AUSTRALIAN CATHOLIC BISHOPS CONFERENCE
General Secretariat

30 August 2012

Committee Secretary
Senate Standing Committees on Community Affairs
Parliament House
Canberra ACT 2600
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Dear Secretary

Inquiry into the Australian Charities and Not-for-profits Commission Bill 2012; Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012; Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012

The Catholic Church in Australia and its agencies (the Church) contribute in a wide variety of ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people experience the fullness of life. It is concerned with all that impacts on human wellbeing.

Entities

The Catholic Church comprises many thousands of different entities which have different forms, purposes and modes of governance, and are subject to varying types and levels of government regulation.

There are currently 3,663 entities in the Catholic Church GST religious group. This does not reflect all the entities that comprise the Church as in some cases all the schools in a diocese were endorsed as one entity and in other cases entities were endorsed as branches. The Catholic Church comprises parishes, organisations within parishes, dioceses, religious orders, provinces, the church nationally and local entities that are part of the church internationally. The Catholic Church is heavily involved in public and private hospitals, aged care, welfare, education (primary, secondary and tertiary) and support of migrants and refugees.

The great majority of entities within the Church are unincorporated associations and unincorporated bodies of persons who currently are subject principally to state and territory

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laws. Many are incorporated associations or trust corporations established under state law. Only a small proportion exist as companies or federally regulated entities subject to Commonwealth jurisdiction.

Australian Catholic Bishops Conference (ACBC)

The ACBC is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The ACBC presents the recommendations in this submission after consultation with representatives across the Church including hospitals, schools, parishes, dioceses, social welfare agencies and religious orders, all of which will be subject to ACNC oversight.

ACNC Bills

The ACBC appreciates the improvements to the *Australian Charities and Not-for-profits Commission Bill 2012* (ACNC Bill), the *Australian Charities and Not-forprofits Commission (Consequential and Transitional) Bill 2012* (Transitional Bill) and the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012* (Tax Laws Bill) as a result of consultation. It wishes to bring to the Committee's attention some remaining issues (detailed in earlier submissions) that, if addressed, will improve the effectiveness of this legislation. In summary, these issues are:

- The ACBC is concerned that the Bills will not achieve the primary policy objective of a reduction in red tape. In order to help achieve this objective, the ACNC should be required on its establishment to use existing reports prepared for Federal Government agencies for the first three years thereby allowing a realistic period for the ACNC to achieve a reduction in red tape.
- Basic Religious Charity status (BRC) should continue to be available if the BRC operates a DGR such as a School Building Fund with an income less than $250,000 pa.
- Broad principles and guidelines for governance and external conduct standards should be included in the legislation.
- Warnings and directions should not be published on the ACNC register.
- If the ACNC is given an inefficient or overly complex way of operating, the cost of the unnecessary regulatory burden and the additional red tape will be borne by thousands of entities across Australia.
- The ACBC remains concerned that the Commonwealth Government has not provided sufficient clarity on the timelines for achievement of a charity passport nationally or the removal of regulatory duplication between Commonwealth and the State and Territory Governments.

Red Tape

The ACBC has a real concern that the legislation will not reduce red tape.

The ACBC notes the concerns of the National Catholic Education Commission, Catholic Health Australia and Catholic Social Services Australia whose constituent bodies are already subject to significant regulation, that there will be additional onerous red tape and duplication of reporting and governance requirements. The concern in relation to schools is a more pronounced example of a broader issue. There is also a more general concern that there is little legitimate public interest in disclosing detailed information about any entity. Persons with a legitimate interest in obtaining information can do so by making a direct request to the relevant entity.

The problem with the regulatory framework which is clearly identified in the Regulatory Impact Statement (RIS) attached to the Explanatory Materials (EM for the ACNC Bill and Transitional Bill, p 266, paragraph 16.5), has not been addressed adequately by the Bills.

