

6 February 2024

**SUBMISSION**

**PRODUCTIVITY COMMISSION**

**DRAFT REPORT FUTURE FOUNDATIONS FOR GIVING: BASIC RELIGIOUS CHARITY**

**Submission made by:** Plymouth Brethren Christian Church

**What this submission is about**

This submission relates to the proposal put forward by the Productivity Commission in its draft report “Future foundations for giving” (the draft report) that the basic religious charity concept that has applied for the purposes of the *Australian Charities and Not-for-profits Commission Act 2012* be removed.

**The Commission Recommendation**

The Productivity Commission’s draft recommendation in relation to basic religious charities states:

**Draft recommendation 7.1**

A more transparent and consistent approach to regulating basic religious charities

The Australian Government should amend the Australian Charities and Not-for-profits Commission Act 2012 (Cth) to remove the concept of ‘basic religious charity’ and associated exemptions, so all charities registered with the Australian Charities and Not-for-profits Commission have the same governance obligations and reporting requirements proportionate to their size.

**Terms of reference**

It is submitted with respect that on their face the Terms of Reference for the Productivity Commission’s philanthropy inquiry do not clearly indicate that issues relating to basic religious charities would be reviewed. Further, the Productivity Commission’s call for submissions which was released in March 2023 appears to have made only one reference to basic religious charities. These circumstances may well have resulted in less contact being made with the Commission on the range of basic religious charity issues which are addressed in the draft report than would otherwise have been the case. However, given that the Draft recommendation 7.1 has now been made, we submit the following.

**Submission**

It is submitted that the basic religious charity concept in the Australian Charities and Not-for-profits Commission Act (ACNC Act) and the consequences that flow from an entity being a basic religious charity should be retained.

The basic religious charity concept has been a feature of the ACNC Act since its enactment.

In broad terms, an ACNC registered entity will be a basic religious charity if it: (i) is registered with the ACNC as the advancing religion charity subtype; (ii) is not entitled to be registered as any other

charity subtype; (iii) is not within an excluded category (for example, an incorporated entity or an entity that is reporting to the ACNC as a group); and (iii) is not in receipt of government grants exceeding a stipulated amount (s 205-35(1) and (2) ACNC Act).

The ACNC fact sheet Basic Religious Charities states that only a small number of charities that have the purpose of advancing religion meet all of the criteria to be a basic religious charity.<sup>1</sup>

The consequences of an entity being a basic religious charity are that the entity does not have to: (i) answer financial information questions in its Annual Information Statement; (ii) submit annual financial reports (regardless of its size); or (iii) comply with the ACNC Governance Standards. Also, the ACNC Commissioner's powers to suspend, remove or replace a responsible entity do not apply in the case of a basic religious charity.

The basic religious charity provisions have remained responsive to developments by their amendment to exclude from basic religious charity status an entity that has had a claim made against it under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) and has not joined the National Redress Scheme.

Draft recommendation 7.1 proposes to provide enforcement powers to an authority of the Commonwealth government (the ACNC Commissioner), which involve powers to give directions and enforceable undertakings to a religious organisation and powers to remove, suspend and appoint responsible entities.

At a general level, when considering what disclosure obligations should be imposed on a religious charity, it must be kept in mind that where the provisions of an Act relate to religious entities or their activities, a number of potential issues can arise because of a bias against religion in some sectors of the community. The existence of these issues may be illustrated by the Commonwealth government's Securing Faith Based Places Grant Program. This program was provided for religious schools, preschools, places of worship and faith based community centres to address the risk of crime and violence motivated by religious or racial intolerance, through installing or upgrading security infrastructure.<sup>2</sup>

Further, several religious organisations have been under, and are vulnerable to, unfair media scrutiny. Media, anti-religious groups and some other advocacy groups have tried to find information about the financial and operational aspects of a religious organisation and provide distorted, incomplete and uncontextualised information to the public for the purpose of criticism (e.g. because of certain theological views of the religious organisation). Religious organisations are vulnerable to misuse of information and financial disclosure would cause a greater risk for religious organisations.

Also it must be kept in mind that the constituent documents of an entity that could fall within the basic religious charity concept will usually reflect in one way or another the beliefs and principles adhered to by the members of the particular religious faith. If the exercise by the ACNC of powers granted to it would be at variance to the particular beliefs and principles there would be a constitutional issue under s 116 of the Commonwealth Constitution (Commonwealth not to legislate in respect of religion).

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<sup>1</sup> [Basic Religious Charities | ACNC](#)

<sup>2</sup> <https://business.gov.au/grants-and-programs/securing-faith-based-places>

It is a matter of religious freedom that appropriate governance standards of a religious organisation are determined by the applicable theology and accepted practices of the relevant religion and not by secular standards of the ACNC Commissioner.

Governance standard 3 (compliance with Australian laws) would, of course, present no difficulty.

When considering the basic religious charity concept and its implications in the context of the ACNC Act it is important to bear in mind that religious charities qualify (and have always qualified) for a range of concessions under both federal and state/territory legislation. This reflects the importance that religion is regarded as having in the community. These concessions relate, amongst other things, to local government rates and the various taxes such as income tax, land tax and stamp duty. The terms of the exemptions vary. It is not, therefore, surprising that the ACNC Act has special provisions relating to basic religious charities in the form in which they are expressed in the ACNC Act.

#### **Other regulatory measures that apply to a basic religious charity**

Importantly, a basic religious charity is subject to the other regulatory provisions of the ACNC Act which, it is submitted, are adequate for the necessary oversight of such an entity from a regulatory perspective. These provisions include:

- the requirement to submit an annual information statement;
- the ACNC Commissioner's power to revoke an entity's registration;
- the requirement that a registered entity notify the ACNC Commissioner of (inter alia) a significant contravention of the ACNC Act;
- the ACNC Commissioner's information gathering powers;
- the additional reporting requirements that the ACNC can require;
- the ACNC Commissioner's other enforcement powers (warnings, directions etc); and
- the external conduct standards.

It is submitted that, having regard to the above, the way that the ACNC Act presently operates in relation to a basic religious charity should continue.

Sincerely,

Philip McNaughton

Lloyd Grimshaw