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28 February 2018

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Dear Advisor

Submission to the Review of the ACNC Legislation

Please find attached a submission to the Review of the Australian Charities and Not-for-profits Commission (ACNC) Legislation.

This submission is made by the Uniting Church in Australia Assembly, the national council of the Uniting Church in Australia (UCA) and represents the wider Church and its agencies. This includes Church's community and health service provider network, the schools affiliated with the Church, the Uniting Aboriginal and Islander Christian Congress, Frontier Services, UnitingWorld and the Synods, Presbyteries and Congregations of the Uniting Church.

The Uniting Church is the third largest Christian denomination in Australia and the largest non-government provider of community services in the country.

We welcome the opportunity to provide any additional feedback on issues raised in this submission. Please contact Claerwen Little, National Director, UnitingCare Australia on 02 6249 6717.

Yours faithfully

Colleen Geyer
Assembly General Secretary



Submission to the Review of the Australian Charities and Not-for-profits Commission Act 2012 (Cth) and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth)

Uniting Church in Australia



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Introduction

The Uniting Church in Australia Assembly is the national council of the Uniting Church in Australia (UCA) and has determining responsibility within the Church for matters of doctrine, worship, Church government and discipline. We welcome this opportunity to contribute to the first review of the Australian Charities and Not-for-profits Commission on behalf of the UCA.

The Uniting Church is the third largest Christian denomination in Australia and the first church to be created in and of Australia. In the 2016 Census, approximately 870,200 Australians identified a religious affiliation with the Uniting Church. Uniting Church congregations throughout the country are caring communities to which all people can belong. There are around 2,000 congregations with 243,000 members and adherents. A congregation may have hundreds of members or be a community of a dozen people. They can be found deep in the heart of our cities, or in our most isolated towns. At the heart of our church, local congregations provide places for worship, fellowship and support to their communities. Playgroups, youth groups, Sunday Schools and adult fellowship groups are just some of the ways that our church connects and supports people.

The UCA is the largest non-government provider of community and health services in Australia through its service provider network. This network is an umbrella of more than 400 agencies, institutions, and parish missions throughout Australia. Areas of service include aged care, hospitals, children, youth and family, disability, employment, emergency relief, drug and alcohol, youth homelessness and suicide.

A key component of our justice work is the UCA's efforts to bring Indigenous and non-Indigenous Australians together and to support the Indigenous community generally. Reconciliation, land rights and Indigenous leadership training are just some of the activities in which we are engaged. We do this primarily with the Uniting Aboriginal and Islander Christian Congress (UAICC). Established in 1985, the UAICC is dedicated to seeking the spiritual, physical, social, mental and emotional wellbeing of Indigenous Australians.

Another clear focus of the UCA is its work and presence in remote and outback Australia. This is particularly true of our Frontier Services and its related bush chaplaincy work and rural congregations. Frontier Services provides community recovery and support and pastoral ministry to people in some of the most isolated parts of the country since the early 1900s.

The Uniting Church also works internationally through UnitingWorld to nurture church relationships in the Pacific, Asia and Africa, and participate in collaborative

projects. UnitingWorld supports church partners to make the greatest impact in the lives of their communities, as a practical and spiritual resource. UnitingWorld supports partner church programs that have a strong contextual focus; addressing poverty, gender inequality, climate change impact and developing leadership. The relationships and learning from these programs connect Uniting Church communities with partner church communities in a way which brings transformation to both. Fully accredited with the Department of Foreign Affairs and Trade, UnitingWorld is also a signatory of the Australian Council for International Development's Code of Conduct.

There are also some 48 schools across Australia which are affiliated to the UCA. They serve over 50,000 students and provide high quality education in a Christian context.

The Uniting Church in Australia (UCA), as a supporter of the establishment of the Australian Charities and Not-for-profits Commission (ACNC), welcomes the opportunity to respond to the call for submissions to the Review of the ACNC legislation. This Review presents an opportunity to evaluate the performance of the legislative framework, the regulation of the sector and to identify any improvements that can be made.

