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Submission to the Senate Standing Committee on Economics: Inquiry into the Disclosure regimes for Charities and not-for-profit organisations

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

Summary of submission

- (a) Although we consider we are most qualified to comment on charities in the context of the Anglican Church Diocese of Sydney, we have a broader interest in ensuring that the charities sector as a whole has appropriate regulatory regimes in place.
- (b) We support calls for reform of the regulatory regimes that govern the charities sector. Principally this should address the need for harmonisation of the complex arrangements that impact on the sector. The most significant benefits, from both direct cost savings and improved efficiencies, will come from the rationalization and harmonization of the range of State and Federal government regulations and tax regimes that apply to the sector.
- (c) The sector is a significant contributor in all areas of the “social economy”. The great potential benefits for society as a whole from the sector could be lost if the current regulatory regime
 - (i) remains as complex and messy as it is now, or
 - (ii) is replaced by a burdensome and overly bureaucratic regime.¹
- (d) The introduction of a form of charities’ commission may be an effective way to facilitate the operation and governance of the charities sector (we will refer to this model as the Charities Commission). If a Charities Commission is adopted, then it is essential that it assists charities do what they are doing, and does not undermine or destroy the inherent flexibility, responsiveness and creativity which are the sector’s strengths.

¹ A number of commentators suggest this is the case in the UK as the Charities’ Commission there has become both far reaching and expensive.

- (e) The scope and role of any Charities Commission should be determined on the basis of a demonstrable benefit to the public and to the sector and must be appropriate in scale and well targeted to the need. Specifically it must not be an over-engineered model as an over-reaction to the relatively low level of evidenced abuse.
- (f) In particular we would support a new system of registration of charities through a Charities Commission provided such a system does not add to the overall regulatory burden on charities. To this end we advocate consideration of –
 - (i) Such a registration system being the means by which charities are endorsed as tax exempt, and
 - (ii) A group registration/endorsement system which would enable multiple entities which comprise a larger charitable/religious organisation to be recognised as tax exempt charities, and
 - (iii) An exemption from reporting to the Charities Commission for charities which are already subject to a public accountability structure.

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29 August 2008



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1 Charities in the context of the Anglican Church Diocese of Sydney

1.1 The Anglican Church Diocese of Sydney is an unincorporated voluntary association comprising –

- 267 parishes with a regular combined membership of about 80,000, and
- a significant number of other bodies including large social welfare institutions such as Anglicare² and Anglican Retirement Villages, other charitable institutions such as Anglican Youthworks³, and the 39 schools operated by the Diocese for 35,000 students.

These bodies are constituted under church law in accordance with the Anglican Church of Australia Trust Property Act 1917 (NSW), and many are also incorporated under the Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW). They are accountable to the members of the Church through the Synod of the Diocese of Sydney. The Synod is a governance body made up of 719 members, the majority of which are appointed or elected representatives from the 267 parishes.

1.2 All diocesan bodies are subject to an extensive system of public reporting.

1.3 For reporting purposes diocesan bodies fall into three categories:

² Anglicare relates to approximately 40,000 clients on an annual basis with counseling, children and youth services, emergency relief, family relationships and aged care.

³ Youthworks is the co-ordinator of work amongst children and young people and provides materials to 300,000 students, supports 4,000 volunteer and employed scripture teachers, and 8,000 youth leaders attending training events. 50,000 mostly young people and children attending outdoor programs and centres.

- (a) Parishes, whose income largely comes from its members: these provide audited financial statements to the Synod.⁴ Each parish church also provides audited financial statements to its members at its annual vestry meeting.
- (b) Organisations which do not receive funding from government programs: these provide their audited financial statements to the Synod together with annual reports.⁵
- (c) Other organisations such as PBIs and educational institutions which receive funding from government programs: these report to the Synod as with (b), but in addition report to the funding body.

1.4 Although we consider we are most qualified to comment on charities in the context of the Anglican Church Diocese of Sydney, we have a broader interest in ensuring that the charities sector as a whole has appropriate regulatory regimes in place.

2 Relevance and appropriateness of current disclosure regimes

Introduction of a Charities Commission

2.1 The introduction of a Charities Commission may be an effective way to facilitate an appropriate degree of disclosure in the charities sector. If a Charities Commission is adopted, then it is essential that any reporting by charities to the Commission should not duplicate existing reporting mechanisms that are transparent and effective.

Reporting by tax exempt charities

2.2 **We advocate consideration of an exemption from reporting to a Charities Commission if the charity is already subject to a public accountability structure.**

2.3 There does not appear to be sufficient evidence that additional reports to a Commission would add to the transparency and accountability of charities. In these circumstances there would be little demonstrable benefit to justify the additional cost.

2.4 There is possibly less accountability at present for stand-alone charitable institutions which are not subject to an existing public accountability structure. For these, in particular religious institutions, there is perhaps greater justification for the introduction of a reporting requirement to a Charities Commission.

