



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

General Secretariat

7 March 2018

Mr Murray Crowe
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ACNCReview@treasury.gov.au

Dear Mr Crowe

Review of Australian Charities and Not-for-profits Commission legislation

This submission is from the 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 Catholic community is the largest religious group in Australia with more than one in five Australians identifying as Catholic. Worship, pastoral and other religious activities take place in more than 1,380 Catholic parishes. The Church provides Australia's largest non-government grouping of hospitals, aged and community care services, providing approximately 10 per cent of health care services in Australia. It provides social services and support to more than 450,000 people across more than 650 sites Australia-wide each year. It has more than 1,730 schools enrolling more than 760,000 Australian students. Catholic Church agencies employ approximately 220,000 people who serve millions of Australians, both Catholic and non-Catholic.

The ACBC seeks to participate in public debate by making reasoned arguments that can be considered by all people of goodwill.

The ACBC appreciates the opportunity to make a submission to the Review of the Australian Charities and Not-for-profits Commission (**ACNC**) legislation.

Introduction

The ACBC supports national regulation by the ACNC to determine charity status, ensure accountability, promote transparency and reduce the burden of regulatory compliance.

The current regulatory regime has meant additional reporting and red tape, especially in view of the duplication with state and territory legislation. Unincorporated entities have new reporting obligations as a result of the ACNC, which are particularly burdensome for organisations heavily dependent on volunteers.

The ACBC acknowledges the positive manner in which ACNC staff have managed the implementation and operation of this new regulatory body. The Commission's culture of consultation, including through formal mechanisms such as the Professional User Group (**PUG**) and the Sector User Group (**SUG**), has been effective in assisting the sector to transition to the ACNC's regulatory framework.

While the ACNC shows some promise, after five years there is still some way to go to reducing the compliance costs of charities and in many cases costs have increased.

The ACBC has undertaken extensive consultation across the broad spectrum of the Church's charitable services to prepare this submission. The submission identifies some of the key issues raised during the consultation. Further, we have provided comments on operational improvements the Review team may wish to consider at **Attachment A**.

Objects of the ACNC

We support the current objects of the ACNC as they apply to the registration and regulation of charities. We note the ACNC itself has made a submission seeking amongst other changes the inclusion of two additional objects:

- (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.

The ACBC does not support the creation of these additional objects. These are matters which are properly discharged by the governing boards and the management of charities and NFPs. We believe that the current objects are sufficient to meet the requirements of a national regulator of charities.

We have particular concerns with the focus of question numbers 4 and 5 put by the Review which would lead to unwarranted intrusion by the ACNC into the rightful domain of charities, that is, their rightful activities, and the way in which a charity would use funds 'for the purpose they are being given'. Additional and unnecessary reporting by charities to the ACNC could result and there is uncertainty as to how the ACNC would measure the ways in which a charity would use funds appropriately. The ACNC already has the power to assess and de-register charities.

Basic Religious Charity status

The ACBC supports retaining the current definition of Basic Religious Charities (BRCs) (Section 205-35). BRC status has been very effective in keeping to a minimum the time and resources involved in regulatory compliance for unincorporated Church entities. For many of these entities, attention to accounting and regulatory compliance is handled by volunteers. In this regard, BRC status is consistent with the ACNC's Object to cut red tape as enunciated in Section 15-5(1)(c): "to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector".

BRC status works and we are not aware of any reason that would warrant changing the classification.

Losing BRC status would result in many parishes which are currently able to rely on volunteers being required to seek professional advice, which could come at a cost disproportionate to the size of their annual revenue.

Further, the ACBC believes that BRCs should be made available to other religious groups which have been denied access to this provision solely because they are an incorporated body within the meaning of Section 205-35 (2).

Some basic religious charities operate interstate through non-Corporations Act bodies corporate, but have Australian Registered Body Numbers (**ARBNs**), especially if they own real estate in more than one jurisdiction. The ACNC interpreted this to mean they were Corporations Act registered entities, so, although they were eligible as BRCs on all other grounds, the ARBN excluded them from BRC status. This is an unintended consequence of the definition and should be specifically excluded from the factors disqualifying a charity, which otherwise has the sole purpose of advancing religion. The fact that an entity is registered with the Australian Securities and Investments Commission (**ASIC**) as an ARBN should not disentitle a charity to BRC status.