In responding to the Review's Terms of Reference we have also taken the opportunity to respond to the submission to the Review from the ACNC. These responses are included in Appendix One of this submission.

The Context of the Review

The UCA remains a supporter of the ACNC and endorses the supportive and educative approach that it has adopted since its inception. We believe that this approach has helped to improve the understanding of governance and compliance across the charitable sector and to enhance the public trust and confidence in the sector. Continuing this approach over the next five years would see the sector not only further improve its governance standards but would enhance the effectiveness of many charities and not-for-profits as they strive for best practice and recognition of this status.

The continued supportive and educative approach coupled with targeted compliance work and voluntary undertakings has already demonstrated the ability of the Commission to work well with the charitable sector however there is still much work to be done to achieve the three objects of the ACNC, in particular in the area of red tape reduction.

To seek to change the operation of the Act in a significant way at this juncture would be premature and, by increasing uncertainty, would adversely impact on the charitable sector's ability to deliver its services to those most in need in the community.

We note that the Review of the ACNC legislation is not being undertaken in isolation but is occurring at the same time as a number of other important reviews of legislation and regulations affecting the sector, including the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, the Foreign Influence Transparency Scheme Bill 2017, and the AASB Discussion Paper: Improving Financial Reporting for Australian Charities. For that reason, the interaction of any wider changes should be considered before enacting major changes to the operations of the ACNC.

Many parts of the community sector are also undergoing rapid adjustment to new quasi-market funding schemes in the disability and aged care sectors and many charities are focused on adapting to the new operating environment so as to ensure continuity of care and choice for the people they serve. This is a time of great change and uncertainty for the sector.

Significant changes to the ACNC Act, that increase the already considerable compliance burden on the charitable sector or undermine the Act's original purpose of supporting and enabling the sector, will further detract from its productive activity with no clear benefit in the cost effectiveness of the regulatory regime. This is a major reason why the Uniting Church in Australia recommends that no major changes are made to the current legislation at this time and also why we do not support some of the broader changes to the Act proposed by the ACNC in its submission to the Review.

Such premature changes would also be likely to lead to an increase in red tape and compliance costs. The Commission would be far better placed to use the next five years to work with the sector to co-design a new regulatory and compliance regime based on evidence and a detailed understanding of the risk factors involved rather than pre-emptively seeking expanded objects, and powers which would add to the uncertainty already present in the sector.

While the Act is five years old, the Commission itself is still very new, having had to recruit staff, consult and begin operations within this five-year window. As a result, it should allow significantly more time to embed its current mandate rather than seek an expansion of its powers or mandate at this stage.

Our detailed responses to the Review, and the submission of the ACNC are outlined below and in Appendix One.

Detailed Responses

Objects of the ACNC

The Uniting Church in Australia as a long-term supporter of the establishment of the ACNC continues to believe that the existing objects of the ACNC remain valid and appropriate.

To date, one of the great strengths of the ACNC has been to gain the wide support of the charitable sector as it established itself as a Commission that was willing to consult, listen to and support organisations. This achievement should be recognised and celebrated. For the Commission to find a broad consensus from a range of charitable organisations that cover services from children and family services, through to health and medical research, aged care, services for animals, and the environment demonstrates the value of the educative and consultative approach that has been its hallmark to date.

Over the past five years the Commission has also demonstrated an understanding of the sector and its mission and goals as expressions of the goodwill of the Australian people in giving effect to its legislative mandate. The Commission has supported the sector as a whole to improve its governance and performance and we support the continuation of this approach.

The three objects of the Act are:

- (a) To maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector;*
- (b) To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and*
- (c) To promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.*

It is far too early to amend these objects. We believe that to do so at this stage would undermine the confidence of the sector and of the Australian public in the Regulator as it works to fully embed the current Act. We note that this is a view endorsed by the ACNC Advisory Board in its submission to the Review.