⁴ Sydney Church Administration Ordinance 1990 requires parishes to comply with specific reporting and accountability obligations.

⁵ Sydney Anglican Accounts, Audits and Annual Reports Ordinance 1995 requires diocesan organisations to comply with specific reporting and accountability obligations.

Government funding reporting

- 2.5 Where public benevolent institutions, schools and other institutions are in receipt of Federal and State Government funding, there is already an extensive and thorough regime of reporting requirements. **Any reform would ideally aim to harmonise these, making them less complex and more in alignment with each other, rather than imposing an additional layer of regulation.** This does not mean the compliance regimes should be any less robust, but they will deliver more effective outcomes if they are less complex, consistent and more targeted.

Deductible donation reporting

- 2.6 Notwithstanding some popular perceptions,⁶ reporting on the amount of a donation that reaches the beneficiary is misleading at best. The complexity of the sector's compliance obligations and the lack of consistency across sectors leads to lack of understanding by donors and other supporters. Best practice in disclosure and accountability focuses on the outcomes of programs rather than the in-puts: what the impact of the work is rather than necessarily how the money is spent. Even focusing on a common reporting regime in some sectors (in particular overseas aid) on percentage spend on administration or overhead, does not answer the questions donors typically want to ask.
- 2.7 **There is no public benefit to be served by mandating reports on the amount of a donation that reaches the beneficiary.** Charities already have considerable pressure on their overhead spend.
- 2.8 Recent research in a doctoral thesis by Ted Flack conducted through the Queensland University of Technology supports the argument that annual reports are more effective than statutory reports and returns in that they have both functional and symbolic roles in the system of accountability of public fundraising charities. "Functionally, annual reports are a useful and generally valued means by which public fundraising charities communicate a wide range of types of information about their activities and their performance to interested parties. Symbolically, annual reports also serve as an important signal of assurance to those who receive them. For those who prepare them, annual reports serve as useful signals of managerial and governance competence to those whose opinion is salient to preparers. Annual reports also have a role in the system of accountability for the maintenance of the mission of these organisations, in ways that statutory reports and returns do not."⁷

⁶ For example the Choice Survey referred to in the Background Paper.

⁷ Flack, Ted, 2007, The Role of Annual Reports in a System of Accountability for Public Fundraising NFPs at <http://adt.library.qut.edu.au/adt-qut/public/adt-QUT20070726.123513/>.

3 Models of regulation and legal forms to improve governance and management of charities

- 3.1 The existing church law regime applicable to the Diocese already provides an effective legal structure, appropriate flexibility (ie capacity to change trusts cy pres) and reporting and governance requirements. Underpinning all this is accountability to the Diocese as a whole – the people – through the Synod.
- 3.2 However we consider that the following matters would improve the governance and management of charities generally.

Harmonisation and rationalization of existing regulation

- 3.3 **We consider that reform of the regulatory regimes that govern the charities sector should principally address the need for rationalization and harmonisation of the complex arrangements, both State and Federal, that impact on the sector.** The introduction of a Charities Commission may be an effective way to facilitate this rationalization and harmonisation.
- 3.4 If a new government body with a particular focus on charities is determined to be the best means of facilitating the operation and governance of the charities sector then the following must be achieved.
- 3.5 Any new regulatory regime should lessen overall regulatory burdens rather than simply adding a new layer of additional regulation. The sector is a significant contributor in all areas of the “social economy”. The great potential benefits for society as a whole from the sector could be lost if the current regulatory regime
- (a) remains as complex and messy as it is now, or
 - (b) is replaced by a burdensome and overly bureaucratic regime.
- 3.6 Part of the brilliance of the charities sector in Australia is its long history of flexibility and capacity to respond early to need as it is identified. Historically charitable institutions in Australia have provided critical social infrastructure and social welfare initiatives before these have been supported politically as the proper concern of government. There is a real danger that in well-intentioned attempts to provide support and reform to the sector, an over-engineered reform regime lead to the brilliance of the sector, and its differentiating qualities of responsiveness, creativity and lack of bureaucracy, being lost.
- 3.7 The scope and role of a Charities Commission should be determined on the basis of the demonstrable benefit to the public and to the sector – in particular it must be appropriate in scale and well targeted to proven need. Specifically it must not be heavy-handed or an over-engineered model as an over-reaction to the relatively low level of evidenced abuse.

3.8 The most significant benefits, from both direct cost savings and improved efficiencies, will come from the rationalization and harmonization of the range of State and Federal government regulations and tax exemption regimes that apply to the sector. A Charities Commission could have the role of bringing together on the government side expertise and understanding of the whole regulatory environment within which the sector works. This will make possible a perspective that is not there at present.

Registration of charities

3.9 **We would support a system for registering charities with a Charities Commission provided such a system does not add to the overall compliance burden on charities.**

3.10 Charities are currently required to be endorsed under the Income Tax Assessment Act 1997 (ITAA) in order to be treated as income tax exempt. Consequently a new system of registering charities with a Charities Commission is unlikely to add to the compliance burden if such a system serves also as the means by which these bodies are endorsed as tax exempt.