The receipt of any government grants removes the BRC status, which results in additional costs for auditing. This impacts on small parishes with heritage buildings. Clarity over the difference between a religious order and a Catholic parish is needed.

BRCs are limited to grants of \$100,000 when branching is not taken into consideration by the ACNC. Also the BRC threshold should be raised to \$250,000, the same as the deductible gift recipient (**DGR**).

The ACBC wishes to acknowledge that bulk lodgement of the Annual Information Statement (**AIS**) has proved very useful for parishes and a big time-saver. It is considered essential by many Catholic entities for BRCs with multiple entities managed by the one administrative function.

The case for extending BRC status to other unincorporated entities

Some submissions to the Review may call for the abolition of the BRC status. This would be a backward step having regard to the success of the current arrangements in reducing red tape for small unincorporated charities.

There is some force in the argument put by critics of the BRC concept that a similar exemption is not available to like bodies with other charitable purposes. The ACNC Review could sensibly consider extension of the BRC concept to unincorporated charities without DGR status and not in receipt of government grants.

Critics of the BRC concept have put no cogent argument against the extension of the BRC concept to unincorporated charities with charitable purposes other than religious purposes.

Indeed, the extension of BRC status to a wide range of unincorporated charities would free up resources within the ACNC's Budget to target more directly its legislative responsibilities in relation to large charities and those with DGR status.

Red tape reduction

The ACNC was introduced with promises of it being a one-stop shop for charities dealing with government and a way of reducing red tape.

The ACNC has not significantly reduced red tape and duplication. In many cases, instead of reducing duplication it has just added another level. This means more donor dollars are directed to administration than necessary, reducing the ability of charities to pursue their mission. For example, for charities registered with ASIC and the ACNC, officeholders, directors and secretaries need to be updated with both agencies, often to prove that those signing documents have the authority to do so.

The Government continues to introduce new regulation and requirements for charities with the regulation to be administered by government agencies that do not even acknowledge the existence of the ACNC.

Annual reporting needs to be simplified and better links made with other external reporting bodies both at the Commonwealth, and the state and territory level.

There is still an opportunity to promote the reduction of unnecessary regulatory obligations on the sector including aligning fundraising legislation across the country, addressing duplication with the Australian Business Register, to produce statistics and analysis to provide a better insight into the sector and simplifying other dealings with government.

The ACNC's systems are overly cumbersome and create yet another layer of reporting compliance. The ACNC requires greater authority assumed from the Australian Taxation Office (**ATO**). Many times we are left dealing with the ATO and ACNC on matters that should be with the ACNC. Transparency appears inadequate in how overheads are calculated by charities.

Unincorporated entities such as Catholic parishes need to report now more than ever before. To give one example, the introduction of the ACNC introduced duplication of registration requirements between the Australian Business Register (**ABR**) and the ACNC's Charity Register. Despite persistent representations by the sector in relation to removal of this duplication, there has been no effective response from senior officials of both administrative units housed within the ATO.

We submit that the duplication is easily managed for large charities, but presents an unreasonable impost for small, volunteer-run charities such as some parishes. The ACNC Review presents a perfect opportunity to alter the ACNC Act with consequential amendments to the Business Names Registration Act 2011 to remove unnecessary duplication of registration activities between registers. This can be achieved without any loss of transparency and accountability for small charities or the sector as a whole.

Fundraising activities

There has been some success with harmonisation for incorporated associations in the Australian Capital Territory, South Australia and Tasmania. There is an ongoing opportunity for state fundraising registration requirements to be consolidated with the ACNC reporting.

The ACBC supports the call to bring all charity fundraising activity under one national banner. Currently there is a fragmented approach to fundraising compliance due to each state and territory having its own rules. This imposes a severe compliance burden on charities that engage in large scale mass market fundraising.

Advocacy by charities

Charities should be free to advocate for their beneficiaries and the general public, whilst not overstepping the mark and becoming supportive or critical of a particular political party for reasons other than policy. However, the regulatory framework requires enforcement discretion to allow charities to respond to attacks, criticism or policy proposals aimed directly at them by Members of Parliament or their political parties.