The Uniting Church also believes that it is unnecessary to add further objects to the Act. In its submission to the Review the ACNC has recommended adding the following objects in s15-5 of the ACNC Act:

- (a) To promote the effective use of the resources of not-for-profit entities; and*
- (b) To enhance the accountability of not-for-profit entities to donors, beneficiaries and the public.*

Further expansion of the objects would inevitably lead to increased compliance and regulatory costs and run counter to object (c) of the current ACNC legislation and directly conflicts with the purposes for which the ACNC was established. The addition of further objects would constitute a fundamental change to the role of the ACNC, and one that has been proposed in the absence of evidence that they are needed or without prior consultation with the sector.

The Uniting Church strongly opposes the inclusion of these additional objects. The current objects are sufficient, and clearly set out the ACNC's purpose. The suggested additions are unclear in scope and application and represent an overreach by the regulator. Further, there has been no case established by the ACNC to suggest that the existing powers of the Commission are insufficient.

The proposed objects could potentially lead to the Commission restricting certain activities by charities without requiring the private sector, operating in the same space, to be subject to similar restrictions. In the case of Basic Religious Charities this expansion of objects could restrict freedom of religious congregations to give authentic expression to their faith and to serve and advocate for the people who are marginalised and disadvantaged.

The ACNC's recommendation also fails to recognise the expression of the goodwill and hope that has led to the creation of charitable works and organisations in Australia and appears to signal a move away from collaboration with the sector to a more combative approach.

For all of the reasons above we believe that the proposals to increase the objects should be rejected as:

(a) - it is not appropriate for the Commission to determine the "effective use of resources" and therefore it is unclear how it proposes to "promote" this purpose. As an entity is required to lodge financial reports members of the public already have the opportunity to review and evaluate for themselves whether a charity is effectively using its resources before deciding whether to make donations or to volunteer; and

(b) - is arguably already captured within the purpose of the existing object s15-1(1) (a).

The Powers of the ACNC and Commissioner

The UCA recommends that the existing powers of the ACNC and the Commissioner be retained and that there be no expansion of its aims and discretionary powers at this stage.

Current evidence indicates that the charitable sector is well governed, accountable and effective. There is little to suggest that the sector requires further oversight or regulation.



Indeed, on the 19th of January this year the Commissioner acknowledged that under the current regime, it had been necessary to subject only a very small number of Charities to revocation action.

“There are over 55,000 registered charities in Australia, and the overwhelming majority operate capably and professionally, and improve the lives of countless people,” Dr Johns said.

“However, there are a small number of charities that abuse their position in the community and it is our job it to hold them to account for their actions”.¹

In fact, only 26² organisations had their charity status removed – 0.04% of the total charitable sector. This suggests that the sector as a whole is working within its remit and making positive contributions to the community.

The UCA supports action against the small number of charities that fail to live up to the expectations of the community and that contravene the regulatory standards but, in the absence of persuasive evidence to the contrary, we do not accept the need for a tightening of the regulations or an increase in the compliance burden. Such an increased burden would be particularly inappropriate in the case of the many small, grassroots organisations that give vibrant expression to the aspirations of their members and of those whom they serve, for example the smaller congregations of the Uniting Church which, as Basic Religious Charities, are the lifeblood of community service and worship.

Changes to the regulatory regime should be made on the basis of a risk-based approach, not a broad brush legislative approach, and the components of the regulatory regime should ideally be the minimum necessary to encourage regulated entities to engage in responsible, socially beneficial activity. Furthermore, we are concerned that some suggested changes included in the ACNC submission to the Review will have unintended but disastrous impacts for the sector. For example, in its submission to the Review the Commission is seeking an increase in the discretionary powers of the Commissioner with respect to the release of information, revocation of charitable status, and action in response to other, undefined matters.

