



Australian Charities and Not-for-profits Commission Bill 2012

and

**Australian Charities and Not-for-profits Commission
(Consequential and Transitional) Bill 2012**

**Submission by UnitingCare Australia
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1. Introduction

UnitingCare Australia is the Uniting Church's national body supporting community services and advocacy for children, young people, families, people with disabilities and older people.

UnitingCare Australia takes up community service issues within the theological framework of the Uniting Church, particularly the Church's social justice perspectives. We develop and reflect on the policies and practices of the Uniting Church in community services. We pursue appropriate issues within the Uniting Church, with Government and the community sector, with the Australian community and with other parts of the Church.

UnitingCare Australia represents the network of UnitingCare community services operating nationally across more than 1300 sites. The UnitingCare network is one of the largest providers of community services in Australia, providing services to over 2 million people each year, with an annual turnover in excess of \$2 billion and employing 35,000 staff and 24,000 volunteers nationally.

UnitingCare agencies provide services across Australia to people living in urban, rural and remote communities. Services delivered by our agencies employ a holistic approach to supporting individuals and communities to access the resources, support and opportunities needed to live a decent life. The building blocks of which are being able to access appropriate food, clothing and healthcare; safe and secure housing; meaningful work, education, rest and enjoyment, and; the opportunity to participate in and contribute to communities. UnitingCare agencies, through their community linkages are also able to provide people of goodwill – either as individuals or as organisations – a vehicle to make their own contribution to improving the wellbeing of people and communities that are disadvantaged and vulnerable. We partner with Governments, other organisations, communities and people of goodwill to ensure all people have access to the means and opportunity for a decent life.

UnitingCare Australia welcomes the opportunity to comment on the Australian Charities and Not-for-profits Commission Bill 2012 and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 and associated materials.

2. Overall Assessment of the Bills

The Australian Charities and Not-for-profits Commission Bill 2012 (ACNC Bill) and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 create the platform for reforms that the Not-for-profit (NFP) sector has long called for and which have the potential to benefit Governments, the NFP sector and the Australian community as a whole. For the first time, these Bills offer a legislative vehicle which acknowledges the important contribution the NFP sector makes to the social and economic fabric of our society. It rightly places an obligation of accountability on the sector to reflect the interests of those who support the sector through the donation of their time and money and the communities it serves.

For UnitingCare Australia accountability is not just about reporting and compliance, it is also an obligation to best use the often scarce resources that NFP entities have available to them to achieve mission or purpose. As an active participant in the consultation processes for the establishment of the Australian Charities and Not-for-profits Commission (ACNC) we have consistently stated that a new national regulator for the NFP sector must promote the ongoing accountability and transparency of the sector whilst simultaneously eliminating the unnecessary administrative, reporting, acquittal and compliance costs imposed by Government.

The ACNC Bill also recognises the importance of a sustainable, robust, vibrant, independent and innovative Australian NFP sector in the Objects of the Act. It is our assessment that Objects 15-5 (1) (a) and (c) compliment and support the achievement of a sustainable robust, vibrant, and innovative sector. However, we believe further work is required to enshrine the principle of the independence of the sector in the Bill.

Our assessment is that the ACNC Bill provides sufficient powers to enable the ACNC Commissioner to fulfil his/her regulatory oversight functions. We believe that some reworking of the Bill is required to ensure that the independence of the sector is protected and that red-tape reduction is delivered as part of the suite of NFP reforms linked to the creation of a national NFP regulator.

3. Specific comments on the Bills

The legislation before the Committee is a significant improvement on earlier versions. It is important to acknowledge that the Government has responded positively to the feedback from the sector and as such many of the contentious issues with earlier versions of the ACNC Bill have been addressed. That said we do not believe that the Bill goes far enough to protect the independence of the NFP sector or to deliver a tangible reduction of red-tape in the area of administration, reporting, acquittal and compliance obligations regarding Commonwealth government funding.

3.1 Giving effect to the principle of Independence of the NFP sector

Independence is a core principle of the NFP sector. Independence of the sector is acknowledged both in the objects of the ACNC Bill and in the Assistant Treasurer, David Bradbury's second reading of the Bill¹ in which he stated that:

“The government is dedicated to supporting a strong, vibrant, diverse and independent NFP sector.”

We believe that a new national regulator must protect this independence which allows NFP entities to make their own decisions on how to best meet their mission without undue influence and control from the Commonwealth Government and its agencies. This principle must be applied in terms preserving the sector's diversity of structure, governance arrangements and activities, in particular public advocacy.

Preserving the independence of NFP entities can be challenging where a Government monopsony exists. The Government monopsony in social service delivery limits the capacity of NFP entities to conduct genuine contract negotiations with the Government. In Australia, this has led to an increase in the reporting and administrative obligation placed on NFP entities as well as terms and conditions which have limited the capacity of entities to undertake advocacy (commonly referred to as a “gag” clauses).