Systemic issues and failures in the social welfare system are often addressed and changed by concerted advocacy efforts on behalf of civil society. Advocacy is important as an educative and pastoral means to raising public awareness and gathering support in order to influence public policy for the betterment of the Australian community.

The ACNC's current guide for charities, elections and advocacy is useful.

Disclosure of information

The ACBC supports religious contemplative orders and institutes keeping their religious constitutions confidential, however the ACNC has discretion not to publish a document only if security of an entity's clientele is to be affected, or the information is commercially sensitive or could cause detriment to the registered entity. The ACNC should have more discretion not to publish material which is considered confidential by the charity and is not necessary for the public benefit.

National Standard Chart of Accounts

There needs to be more communication on the National Standard Chart of Accounts (**NSCOA**) and encouragement for charities to adapt to the standard where possible.

The NSCOA assumes that all charities can capture financial information in a standard manner. Not only does this ignore the diversity between charities, it ignores the diversity within a charity. For example, a Catholic entity may operate a church and a child care centre as well as offer services to the poor and disadvantaged. It may receive government funding for the child care centre and to offer services to the disadvantaged. However, the NSCOA fails to capture all this information in a way which allows meaningful reports to be produced.

The NSCOA should not be made compulsory as it would be onerous for many charities which have limited resources. It would also fail to recognise differences across the charities sector and the costs in re-engineering for compliance. For example, the format differs from what the Commonwealth requires from residential aged care and other agencies.

Governance standards

The Governance Standards provide a good set of guidance tools that can be used by organisations in a way that is tailored to their context. As the Governance Standards are in plain English they are easily communicated and understood by board members and other officers who may have had no prior experience in a governing body.

Many charities are religious; many are secular. This leads to diversity in the adoption of governance structures and governing rules by charities. The ACNC has operated flexibly within this context over the past five years, and should continue to do so.

The ACNC could assist by taking more of a role with respect to internal governance disputes. ACNC could be a guide, regulator and mediator. Much time and energy could be saved by organisations suffering dysfunction from internal disputes.

Public register of charities

The ACBC appreciates the value of the public register of charities. This has value in promoting transparency and public confidence in the sector. It is one means by which charities are held accountable to the public.

The important values of transparency and accountability need to be understood and promoted in a way that is proportionate to the size of charities and any assessment of relevant risk factors.

There is ongoing concern that the release of some financial information on the public register of charities creates some concern in competitive situations in non-government education. There is an ongoing problem with inconsistencies between the different publicly available databases reporting the finances of non-government schools and the ACNC's format for the financial information of these schools.

Reporting of volunteers and employees

The reporting of volunteers and paid employees in the school context has less relevance than say in a charity taking public donations and then expending same on administration rather than the purpose for which they were given.

Revoking registration

The ACNC should not be prohibited from providing the reasons for revoking registration or penalising of breaches of the ACNC Act or other Australian law. Providing reasons would help the charitable sector better understand its obligations. However care must be taken to ensure details concerning the investigation and reasons for revocation are not released until investigation into the matter is complete. To do so before the charity has responded to allegations has the potential to undermine the reputation of the entity and the sector more broadly, especially where the claims are found to be vexatious or without merit.

The process for an entity to revoke ACNC registration is overly cumbersome and time-consuming.

ACNC consultation processes

Consultation is valuable. The activities of groups like the PUG and SUG, the ACNC's national road show presentations and on line access have brought the ACNC into the daily world of their stakeholders: hearing first-hand how policy and regulation is impacting their sector participants.

The ACNC is encouraged to continue exploring further opportunities for two way conversations with the sector.

For example, the ACNC could work further on consultation and awareness with the banking and finance industry, to help banking staff who deal with charities to better understand the sector.

The ACNC's thresholds for registered charities

One option for extending BRC-like status for reporting is to extend the BRC-like status to all unincorporated charities not in receipt of DGR status. In the first instance the extension could apply to all unincorporated non-DGR charities classified as “small”. Currently small charities are defined as having revenue under \$250,000.