We believe that the increase of the Commission’s powers without specifying the circumstances in which they can be used, or providing safeguards against their abuse, has the potential to impact adversely on the ability of the Church to advocate on behalf of

1 ACNC Media Release, “Charity revocations hit record high in 2017”, 19th January 2018, http://www.acnc.gov.au/ACNC/Comms/Media_R/MR_231.aspx, accessed 15th February 2018

2 Ibid

people who are marginalised and disadvantaged in line with our Gospel calling. We also believe that this may have an adverse impact on freedom of religion.

We are concerned that increasing the powers and mandate of the Commission, without an agreed framework for action or increased resources, may result in organisations being targeted arbitrarily and/or inconsistently.

We do however agree that there are some minor changes to the legislation that should be made to improve the effectiveness of the Commission and reduce red tape for the sector. These changes are outlined below.

Recognition of Basic Religious Charities

As a Religious organisation, the Uniting Church undertakes all of its work motivated by the heartfelt desire of our Congregations, Synods, Presbyteries and Assembly to share the love of Jesus and the Gospel throughout the world.

The UCA is the largest non-government provider of community services in Australia through its social service provider network, but at the heart of the Church are the many congregations who come together to work together on local initiatives. Many of these works are small but are responsive to the needs and desires of the local community and are in fact an essential part of the life of the Uniting Church in Australia.

Basic Religious Charities provide the opportunity for people of faith and goodwill to operate together in a simple but effectively governed way that finds the balance between red tape and religious freedom of action.

As a result, the Uniting Church in Australia and its many members particularly value the support of the Commission for Basic Religious Charities and we are taking the opportunity to restate our support for these and for the approach the Commission has taken to date.

Any changes to these bodies could have dire impacts on the life of the Church in Australia and the freedom of many religious communities to give expression to the call of the Gospel and would not be supported by the Uniting Church.

We do recommend one minor change to the ACNC Act however that relates to Basic Religious Charities - an issue throughout the Act where any dollar amount is specified.

The current provisions provide for a cut-off in government financial support of \$100,000 for these bodies before they move to a different reporting regime, an amount that is not indexed in the Act and will continue to decline in real terms. We recommend that the income limit be indexed in line with the CPI at a minimum to preserve its real value.

Size of Charities

The Uniting Church and its agencies, as has already been observed, operate many entities from the small to the very large. We recognise the need for different reporting burdens for entities of different sizes and believe that the current approach achieves the right balance in this regard.

However, in line with our observations supporting Basic Religious Charities we recommend that the cut-off points for small charities continue to be reviewed to ensure that the regulatory burden reflects changes in the inflation rate and community expectations of a small charity.

Advocacy

As a Religious organisation we and our agencies seek only to engage in advocacy in response to the calling of the Gospel and to give authentic expression of our faith. We are called on to not only minister to people who are sick and those in need but to question injustice and offer solutions to problems. We see this as an essential part of our Christian duty and religious freedom. The concept of listening to other voices and sharing them without fear or favour is also at the heart of our Basis of Union.

We are concerned that many changes of legislation and regulation that are being considered at the moment, including this Act would have a significant impact on this free expression.

The current ACNC Act provides for mechanisms that ensure that Churches and their agencies are not subject to punitive or restrictive action when we lift our voice in advocacy. These include mechanisms for dealing with complaints in a collaborative and confidential way to ensure that only substantiated claims are made public.

Once these complaints are dealt with effectively the Commission has a full suite of powers already at its disposal including deregistration. We are concerned that changes to the Commission's protocol for reporting and making public statements may have the perverse impact of stifling advocacy and undermining the confidence of the public in the sector on the basis of claims that may prove unfounded.

This will have the potential effect of undermining the objects of the Government and the Commission in seeking effective outcomes for the people of Australia as many works and Acts grew out of the advocacy of the Sector including the ACNC.

As a result, we wish to restate our consistent position that the current ACNC Act is achieving its objectives and, in the absence of evidence to the contrary, should be allowed to continue for a further five years before any significant changes are considered.

