

15 February 2013

Manager
Philanthropy and Exemptions Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Dear Sir/Madam,

**Submission to Consultation Paper
Development of governance standards –December 2012**

The purpose of this letter is to respond to the consultation paper released in December 2011.

I enclose the submission from Australian Baptist Ministries and associated entities and look forward to participating in this discussion as it continues.

If I can be of any further assistance or any clarification is required please do not hesitate to contact me.

Yours faithfully
Australian Baptist Ministries



Trevor Spicer
National Treasurer



Development of Governance Standards 2012

Submission responding to Consultation Paper released 17 December 2012

Submitted on behalf of:

Australian Baptist Ministries

Global Interaction

Baptist World Aid Australia

Queensland Baptists

The Baptist Union of Victoria

Baptist Churches of Tasmania

Baptist Churches of South Australia

Baptist Churches of Western Australia

The Baptist Union of the Northern Territory

The Baptist Union of New South Wales and Australian Capital Territory

1,000 Local Baptist churches throughout Australia

Contact: Mr Trevor Spicer
National Treasurer
Australian Baptist Ministries
P.O. Box 273
HAWTHORN VIC 3122.

Tel: (03) 9815-7121
Email: tspicer@baptist.org.au

The Baptist Union of Australia Incorporated ABN 14 389 247 348

Draft Governance Standards – Consultation Paper December 2012

This submission is in response to the Consultation Paper titled “Development of governance standards” which was released for public consultation by the Assistant Treasurer on 17th December 2012.

Australian Baptist Ministries, State Baptist Unions, their associated agencies and organisations together with local Baptist churches throughout Australia welcome the opportunity to contribute to the discussion on this important issue by way of this submission and, if requested or required, to make comment to the Minister or to the ACNC in any other way requested.

We look forward to the opportunity of continuing to interact with the Government as it further develops policies on the range of reforms within the charitable and not-for-profit sector.

Australian Baptist Ministries, together with other Christian denominations, and leaders of other faiths, are deeply concerned that the continued increase in regulation (past and proposed) of faith based organisations undermines, erodes and will eventually attack some of the fundamental freedoms that Australians hold dear; freedom of association and freedom of religion.

In part we see this occurring in the draft governance standards on which this consultation is based which, once approved will form part of the regulations which give substance to Division 45 of the Australian Charities and Not-for-profits Commission Bill 2012.

While Australian Baptist Ministries welcomes the inclusion in the Australian Charities and Not-for-profits Commission Bill 2012 of the concept of the Basic Religious Charity, in our view the category is too narrow. The fact that a local church or parish is an incorporated association in our view is irrelevant and should not preclude it from being a Basic Religious Charity. In the case of the Australian Baptist Denomination, this disqualification from being a Basic Religious Charity means that over 100 local Baptist Churches in Australia automatically cannot be considered a Basic Religious Charity, despite meeting all of the other requirements. In our view this is ludicrous.

Furthermore, and of greater concern in our view, is the power under the Australian Charities and Not-for-profits Commission Bill 2012 of the Commissioner to remove responsible entities, including ministers of religion, from their leadership roles within these Baptist Churches that are disqualified from being Basic Religious Charities. Australian Baptist Ministries believe this to be an unacceptable power; one where a minister of religion can be removed from their local church or parish by a government agency.

Australian Baptist Ministries is also extremely concerned that the commissioner may, under the current Bill, on removing a responsible entity of a local church or parish that is an incorporated body, impose on that local church or parish, a person as a responsible entity who is not a Baptist and not therefore cognisant of the issues related to the operation of that local church.

These are views consistently stated by Australian Baptist Ministries in our previous submissions regarding;

- the Exposure Draft of the ACNC Bill released in December 2011,
- the original consultation paper titled 'Review of not-for-profit governance arrangements also released in December 2011,
- the exposure draft of the ACNC Bill when referred to the Standing Committee on Economics in July 2012,
- the exposure draft of the ACNC Bill when referred to the Joint Committee on Corporations and Financial Services in August 2012,
- the exposure draft of the ACNC Bill when referred to the Senate Standing Committee on Community Affairs in August 2012.

In our opinion, that these views need to be stated a sixth time is disappointing and unfortunate and indicates to Australian Baptists that either the treasury and government is uninterested in our views or potentially does not grasp the variety and diversity of views, polity and governance structures amongst the major Christian religious denominations within Australia.

Australian Baptist Ministries remains willing to constructively engage with the ACNC, the Treasury or Government in the implementation of these proposed governance standards.

Who we are

Australian Baptist Ministries is the trading name of The Baptist Union of Australia. The Baptist Union of Australia is a voluntary association of State Baptist Unions and is incorporated under the Australian Capital Territory Associations Incorporation Act 1991.

