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Dear Committee Secretary,
Senate Standing Committee on Community Affairs ,
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Dear Committee Secretary

Thank you for the opportunity to make a submission on your inquiry on the various Bills concerning the Australian Charities and Not-for-Profits Commission.

It is difficult to understand why the matters contained therein are set out in 3 Bills. In view of the purpose of this legislation it seems unnecessary and confusing to have 3 Bills. There appears to be no rational reason to require separate legislation it again adds to the complexity of this legislation.

I have noted that it intends to provide simplicity and clarity this approach seems to be contrary to the intention.

I have only yesterday found out about the possibility of making submissions to you and do confess I do not have time to deal with all the matters I would wish to raise.

However some general comments at first

1. At no time during the period for submissions did Treasury make an effort to contact the approximately 60,000 small organisations till March/April this year.

2. There has been no analysis done and published by Treasury of the types of these small organisations to ensure that they had a representative sample of these small organisations.

3. It is interesting to note that the Charities Definition Inquiry 2001 had over 330 submissions yet this number was not received on any one of the several discussion papers that requested submissions.

4. Treasury still has not release its paper yet on companies limited by guarantee yet it was indicated early 2012.

5. There has been no discussion anywhere that I can see on entities created by Letters Patent. Again this was promised to be covered at one of the forums in Sydney.

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6. The proposed Legislation defining Charities is still unknown.

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7. The Regulations are still unknown.

8. Section 60-30 I am not opposed to the concept expressed here but I believe that the ACNC should set the standards and not have outside body such as the AASB determine the standards. There are potential conflicts here as I understand the AASB has been considering performance reporting standards for corporations since 2009 as the legislation is drafted this could be in addition to those contained in the proposed regulations. I believe you should inquire whether the professional standards of a registered company auditor would be allowed to follow the standards of the ACNC solely.

9. Section 60-35 The ACNC should set the standards not another body.

10. The Government in the explanatory memorandum (some 325 pages) says it will consult with stakeholders and peak bodies yet as no analysis has been done of the small organisations to see if they are represented by peak bodies..

11. Treasury have also stated they will be reviewing the legislation concerning Public and Private Funds yet the latest legislation on this was approved by Parliament to commence in January 2012 during the time of this investigation. It is disappointing that Treasury want to review legislation so soon..

<u>I think I can illustrate my concerns with this legislation by taking an example of a small independent “religion” charity that is incorporated in NSW under The Associations Incorporation Act .</u>

<u>1.</u> At present it has to comply with some 44 pages of legislation and regulation.

<u>2</u> The proposal in the Bill means not only does it have to comply with the NSW legislative requirement, but 152 pages additional pages of legislation and an unknown number of pages of unknown regulations. There are also some 325 pages of explanatory memorandum. It is hard to see how this leads to simplicity and clarity.

<u>3</u>.It would look at Section 25-5 (5) and see that it falls within Item 3 & 1 .It would be puzzled that the legislation seeks to compartmentalise a charity yet it cannot find the proposed legislation that defines charities that way and it thinks that the common law does not make this distinction. Yet we do not know what the definition of charity will be .So it would think we are not sure about what this means and then would say we need legal advice about this.

4. .It would then look at Section 205-35 (some 139 pages later) and then become puzzled does it cease to be one charity or does it have to register a separate charity to cover item 1 . Again it would say do we need legal advice.

5. The explanatory memorandum does attempt to deal with this but it should be properly clarified in the Bill and not rely on a general statement in explanatory memorandum. Perhaps this church has no paid employees or pastors yet spends 60% of its income in performing duties in Item 1. How do they define ancillary if it is a quantum test or is it part of their activity expressed in Item 3.

6. Any understanding of religion be it Christain, Jewish or Muslim would be that it is has duty to carry out the tasks referred to in Items 1, 2 and 4 .Yet it is arbitrarily classified as only being entitled to one Item if it wishes to claim to be in Item 3. This is a serious deficiency as it could be interpreted as making laws contrary to Section 116 of our Constitution, especially prohibiting the free exercise of any religion.

8. It could also be in breach of Article 18 of the Universal Declaration of Human Rights Article 18.

7.Then when it looks Section 205-35 (5) and finds that its grant from the Federal Government to assist in its Item 1 programmes causes it to cease to be a basic religious charity, however if the funds came from a State Government this clause does not apply. This seems to be unnecessarily confusing.

9. Then it would have to go through the “Consequential and Transitional Bill 2012 (96 pages) and the Explanatory Memorandum of another 40 pages .It then finds in (Part 9 Section 16) that the legislation is going to reviewed in 5 years. This would seem to be good public policy but the Minister is not directed as to what the terms of reference should cover.

10 Then the Tax Laws Amendment (Special Conditions for Not-For profit Concessions Bill. (42 pages). and another 40 pages of Explanatory Memorandum.

11It then questions why we have to deal with 3 Bills to understand its position. Simplicity and clarity would dictate that it should be one place. Effectively it is now covered by 4 Bills and 2 sets of regulations.

12The definition of a “basic religious charity”.seems to be discriminating as it differentiates religion because of its structure.

13 As it is a small charity and the Commissioner elects to take action against it and upon appeal the Commissioner loses it would be fair to assume that all its assets would be consumed by the legal process therefore I would submit that Commissioner become liable for all costs incurred.

The end result for this small incorporated association run by volunteers rather than 44 pages of legislation and regulation it would have to add 290 pages of legislation and 465 pages of explanatory memorandum and an unknown number of pages of unknown regulations just to be sure it complied. It would also be aware that it is intended to define Charities in legislation in the future.

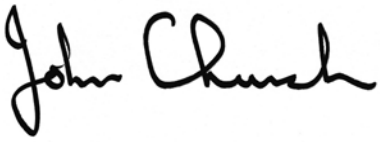
I do not believe the Bills in their present form provide simplicity and clarity for charities, recipients/users of the information.

The real tragedy I find is that as a person who believes the concept is good it would be to my mind sensible to establish the Commission as set out in Chapters 4, 5, 6 and 7 with some amendments. Then it would be logical to proceed with all the legislation that may need to be drafted to make sense of the whole process we still do not know “the Definition of Charity” that is to be proposed, the Regulations that are to be proposed.

The Not for Profit Sector in 2007 employed 890,000 and the number of volunteers were 317,000 so it can be seen that this sector represents a significant section of the Australian community and it is disappointing to have this important legislation presented in such an incomplete form.

I regret that I do not have the time to adequately review all this legislation.

.Yours Faithfully,



John Church
30th August ,2012