AASB and Other Reviews

The Uniting Church also notes the work of the Australia Accounting Standards Board (AASB) and the Australian Audit Standards Board and draws attention to the fact that three Commonwealth bodies are working on a framework that would have a significant impact on charities and their compliance costs. We question some of the underlying assumptions in the AASB paper: *Improving financial reporting for Australian Charities* and are concerned about a lack of coordination in approaching the issues of reporting and compliance. The Uniting Church recommends that there be much wider consultation with charities before further work is undertaken in this regard.

Further we question the linking of the AASB paper to the ACNC Review, which not only highlights the need for caution in making substantial changes but also highlights the enormous legislative, regulatory and contractual change already affecting the sector.

Conclusion

The Uniting Church in Australia reiterates its support for the existing objects and powers of the ACNC and the Commissioner as specified in the 2012 legislation. We believe that over the past five years of operations the ACNC has served an important and effective role in achieving its three objects by working in a collaborative and productive manner with the charitable sector.

While the efforts of the Commission to enhance the sector should be celebrated, there is still significant work to be done to further bed down the current objects of the Commission, in particular that of reducing unnecessary regulatory obligations and supporting and sustaining a robust, independent and innovative not-for-profit sector.

The educative and collaborative approach taken by the Commission to date is helping to create and support a culture of effective governance and transparency across the sector and should be continued. We believe that this approach will continue to help charities and not-for-profits give expression to the hopes and aspirations of the Australian people across all endeavours, secular and religious.

The UCA believes that it is too soon to initiate any major changes to the role and legislation of the ACNC especially given the great change and uncertainty in the operating and regulatory environments in which Australian charities are operating. Further, the majority of charities and not-for-profits are already seeking to achieve the highest levels of governance and service, and they should not be penalised by increasing the burden of reporting and compliance because of the actions of a very small minority.



Uniting Church in Australia
ASSEMBLY

The charitable and not-for-profit sector has a role at the heart of Australian life and at the heart of the Uniting Church. It is a role that should be celebrated and supported by all Australians, but especially by the body designed to support it - the Australian Charities and Not-for-profits Commission.

Colleen Geyer

Assembly General Secretary

Appendix One:

Response to recommendations contained in the ACNC submission

Given the importance of the ACNC itself to the operation of the Act it appears prudent for us to turn our attention to the submission from the Commission, while noting that the ACNC Board itself has reportedly not supported the recommendations in many cases.

We do not propose to respond to all of the recommendations contained in the submission from the ACNC, and where we have not commented on matters it should not be inferred as support. We believe that the appropriate time to respond to these in detail will be at the Review panel hearings. We would welcome the opportunity to answer these at such a time, noting that the Uniting Church is a large organisation with a breadth of work and services that intersect with a large proportion of the Australian public through its community services, aged care, hospitals, schools, rural communities and congregations.

The numbering below refers to the Recommendations as numbered in the ACNC submission to the Review.

1. Consider whether measures could be introduced at the Commonwealth level to protect a charity's accumulated charitable income and assets after its ACNC registration has been revoked.

We support the concept of protecting the accumulated income of Charities for Charitable purposes, however we suggest that an organisation's constitution is the appropriate mechanism to do so. We also note that many Government schemes such as community housing, and other agreements already stipulate such an approach.

We propose the following definition:

“all surplus funds being applied to further the objects or purpose for which the organisation was established.”

3. Consider whether a statutory definition of 'not-for-profit' should be introduced for the purposes of the ACNC Act and the Charities Act.

Like many of the recommendations in this submission we would suggest that there has not been adequate time to properly consider this recommendation.

In the ACNC's own words, in the majority of cases, the absence of a statutory definition has not given rise to difficulties and so it is puzzling that it has been recommended here.

In addition, a narrowing of the definition could be used to restrict future not-for-profits that may not align with current approaches and knowledge.

