table at Para 5-10 (3) identifies the types of registered entities. It has expanded the heads of charity from four to twelve. We support this expansion in the number of heads, providing the Public Benefit Test was not an obligation where there is a specific head – and is only a requirement for the last more general head “Other purposes beneficial to the community”.
- 10.4 Many of our members are public benevolent institutions. We are worried about the term “prevention of poverty” (Item 4). We submit that the “relief of poverty” is already clear in the present Common Law and should be retained as a specific head.

In preparing this submission, Missions Interlink acknowledges the pro-bono assistance received from Add-Ministry Inc and accountants Noel Harding (WA), Kimberley Smith (Vic), and Lawrie Green (NSW).

Please contact me if you have any questions about the matters raised.

Yours sincerely



Pam Thyer
National Director