Australian Baptists are a multi-cultural and multi-generational movement of people serving communities in metropolitan, regional, coastal, rural and remote Australia through a network of approximately 1,000 churches with a regular combined regular attendance of around 150,000 people. At the 2006 census over 315,000 people listed their religious affiliation as Baptist.

Australian Baptist Ministries is a federated organisation, partnering with local churches through State Baptist Union entities.

While some local Baptist Churches are incorporated entities most operate as separate unincorporated entities. Many of our State Baptist Unions are incorporated by acts of their applicable state parliament.

In many ways Australian Baptist Ministries would most likely be seen by the community in general as the peak body of the Baptist movement in Australia.

While the Baptist ethos values the autonomy of the local congregation, there are many times, places and occasions where a national voice or opinion is sought from Christian denominations and other times and occasions where, in our view, a national statement on behalf of the Baptist movement in Australia can contribute significantly to the national debate or thinking. In our view this is one of those times.

What we do

Together with the State Baptist Unions, Australian Baptist Ministries is committed to:

- supporting and equipping local churches,
- training and equipping individuals for professional and lay ministry,
- supporting overseas missions,
- assisting the disadvantaged within our own communities and overseas.

There are a number of ministries that operate under the auspices of Australian Baptist Ministries to provide these many and varied opportunities to serve the public amongst the many communities in which our congregations and agencies operate.

These ministries include:

- Approximately 1,000 local Baptist congregations of varying sizes,
- State Baptist Unions in all states and territories of Australia,
- Baptist Care Australia,
- State Baptist Care organisations in each state,
- Global Interaction,
- Baptist World Aid Australia,
- Crossover Australia,
- Remote Churches Ministry,
- Baptist Financial Services,
- Australian Baptist Insurance Services.

Local Baptist Churches and many of the above organisations commenced and continue to exist through the generosity and foresight of Australian Baptists. In many cases they have been contributing through the generosity of members to the social fabric of Australian communities and in an International setting for well over 100 years.

While some of the above organisations operate solely within the Baptist community of churches, many of them have a far-reaching impact on Australian communities and each of them contributes to the public benefit of Australians and Australia.

For example Baptist Care Australia encompasses 2,700 packaged community aged care places , over 4,400 residential aged care places, family services, refugee services, employment services, youth services, low cost housing, chaplaincy, counselling, disability and mental health services and other diverse programs to meet community need.

The international ministries listed above (Global Interaction and Baptist World Aid Australia) provide humanitarian, development, medical and educational support services and capacity building amongst some of the world's most disadvantaged people.

Responses to the Six Draft Governance Standards

Draft Governance Standard 1: Purposes and NFP Nature of a registered Charity.

Australian Baptist Ministries have no major issues with the object of Draft Governance Standard 1 as we believe that all Baptist Churches in Australia are able to demonstrate a commitment to their stated purposes. Each of our State Baptist Unions has 'model rules' that local churches may use entirely or as a guide to their own governing rules. In the event that governing rules of a local Baptist congregation do not indicate clearly enough the purposes of their Baptist Church, we believe that the Commissioner should accept the purposes indicated in the 'model rules' of that particular State Baptist Union instead and without penalty.

We have assumed that, in relation to this Draft Governance Standard, a sufficient means of 'making information about its purpose available to the public, including members, donors, employees, volunteers and benefit recipients' would be through the inclusion of the governing rules of the registered entity on the Australian Charities and Not-for-profits Register.

Most Australian Baptist Churches would, in addition to information required on the ACNC Register, make this and other information known to their members, adherents and attenders through other printed and electronic means.

Draft Governance Standard 2: Accountability to members

Australian Baptist Ministries would support the notion that registered charities in Australia should be accountable to their members.

This is currently the case for Baptist Churches within Australia where the autonomy of the local congregation (free from enforced direction of those outside the local church) is one of the issues that Baptists hold dear. The ability of a local congregation to govern it and to discern within a members' meeting of a local church the will of God for that local church is important to us.

In our view there is no question regarding the object of Draft Governance Standard 2 however we do have some questions regarding some of the practical outworking of the wording of the Standard and the subsequent notes.

Note 2 indicates that an annual general meeting should have a question and answer session. While many Baptist Churches around Australia would probably do this as a matter of course, there are many large Baptist Churches and churches of other denominations where this is simply not practical, given the size of the membership. We would suggest that other means of providing the 'question and answer session' be included in the note, for example an on-line discussion forum or other events not necessarily associated with the annual general meeting.

Draft Governance Standard 3: Compliance with Australian Laws

Australian Baptist Ministries support the notion that our churches and agencies should operate within the laws of the appropriate jurisdiction, and we support without reservation the object that these organisations should be operated in a manner that is honest, transparent and which safeguards the assets and financial viability of the entities.

In our view there are two areas of concern in relation to this Draft Governance Standard.