The ACNC Review might also give consideration to the thresholds defining size of charity. Arguably any charity with revenue less than \$1 million might be regarded as “small”. In the Catholic Church’s experience, such a threshold would lead to almost all unincorporated non-DGR charities (including almost all parishes) to be defined as “small”.

Following the logic of raising the thresholds for other categories, the ACNC Review might consider the following adjustments to thresholds:

- Small registered charity – no more than \$1 million in revenue per annum;
- Medium registered charity - annual revenue more than \$1,000,000 and no more than \$5,000,000; and
- Large registered charity - annual revenue of more than \$5,000,000.

Conclusion

The ACNC has proved a reliable and expert regulator for charities to work with as they provide important public benefits to the Australian community. The ACBC in this submission supports a range of outcomes from this review, including:

- A national regulator with a continued focus on the reduction of red tape
- The ongoing provision of BRC status to appropriate entities, and
- The freedom of charities to advocate for their beneficiaries and the general public.

The ACBC appreciates the opportunity to contribute to this review.

I would be happy to answer any questions you may have. I can be contacted via Mr Jeremy Stuparich, Public Policy Director at the ACBC on 02 6201 9863 or at policy@catholic.org.au

Yours sincerely

A handwritten signature in black ink, reading "Stephen Hackett" followed by a large, sweeping flourish that extends to the right and then loops back down.

Rev Dr Stephen Hackett
General Secretary

Operational improvements the Review team may wish to consider**The ACNC's website**

The ACNC's website is full of very useful and easy to find information such as articles on crowd funding and checklists, though these are not always easy to find, particularly as the site grows in size. The search mechanism is too slow, search by name is often not successful and search by ABN requires a visit to ABR first. The site and all aspects of lodging are very slow. This becomes increasingly problematic at peak reporting periods. One Catholic entity had to submit its AIS after 9pm on the due date, as repeated attempts during business hours a week prior proved unsuccessful. We understand that there are likely to be system overhauls in place by the time that AISs are due to be lodged over the 2018 year and we welcome any system improvements this change will deliver.

Annual Information Statement

Our concerns with the annual reporting process are two-fold: the year-to-year changes in the Annual Information Statement (AIS) format and the cumbersome nature of meeting some financial reporting obligations.

The information requirements of the AIS have grown each year since the process began. For example, the latest additions include data on hours worked as well as numbers of employees. Does this data really need to be collected from all medium and large charities every year?

Having regard to the ACNC's legislative object to remove unnecessary regulatory obligations, the ACNC could show leadership in this regard by removing questions from the AIS on less important data when new additional reporting requirements considered more important are included in the template.

There should be an ability to edit information directly online rather than submitting forms (for example, in the case of a one-off financial event which increases a charity's turnover beyond its current annual band). This type of information should be able to be entered "live" into a record rather than be submitted via the forms process and then reviewed. Similarly for the process to revoke charity status - this information could be directly entered into the website.

If a charity is large (thus requiring lodgement of financials) and has not changed its activities in the previous year, the annual lodgement requirement seems onerous.

The obligation to transpose financial information for the online form is an example of duplication that could be eliminated.

It would be helpful if the ACNC streamlines the population of the AIS from financial statements.

Registration of responsible persons

The ACNC has not replaced ASIC in commerce, especially for banks, as the authoritative source of latest details of directors and company officers of a charitable company. This needs to be more broadly published, or, the ASIC register automatically updated as ACNC is updated. Many Catholic entities that are registered with the ASIC report that they must keep both ACNC and ASIC registers current as part of their interaction with banks and suppliers of services.

It would be good to clarify the position that responsible persons hold e.g. as director. This information is no longer up to date on the ASIC site so it is not possible to establish exactly who the directors are, as opposed to other non-directors who may be responsible persons.

ACNC's requirements for deductible gift recipients status

It is helpful that the ACNC deals directly with the ATO where in conjunction with an application for the ACNC registration, the applicant also seeks tax concessions including DGR endorsement, but, there is no contact known at the ATO once the matter leaves the ACNC, and the applicant is dependent upon the ATO communicating, in its time, with the applicant. The ACNC could notify a contact to the applicant once the ACNC had referred the application to the ATO. The ACNC should be empowered to grant DGR status at the same time it is considering the charitable status application, aware the DGR eligibility is narrower.