8. Amend the ACNC Act to expressly authorise the Commissioner to collect:

(a) the personal details (as defined in the Corporations Act) of responsible persons at the point of registration and to require registered charities to provide the personal details of a person who becomes a responsible person after registration; and

(b) information about the involvement of a responsible person in unlawful activity (including that a responsible person has been convicted of a criminal offence) from a person other than the responsible person where the collection of the information is reasonably necessary for the purposes of determining whether an entity is entitled to be registered as a charity or for the purposes of determining whether a registered charity has contravened the Act or failed to comply with the governance standards or the external conduct standards.

While we support the principle stated above we would seek to have the concept of reasonable purposes more clearly defined.

Further, the governance and external conduct standards are not defined, leaving this power open to arbitrary use. Accepting this recommendation will have the effect of elevating standards to the level of regulations without the ability of the Parliament to review and disallow.

9. Amend s 45.20(3) of the ACNC Regulation to include the following suitability conditions to be a responsible person:

(a) that the person does not have a ‘disqualifying conviction’ for a terrorism, terrorism financing or money laundering offence under Commonwealth, State or Territory law; and

(b) that the person does not have a ‘disqualifying conviction’ for a ‘relevant offence’, being an offence that is relevant to the operation of the charity.

Once again, we note the definition of relevant offence in (b) is vague and open to arbitrary interpretation without appropriate review. Such expansions increase the risk of regulatory overreach and unintended consequences and should be subject to wider consultation.



11. Amend s 40-5 of the ACNC Act to provide that the ACNC Register is to include the grounds under s 35-10(1) on which a decision to revoke a charity is based, and a summary of the reasons for revocation.

One of the great strengths of the ACNC has been its educative and supportive approach. While welcoming a deeper understanding of the Commissions decisions, we believe that this should be based on a consistent list of reasons for revocation, and improved options for the sector to question the reasons behind the Commissions decisions.

12. Amend Subdivision 150-C of the ACNC Act to provide that ACNC officers are authorised to disclose protected ACNC information for the purpose of making a public comment or publishing information about the Commissioner's regulatory activities when it is in the public interest to do so. Specifically, this may include confirming that an investigation has been commenced, disclosing action that the ACNC has taken or is proposing to take in relation to a registered charity or a responsible person and disclosing a regulatory outcome (e.g. that the ACNC and a registered charity have entered into a compliance agreement or that the ACNC has provided regulatory guidance to a registered charity).

As we have reiterated throughout this submission the approach of the Commission to compliance has been an educative one and part of the Commission's success to date has been the secrecy provisions of the Act. These provisions also discourage a charity from taking a complex and expensive legal route to dealing with problems.

We have significant concerns in regard to this recommendation in light of the reputational damage that may be caused by the publication of information about investigations, in particular the commencement of an investigation and proposed actions the ACNC may take. Publication of such information is premature considering any investigation may result in no findings against the charity in question. Even with the limitation of "in the public interest" we would suggest that any public comment given by the ACNC would potentially unfairly prejudice the public against the charity, the public not having the benefit of the information available to the Commission.

This proposal seems heavy handed given the small number of charities that have been found to be in breach of the regulations. No compelling case has been made for the disclosure of protected information to the public. Combined with the proposed expansion of the Act and with the proposed powers recommended in other bills currently being considered, this represents a significant change in approach by the Commission. This recommendation is poorly framed - it would allow absolute discretion on the part of the Commission as to how and when to apply such a provision.



Such a provision may have unintended consequences. For example, large and complex charities may see industrial relations issues spill over into this arena and a regulator seeking to respond to a media inquiry may disclose claims that later prove to be without foundation but have the potential to result in permanent reputational damage.

13. Amend subdivision 150-C – Authorised Disclosures of the ACNC Act to include a provision that expressly authorises ACNC officers to disclose protected ACNC information in bulk to an Australian government agency if the disclosure is reasonably necessary:

(a) to enable data-matching, analysis or research for the purpose of assisting that agency or another Australian government agency to carry out its law enforcement or investigatory functions or activities or for the purpose of assisting the ACNC to carry out its functions; or

(b) to enable the implementation of arrangements between the ACNC and other government agencies for the purpose of reducing regulatory duplication.