The House of Representatives Standing Committee on Economics' report on the ACNC Bill and Transitional Bill argued that reducing red tape "...is a long term project, but the committee is confident that, over time, duplication will be minimised" (page iv). The ACBC is concerned with the conversion of a key principle that was used to gain support for the establishment for the ACNC has become a long term aspiration with no certainty that it will now be achieved. The ACBC is therefore sceptical about the wisdom of accepting an initial increase in red tape in the hope that it may be reduced in the future. The ACBC looks to the Commonwealth to obtain assurances from the states and territories and a published timeline committing to a reduction in red tape at the national level.

Specific Concerns

The remainder of this submission will address the following specific concerns:

- School reporting requirements;
- Basic religious charities;
- Governance and External Conduct Standards;
- ACNC register;
- Annual information statements;
- Reports to other agencies;
- Substituted accounting periods;
- Special conditions.

School reporting requirements

The National Catholic Education Commission (NCEC) represents the interests of all 1700 Catholic schools in Australia in matters of national policy. The NCEC advises the Australian Catholic Bishops Conference on national policy issues affecting Catholic schools.

Many specific issues impacting on Catholic schools via the proposed ACNC legislation were raised by the NCEC and included in the Australian Catholic Bishops Conference submission to the House of Representatives Standing Committee on Economics enquiry on the draft exposure bills (submission number 3, 20 July 2012). These included the following:

(a) Catholic schools will not qualify as "Basic Religious Charities" and will thus be subject to a full range of ACNC reporting requirements in addition to those currently required by Commonwealth and State/Territory Governments and their agencies.

(b) The proposed ACNC reporting and accountability requirements will impose unnecessary red tape and an additional administrative burden on Catholic schools which are already subject to comprehensive reporting requirements. The existing complex regulatory system for non-government schools includes:

i. reporting in accordance with the Department of Education, Employment and Workplace Relations prescribed Financial Questionnaire and Commonwealth and State funding agreements for recurrent, capital and targeted programs in accordance with the legislation in each jurisdiction;
ii. *My School* data collections and reporting as prescribed by the Australian Curriculum, Assessment and Reporting Authority (ACARA);
iii. minimum standards and reporting requirements under State and Territory school registration regimes including periodic reviews and auditing to ensure ongoing compliance;
iv. the financial information required of State and Territory education departments such as the Victorian Registration and Qualifications Authority;
v. the strict maintenance of not-for-profit status as a condition of receiving public funding.

(c) The NCEC notes in the Transitional Bill that the Commissioner has the discretion to accept reports (for example, from Catholic schools) to other Government departments and welcomes this initiative. However the NCEC believes that the Bill should be strengthened to mandate that non-government schools only need to report once to Commonwealth Government agencies.

(d) Most Catholic schools and all Catholic school systems will be classified as "large" charities and will therefore be subject to the highest level of proposed ACNC reporting. Again, the prospect of additional "red tape" for Catholic schools threatens.

(e) Catholic school authorities already carry a high level of regulatory burden, with much of the current mandatory financial reporting and governance regulations unaligned between Commonwealth and State requirements. The ACNC regulation must acknowledge the existing complex regulatory system and not impose an additional layer of regulation without clear evidence of the consolidation of the regulation of schools at Commonwealth and State level.

Another issue for some Catholic schools is that the new reporting may mean a mandated change in financial reporting to accrual accounting. The compliance costs of additional administrative reporting will impact particularly on low-resourced primary schools. In adding the ACNC reporting overlay, small schools are likely to be subject to a higher overall degree of reporting and disclosure than is required by large corporate entities.

There is high potential for the operating environment of schools to be disrupted through increased administrative costs and a myriad of reporting formats.

Of particular concern to the NCEC is the extent to which the principle of competitive neutrality is violated by the provisions of the Bill. The NCEC has agreed to annual school-by-school financial reporting according to rubrics common to all schools through ACARA (which reports to the Council of Australian Governments (COAG) Standing Council on School Education and Early Childhood). NCEC is concerned that government schools will not be required to report to ACNC and therefore information on government schools would not be disclosed on the public ACNC portal.