Group registrations

3.11 **The regulatory regime would be improved by the introduction of a scheme whereby group registrations are available (such as the scheme for ‘group rulings and exemptions’ in the US). This would enable entities which form part of a broader charitable/religious organisation to be recognised as tax exempt charities.**⁸

3.12 Group registration would enable an efficient system of affiliated organisations within the same existing public accountability structure to operate with a single registration and endorsement process. At present these entities are required to separately be endorsed, and under the current system these entities are seen in isolation instead of as part of the whole. There would be considerable cost savings achieved by a group registration system particularly in view of the very significant number of entities that currently require separate endorsement as income tax exempt charities. Such group treatment is already available with GST registration, as is the exemption for affiliated religious institutions under the Charitable Fundraising Act 1991 (NSW).

Definition of ‘charity’

3.13 Experience of other equivalent legal regimes to ours in Australia suggests there is nothing to be gained in replacing the reliance on the common law definition of charity. Likewise there is no evidence that there will be any improvement in the governance and management of charities with removal of the presumption of public benefit for categories of charities— including charities for the advancement of religion.

⁸ Without requiring consolidated accounting however.

New charitable corporation

- 3.14 We do not consider there is any demonstrated need to remove the existing church law structures⁹. This would be an extremely complex process with multiple legal problems, for no demonstrable benefit.
- 3.15 However it may be helpful to have a new form of charitable incorporated body (such as the UK Charitable Incorporated Organisation or CIO) available as an alternative to the incorporated association and company limited by guarantee. Both of these forms of incorporation have significant shortcomings: the incorporated association has insufficient support for best practice in corporate governance and trust responsibilities; the company limited by guarantee suffers from having to comply with provisions of the Corporations Act which are not suitable for charitable corporations which exist for the pursuit of charitable objects rather than profit for shareholders.

4 Other measures (by government and the sector) to improve governance, standards, accountability and transparency in the use of public and government funds

Simplified entry point

- 4.1 The entry point for tax concession charity exemptions and benefits is already highly complex and at present is regulated by the ATO which has responsibility for protecting the taxation base rather than facilitating an effective charitable sector. Any regulatory reform would usefully lessen rather than add further layers of regulation and accountability. A simplified entry point may be the most effective way of rationalising regulation.
- 4.2 There is at present considerable inconsistency between different government regulators (in particular between State and Federal regimes) in how exemptions are accessed and the criteria to meet. For example charities for the advancement of religion are exempt from paying income tax. They also qualify for exemption from NSW Payroll Tax as religious institutions, however the tests are inconsistent and application complex. There are many other examples.
- 4.3 **We recommend the consideration of reforms that incorporate and rationalise the diverse regulatory regimes that make the management of charitable institutions complex and expensive.** A process for obtaining group or synchronised registration would represent a significant cost saving both for the charitable institutions themselves and government regulators.

⁹ Such as the Anglican Church of Australia (Bodies Corporate) Act 1938.

Access to review

- 4.4 We agree with the criticism of the Non-Profit Roundtable of the wide range of confusing, sometimes contradictory concessions – some unfair, and requiring court action to correct. Most bad decisions are not appealed by charitable institutions either because they do not have the funds to meet the cost of litigation, or they cannot justify spending donors' or other funds on such litigation.
- 4.5 A Charities Tribunal¹⁰ could be a considerable improvement to lessen the current cost burden of legal action to obtain review of administrative decisions. A Charities Tribunal could assist by bringing together relevant expertise in the trusts, tax and corporate governance issues relevant to charities.

Charitable trusts protection needed

- 4.6 The Anglican church like the other major church denominations has its own trust and accountability structures under legislation – specifically the Anglican Church of Australia Property Trust Act 1917, and the Anglican Church of Australia Bodies Corporate Act 1938. These provide a mechanism of transparency and accountability for the protection and proper use of trust property within its care.
- 4.7 However there are many charitable institutions which do not have such accountability structures. It would be in the public interest to restrict the ability of charitable corporations to change their objects without any limitations – at present this will often result in breach of charitable trusts, but there are significant impediments to action to prevent such breaches. The cost of Supreme Court action, even under the Charitable Trusts legislation which is available in some states, is prohibitive for many institutions. In the event that a Charities Commission introduced, it would be desirable for registered charities to be required to obtain approval before they adopt changes to their objects.
- 4.8 Likewise, it would be desirable for a Commission to have the capacity to approve schemes cy pres in relation to trusts without the need to undertake expensive Supreme Court applications.¹¹ It would be very helpful for organisations to have access to a UK-style Commission's cy pres mechanism to enable variation of trusts in the event of impossibility or inexpediency.

ROBERT WICKS
Diocesan Secretary

29 August 2008

¹⁰ As introduced in the UK under the Charities Act 2006.

¹¹ Such as the UK Charities Commission's role.