We reject this recommendation, particularly given that the ACNC's own recommendation (20) suggests that this information sharing is already made possible through the use of the Charity Passport. We support the Commission's recommendation 20 for the promotion of the use of the passport.

16. Consider options for addressing the issues arising from the inability to check the names of current directors and company secretaries of charitable companies by searching the ASIC register.

This recommendation is unclear. Firstly, the ASIC register is searchable by anyone for a fee and the resulting report clearly details the directors and company secretary. Secondly, the ACNC register currently records and displays the details of responsible persons for both charities that are companies and those that are not.

Further changes should be considered carefully to avoid any unintended consequences that may make people reluctant to take on governance roles in NFP organisations.

20. That the Commonwealth government promote the use of the ACNC's charity passport by Commonwealth, State and Territory agencies so as to reduce the regulatory burden on charities.

As stated above at 13, we support the promotion of the use of the Charity Passport to reduce the regulatory burden on charities.



21. Further work to be undertaken by the ACNC and AASB in consultation with the sector to develop a suitable reporting framework for registered charities.

As we outlined in our introduction it is the UCA's view that the combined impacts of potential changes in the sector should be considered before enacting major changes to the operations of the ACNC and its Acts. We strongly recommend consideration of the implications of the intersections of changes to relevant Acts, regulations and standards before any changes are made.

The three relevant statutory authorities, the AASB, the AUASB and the ACNC have not outlined how they will ensure there is effective and deep consultation and input into shaping these decisions. We would welcome an approach that included the sector in these consultations.

The AASB paper is not part of this Review however the changes it foreshadows will have potential impacts on compliance costs in the sector and, when coupled with some of the recommendations from the Commission's submission, could have unintended regulatory and compliance implications.

We would also question some of the underlying assumptions about the sector and the motivations that underlie the paper from the AASB released in November, which appear to be at odds with the genuine expression of goodwill from the community that sees charities established.

29. Amend s 35-10(1) of the ACNC Act to include as a ground upon which the Commissioner may revoke a charity's registration that the registered charity has ceased to operate.

This would appear to be redundant as this is already picked up through failure to lodge returns with the ACNC.

33. Amend s 115-55 of the ACNC Act:

(a) to enable:

(i) the Commissioner to delegate any function or power to any member of the staff assisting the Commissioner; and

(ii) SES employees assisting the Commissioner to sub-delegate any function or power to any other member of the staff assisting the Commissioner who has the expertise to exercise the function or power being delegated; and



(b) to provide that in exercising a delegated or sub-delegated function or power, the delegate or sub-delegate must comply with any directions given by the delegator or sub-delegator.

We do not doubt that the intent behind this provision is to be more effective and responsive however we note that the Commission has far reaching powers over the sector, many of which will limit the effectiveness of charitable operations and in some cases, stop them. As is consistent with many other Acts only minor powers should be sub-delegated.

If this section is to be considered, then the Act should specify and limit which powers are subject to delegation and sub-delegation and add mechanisms for review of such decisions.

35. Amend the definition of ‘Australian government agency’ in s 300-5 of the ACNC Act to clarify whether it includes or excludes local government authorities or amend s 205-35(5)(a) of the ACNC Act to clarify whether grants from local government authorities are to be taken into account in determining whether an entity is in receipt of government grants exceeding the threshold amount.

We consider that this amendment would have the potential to significantly disadvantage local churches who rely on both their status as a Basic Religious Charity (BRC) and grants from local governments to undertake valuable services to the community in which they operate.

While seeking clarification is welcome the Uniting Church notes the adverse impact this could have on Basic Religious Charities and would seek to ensure that no BRC is worse off under a clarification.