The Bill proposes that the detailed financial records of Catholic schools will now be included on the ACNC public register and will thus expose Catholic schools to a far greater level of media scrutiny than is either warranted (given their current heavy reporting obligations) or fair (in comparison to the disclosure levels of comparable government schools which are exempted).

This unwarranted public disclosure will inevitably lead to the creation of “league tables” in the media, with different criteria being applied to the comparison with similar schools doing the same work in the government school system simply on the basis of Catholic schools being registered, approved and regulated by the state but not owned by the state.
The NCEC has serious concerns with the proposed legislation. In particular, the NCEC believes that issues related to additional reporting and governance make the provisions unfair and unworkable for Catholic schools.

Basic religious charities

The ACBC appreciates the recognition given to the special role that entities established for the promotion of religion play in the community and the consideration given to attempting to remove unnecessary and burdensome requirements from these entities.

From this policy perspective, it appears that proposed section 205-35 is intended to establish a set of definitional requirements that replicate the usual activities of religious entities.

In the Catholic Church, many of these entities are our parishes – there are 1368 parishes in Australia. A parish is typically involved in worship, education (generally through a parish school) and community services and support, for example childcare for working families, family support, parent groups and the making available of parish facilities to parish and other community groups. To assist the Parish Priest in carrying out these roles, the parish community would typically support these activities both financially and by parishioners contributing their time, labour and expertise in a voluntary capacity.

Whilst acknowledging and appreciating the policy intention behind the concept of a BRC, the ACBC notes that the term "basic religious charities" may give rise to negative overtones and comparisons and for this reason asks for the term to be replaced with a term such as "Religious Charities" or "Charities for the advancement of religion."

The ACBC is pleased to note the effect of section 205-5(4) that a Church entity that may qualify as a BRC under section 205-35 will not have that status affected where it uses the same trustee as another Church entity that may not qualify as a BRC. The capacity of a person / entity to act in several capacities, and the acknowledgement that on each occasion it will be taken to be a different entity, is an important and welcome inclusion that will support the way in which the Church operates.

Recommendations

Having reviewed the proposed section 205-35 the ACBC submits that the following changes be taken into account so that the definitional requirements contained in that section may more completely reflect the reality of life in a typical parish or church agency:

- (**DGR disqualifier**) In supporting the parish school, a large number of parishes have established School Building Funds which may or may not be under the ABN of the parish and have been endorsed as DGRs. Proposed section 205-35(3) excludes an entity from being a BRC if "it is a [DGR]". ACBC notes that DGR is defined in section 30-227 of the *Income Tax Assessment Act 1997* to include entities that operate a DGR fund. The current drafting would mean that the apparently well-intentioned exemption in the Bill will not apply in practice because section 205-35(3) would disentitle such a parish from being a BRC simply because it operated a School Building Fund or some other DGR . The effect of Section 205-35(3) will be to increase red tape and the level of reporting above that which currently applies by requiring parishes which operate a School Building Fund to place the School Building Fund into a separate ABN if the parish is to be a BRC.

  ACBC understands the rationale around monitoring and control of DGRs but we note that DGRs with annual revenue less than $250,000 are not subject to financial reporting requirements.

  As the only reason why such a parish would lose entitlement to be considered a BRC is that it is a DGR, we submit that this entitlement should not be lost where the

DGR's annual revenue is less than the threshold for medium registered entities. Our submission is that proposed section 205-35(3) reads:

> *An entity is not a **basic religious charity** if it is a DGR, but only where the aggregate of the DGR activities of the entity alone would result in the entity being classed as a medium registered entity or a large registered entity.*

- (**Type and subtype**) The ACNC may consider that a typical parish conducting a school building fund (which is but one example of the extensive parish life) would also be entitled to registration as a subtype in column 2 of item 2 of the table in section 25-5(5) (Entity with a purpose that is the advancement of education). Although the Church would view the advancement of religion as the defining characteristic of the parish (even in relation to the school building fund activities), the risk of a different interpretation by the ACNC needs to be clarified so that an entity can still qualify as a BRC if it undertakes purposes within other subtypes provided that the advancement of religion is one of its purposes. For this purpose, we submit that proposed section 205-35(1) be amended as follows:

> *Remove ": and" at the end of section 205-35(1)(b) and replace it with "."*
> *Remove section 205-35(1)(c).*

The ACBC notes that under the Transitional provisions (section 2(3)) basic religious charities will need to be registered and asks that the ACNC Commissioner ensures a streamlined mechanism to do that.