One of the first NFP reforms to be introduced in 2008 was the removal of “gag” clauses from Commonwealth Government funding agreements. We believe that this Bill should be strengthened to ensure that future Governments are restricted in their capacity to limit or undermine the independence of the NFP sector through the re-introduction “gag” clauses.

¹ Hansard, Commonwealth of Australia, House of Representatives, 23 August 2012, p.5 (David Bradbury, Assistant Treasurer and Minister Assisting Deregulation)

3.2 Promoting the reduction of unnecessary regulatory obligations on the NFP sector

While the Objects of the ACNC Bill now include the **promotion** of red-tape reduction, we are concerned that there are limitations to the ACNC's capacity to **deliver** any tangible red-tape reduction measures outside of its own activities. The majority of the proposed red-tape reduction benefits of a single national NFP regulator are predicated on State/Territory Government cooperation or agreement which is yet to be secured from other Commonwealth agencies and regulators. While the ACNC Bill mandates for the ACNC to work towards those agreements it is incorrect to assume they are conclusive savings (Explanatory Memorandum, 1.80 – 1.99, p.18).

We commend the work of the ACNC Implementation Taskforce in seeking to work with representatives from other State/Territory Governments and Commonwealth agencies to identify how each might support the principle of 'report-once-use-often', use the proposed 'Charity Passport' and the potential to develop memoranda of understanding with other regulators. We also acknowledge discussions within the COAG agenda. However, we note that these are complex and lengthy negotiations which will need to conclude favourably before any tangible red-tape reduction is delivered to the NFP sector.

We also note that the proposal for the ACNC Commissioner to accept, during the ACNC's transitional phase, reports prepared for other Commonwealth agencies. Again, we welcome the proposal to limit the additional reporting and compliance burden imposed by the ACNC on the NFP sector but wish to clarify that this action will not result in any reduction of the current reporting and compliance requirements for the NFP sector.

The House of Representatives Standing Committee on Economics Report on the Exposure Draft of the Australian Charities and Not-for-profits Commission Bill 2012² noted that the NFP sector was, in general, characterised by:

“...unnecessary compliance costs with duplicative reporting, especially in the acquittal of grants...”

This finding reflects the experience of the UnitingCare network and colleagues across the NFP sector. We have identified three Regulatory/Administrative areas which impact heavily on community social services:

- (i) Organisational accountability, under State and Commonwealth law and to the ACNC;
- (ii) Service specific regulation and compliance (aged care, child protection, etc) where the priority has rightly been on the protection of those most vulnerable in our community, and;
- (iii) Funding (grants and contracts) allocation processes, contract and agreement making, monitoring, reporting and acquittals.

While the ACNC Bill makes provision for the ACNC to work towards a future reduction of unnecessary red-tape in the first two areas, we believe that the greatest potential for reform exists in the third. Therefore, we suggest that the Committee recommends that the ACNC Bill includes a provision that links the establishment of the ACNC with the delivery of a major and tangible red-tape reduction initiative.

²

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=economics/nonprofit/report.htm p.3, accessed 27 August 2012

4. Recommendations

4.1 Protection of the independence of the NFP sector

To better protect the independence of the NFP sector we suggest an amendment to the ACNC Bill with wording to the following effect:

Subdivision 205-C – Other concepts

Insert 205-45 Independence of the NFP Sector

Independence of the sector means that NFP entities are autonomous entities subject to the direction and control of their Boards or Governance body(ies). The independence of an NFP entity, particularly in relation to advocacy cannot be set aside, limited or controlled by condition of direct or indirect Government funding.

4.2 Tangible red-tape reduction initiative

To draw together the establishment ACNC with the delivery of a major and tangible red-tape reduction initiative we suggest an amendment to the ACNC Bill with wording to the following effect:

Section 60-25 Large registered entities must have financial reports audited

A large entity must:

- (1) (a) have its financial report for a financial year audited in accordance with this subdivision; and
- (b) obtain an auditor's financial report.

Insert

- (2) ***Where a registered entity is required to provide an annual financial statement to the ACNC, that entity will no longer be required to provide a financial audited statement for any individual grant or grants provided by an Australian Government Agency unless the Australian Government Agency has reason to suspect fraud in relation to the use of the grant money.***

Should the Committee decide it is not possible to include the above provision Section 60-25 (2) in the ACNC Bill then we suggest it be added to the ACNC (Consequential and Transitional) Bill 2012 or other legislative instrument.

5. Conclusion

We believe that a new regulatory framework to underpin the transparency, accountability and governance of the NFP sector must appropriate, coherent and effective.

Therefore, we ask the Committee to recommend changes to the ACNC Bill that will deliver a new National Regulator for the NFP sector, place a legislative obligation on both the ACNC and Commonwealth agencies to reduce the unnecessary administrative, reporting, acquittal and compliance costs for any NFP entity required to interact with the Government and to uphold the independence of the sector.