The first relates to some of our charities (not necessarily local church congregations) and to other charities that operate nationally throughout Australia. The concern arises principally where federal and state laws or the laws of two states are not uniform or are in conflict. In theory one of our national organisations or Australian Baptist Ministries itself could be operating within the laws of one jurisdiction but outside the laws of another Australian jurisdiction.

We suggest that the notes to the Standard be modified or an additional note to the standard be added to take this issue into account.

The second, and probably more concerning issue relating to this Draft Governance Standard relates to charities that operate outside of Australia. Many Australian charities operate in countries other than Australia where the laws, particularly regarding Occupational Health and Safety differ markedly or simply do not exist at all. While all Australian Baptist Charities that operate internationally do so attempting at all times to provide a safe working environment for staff employed overseas, in a practical sense this is not always possible. Added to this, the working habits and practices in many countries would be in direct violation of Australian Occupational Health and Safety Laws. In these cases, despite perhaps the best endeavours of the Australian charity, an employee of the registered entity operating overseas may 'engage in conduct, or omit to engage in conduct' that breaches the requirements of this draft governance standard.

In our view an additional note to the standard should make particular reference to registered charities that operate outside of Australia and provide a 'best endeavours' clause for these charities in their international operations.

We reiterate our desire that Australian Baptist Churches and Charities operate within the laws of the appropriate jurisdiction.

Draft Governance Standard 4: Responsible Management of Financial Affairs

Australian Baptist Ministries support the objects of this draft standard in ensuring that registered charities manage their resources responsibly, further their purposes and protect the assets of the charity from misuse.

However, we believe that the term ‘reasonable steps’ is far too vague for a governance standard that if not kept, disqualifies an entity from registration with the ACNC.

Likewise with the term ‘responsible manner’; there is simply no guidance in terms of notes to the draft standard that provides any certainty about what managing financial affairs in a ‘responsible manner’ actually looks like in practice.

We believe that both of these terms, while probably appearing as common-sense to those drafting the standards, are open to a wide range of interpretations depending on the type of charity, the circumstances of the charity and the complexity of its financial affairs.

Draft Governance Standard 5: Suitability of Responsible Entities

Australian Baptist Ministries is committed to seeing Australian Baptist Churches managed and governed in a responsible manner.

We do however, have some serious concerns with this Draft Governance Standard; not because it seeks to have charities operate responsibly, but rather because it means that a decision that previously was made within a local church or parish can now be and may be significantly influenced by the state.

In our view this is an unwelcome intrusion into the affairs of a faith-based community where, for various reasons which have been outlined earlier, the church is disqualified from being a Basic Religious Charity. It does seem to us that the issue of incorporated charities being disqualified from being Basic Religious Charities has been done so purely because they are already required to produce and file financial reports without due concern for other potential ramifications of this disqualification.

Australian Baptist Ministries is far less concerned about the need for incorporated churches to file financial reports than it is about this intrusion into the affairs of a faith-based entity.

In terms of the powers of the Commissioner to remove responsible entities from the governance of the local church or parish, particularly where that person is a minister of religion, is an unacceptable power in relation to any charity that has ‘Advancement of Religion’ as their only charitable purpose or where it is one of their charitable purposes.

We would also wish to reiterate a point made in several of our previous submissions relating to the not-for-profit reform agenda that, apart from those who are ministers of religion, nearly all members of the governing bodies of local Baptist churches and other Baptist charities within Australia are volunteers.

In our view to expect that each time a new responsible entity is nominated for a position on a governing body, a local church treasurer, secretary or administrator has to check the details of that person against those people listed in the Disqualified Responsible Entities Register.

Draft Governance Standard 6: Duties of Responsible Entities

Australian Baptist Ministries is committed to seeing Australian Baptist Churches managed and governed in a responsible manner. We also recognise that for this to happen, responsible entities need to conduct themselves in an appropriately responsible manner.

Our concerns with this Draft Governance Standard are that for local churches of any denomination, leaders chosen from within the local congregation will often be operating within the congregation in various capacities; as a volunteer, as a member, as a member of the governing body and also often as a leader of a particular area of activity within the church.

In our view there would be few decisions made in the local church context where at least one, perhaps many and in some instances all of the governing body members have a personal interest and therefore a conflict of interest. These most likely are not financial, but they are often a material (in a non-financial sense) interest. We assume that in these cases every responsible entity on the governing body would need to declare a conflict of interest and not participate in the decision making and perhaps even in the discussion preceding the decision. We believe this is an unrealistic situation.

We also believe that to impose the duties and responsibilities of paid directors of a corporation on a volunteer responsible entity of a local church or parish is unreasonable.

Recommendation

In our view, the Australian Charities and Not-for-profits Commission Bill 2012 should be amended to provide the same exemption from all of these Governance Standards for any charity that has Advancement of Religion' as their only charitable purpose or where it is one of their charitable purposes.

Failing this, the Governance Standards themselves should make clear an exemption for any charity that has Advancement of Religion' as their only charitable purpose or where it is one of their charitable purposes.