Governance and External Conduct Standards

The ACBC notes that it is intended that the Governance and external conduct standards will be implemented by way of regulation. At the very least, to avoid ambiguity, the ACNC Bill should include clear and specific statements of principle to establish criteria for the new governance and external conduct standards. These Standards need to be flexible and adaptable to different types of entities and reflect the overriding objective not to discourage worthy persons who give of their time and expertise to assist those responsible for governing the entity.

A fundamental value is the independence of the charities. Their ability to organise their structure and governance to suit their own activities should not be compromised by prescriptive and unnecessary standards. The ACNC Bill should limit the scope of the Minister's power to make regulation by limiting the matters to be included in regulations.

ACNC Register

Warnings issued under Division 80 and directions issued under Division 85 can be distinguished from the more serious enforcement action of undertakings given under Division 90, injunctions issued under Division 95 and suspension or removal under Division 100. The publication of each warning and each direction on the register as provided in Clause 40-5(f) is not justified on public policy grounds and may have unintended adverse

consequences on the protection of public trust and confidence in the entity that is the subject of the warning or direction.

Annual information statements

The ACBC notes that annual information statements must be provided under clause 60-5 of the ACNC Bill. The Bill should state that the Annual Information Statement for small entities should not require such entities to provide financial information which they are not otherwise obliged to report financially anyway. All that should be required is a statement confirming that the entity is a small entity.

Reports to other agencies

Clause 10 of the Transitional Bill gives the Commissioner of the ACNC the discretion to treat reports given to other Australian government agencies as meeting the requirements of the ACNC for an annual information statement and other reports. The ACBC submits that if the reports meet the requirements of clause 10(2), the Commissioner "must" accept the report given to another agency as meeting reporting requirements.

Substituted accounting periods

Many entities have substituted accounting periods to suit the nature of their enterprise. Many church entities will use 31 December for their non-DGR activities and 30 June for DGR activities. This suits the convenience of those who received a DGR receipt while allowing accounting and auditing activities to be spread throughout the year. The ACBC submits that clause 11 of the Transitional Provisions is too narrow in limiting the preservation of the substituted accounting period to instances required by an Australian law. The ACBC submits that all entities that are registered when the ACNC commences be entitled to notify ACNC of their current substituted accounting period and retain it.

Special conditions

The ACBC believes it is important that the meaning of "similar purpose" in Clause 44 of the Tax Laws Bill, amending the *Income Tax Assessment Act 1997* (section 995-1(1)) be clarified so it is clear that "a similar purpose" is understood to refer to purpose at the high level, ie charitable purpose and not to more specific purposes, eg advancement of religion. For example, paragraph 1.86 of the Explanatory Memorandum clarifies that "similar purposes would include a charity giving to another charity, regardless of their individual charitable purposes" but this statement is made in a different context. It would be helpful to include a similar statement in respect of clause 44.

Conclusion

The ACBC remains concerned the legislation to be examined by the Committee does not reduce red tape and in fact increases red tape for the sector. This is contrary to the stated objectives of the legislation. The ACBC wants to work with the Government to ensure the legislation meets the needs of the sector. To this end the ACBC has set out a number of

amendments in **Attachment A**, which are necessary to improve the operation of the legislation and the ACNC.

Yours faithfully

Rev Brian Lucas
General Secretary

Attachment A

Proposed Amendments to ACNC Bills

Issue	Section	Suggested technical amendment
ACNC required to use existing reports provided to other federal government agencies for first 3 years of ACNC	10(1) of ACNC Consequential & Transitional Bill	Change "may treat" to "must treat" so that Section 10(1) will read as follows: *The Commissioner **must treat** a statement, report or other document given under an Australian law to an Australian government agency (other than the Commissioner) by a registered entity (whether before or after the entity is registered) as being:* *(a) An information statement for a financial year given to the Commissioner in accordance with Subdivision 60-B or 60-D of the ACNC Act; or* (b) *The reports mentioned in Section 60-10 of the ACNC Act for a financial year given to the Commissioner in accordance with Subdivision 60-C (annual financial reports) or 60-D.* *Clauses 10(2) & (3) to be deleted.*
Basic Religious Charity undertaking purposes within other subtypes not losing their status as a Basic Religious Charity	Clause 205-35(1) of the ACNC Bill	*Remove ": and" at the end of section 205-35(1)(b) and replace it with "."* *Remove section 205-35(1)(c).*
Extending scope of Basic Religious Charity to include operation of DGRs with an income less than $250,000	Clause 205-35(3) of the ACNC Bill	We propose that the Clause be amended as follows: *An entity is not a basic religious charity if it is a deductible gift recipient, but only where the aggregate of the DGR activities of the entity alone would result in the entity being classed as a medium registered entity or a large registered entity*
Inclusion of clear and	Division 45 of the ACNC Bill	Insert a new section 45-10(6) as follows:

specific statements of principle about the governance standards		"(6) The regulations will not specify governance standards that impose any greater burden on a registered entity than the standards applicable to directors of a corporation under the *Corporations Act 2001* (Cth)".
Inclusion of clear and specific statements of principle about the external conduct standards	Division 50 of the ACNC Bill	Insert a new section 50-10(4) as follows: "(4) The objective of the external conduct standards is to help combat terrorist and criminal activities and the regulations must be formulated with regard to this objective."
Removal of financial reports and warnings and directions from the ACNC register	Clause 40-5(1)(e) and (f)(i) & (ii) and (2)	Delete Clause 40-5(1)(e). Delete Clause 40-5(1)(f)(i) & (ii). Delete "the warning or direction is issued," from Clause 40-5(2)
Annual information statements for small entities not requiring financial information that is not otherwise required to be reported	Clause 60-5(3)	The information in the approved form should not require for small entities financial information that small entities are not otherwise required to report. Paragraph 6.35 of the Explanatory Memorandum should also be amended by deleting "finances,".
Allowing registered entities which have a substituted accounting period to preserve that accounting period irrespective of whether it is required by an Australian law	Clause 11(1)(b) of ACNC Consequential & Transitional Bill	Delete "under an Australian law" so that the Clause reads: *(b) The entity notifies the Commissioner that the entity is or was required to prepare a financial report for a period of 12 months that ended on the substituted end day during the 2012-13 financial year*.
Clarifying that a "distribution" does not	Clause 44 of the Tax Laws Amendment (Special Conditions	Amend clause 44(b) as follows:

preclude a person benefiting from assistance provided by a not-for-profit entity as a member of a target group, notwithstanding that the person incidentally may be an owner or member, eg if you are a disabled person who is a member of an entity providing services to disabled persons, you should not be precluded from receiving assistance, and such assistance should not be regarded as a distribution to a person in their capacity as owner or member.	for Not for Profit Concessions) Bill 2012	"(b) under an *Australian law, *foreign law ... and does not distribute, its profits or assets to its owners or members **(in their capacity as owners or members)** (whether in money, property or other benefits) ... ."
Clarifying the meaning of "similar purpose" in the definition of not for profit entity to make clear that a charity can give to another charity regardless of their individual charitable purposes as stated in Para 1.86 of the Explanatory Memorandum	Clause 44 of the Tax Laws Amendment (Special Conditions for Not for Profit Concessions) Bill 2012	Insert a note at the end of clause 44(b) after paragraph (ii) as follows: "Note: similar purpose would include a charity giving to another charity, regardless of their individual charitable purposes." Alternatively, include in Clause 44(b)(i) a definition of "similar purposes" as including a charity giving to another charity, regardless of their individual charitable purposes as set out in Paragraph 1.86 of the Explanatory Memorandum.