

Master Builders Australia

Submission to Treasury  
on Development of Governance Standards –  
Consultation Paper December 2012

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## 1 Introduction

- 1.1 This submission is made by Master Builders Australia Ltd (Master Builders).
- 1.2 Master Builders is the peak national association for the building and construction industry in Australia. Master Builders' members are the nine Master Builders State and Territory associations all of which are industrially registered.
- 1.3 Master Builders has more than 30,000 member-companies with representation in every State and Territory in Australia, the great majority of which, by number, are small to medium sized enterprises. Master Builders' membership consists of large national, international, residential and commercial builders and civil contractors through to smaller local subcontracting firms, as well as suppliers and professional industry advisers.
- 1.4 Membership of Master Builders' represents 95 per cent of all sectors of the building and construction industry.

## 2 Purpose of Submission

- 2.1 On 17 December 2012 the Treasury released a [consultation paper](#) on minimum governance standards for entities registered with the Australian Charities and Not-For-Profits Commission (ACNC) as well as draft regulations and an explanatory memorandum on financial reporting obligations and annual information statements for such entities. Written submissions on both proposals must be made by 15 February 2013.
- 2.2 Master Builders notes that from 1 July 2013 entities registered with the ACNC will have obligations to take reasonable steps to comply with minimum governance standards. There is also a further time period of 18 months after 1 July 2013 where changes might be required to internal procedures to meet the standards. That period is extended to four years after 1 July 2013 if changes are required to constituent documents to meet the applicable standards. It is also noted that from the 2013-2014 financial year registered entities must comply with certain financial reporting and annual information reporting requirements set out in the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act).
- 2.3 Master Builders again reinforces the unsatisfactory situation whereby currently only charities are entities registered with the ACNC but that it has been anticipated by

Government that following further consultation by the ACNC and Treasury, the proposals currently set out in the consultation paper may affect all entities registered with the ACNC including general not-for-profit entities, albeit that the proposals are not so tailored.

- 2.4 This latter proposition is concerning given the status of Master Builders as a company limited by guarantee which has income tax exemption. This is especially the case given that the proposed governance standards diverge from existing corporate regulation. Master Builders has in other contexts in responding to proposals about new regulation for the not-for-profit sector called for clarity in the manner in which the not-for-profit sector will be regulated. In particular, we have indicated that many of the proposals, and we now include the current proposal, do not sufficiently distinguish between types of not-for-profit entities. This is particularly concerning as Master Builders' association members are industrially registered organisations which attain tax exemption from that status under Division 50 of the *Income Tax Assessment Act 1997*. There are already separate regulatory arrangements for industrially registered organisations.
- 2.5 Master Builders reiterates its call for a clear government statement that industrially registered organisations will not be governed by the ACNC Act.

### **3 Government Standards for Charities**

- 3.1 Master Builders does not believe it would be appropriate to extend any governance standards finally adopted for registered charities (noting that there is currently no statutory definition of charity) to the broader not-for-profit sector. This sector is a much more diverse and dissimilar group from charities. It ranges from major national organisations such as Master Builders to small local sports clubs. In addition, many parts of the not-for-profit sector have current regulatory structures that, in any future consideration of further regulation, would need to be taken into account. This is especially the case with regard to industrially registered organisations, a point made to Treasury in a number of prior submissions.
- 3.2 Accordingly, Master Builders again strongly expresses concern that a new layer of regulation affecting charities will be erected, with the notion that it might later be extended to other not-for-profit entities without consideration of the ramifications of that proposition. We also believe that the regulation of companies should remain with ASIC under the *Corporations Act 2001* and not be displaced by the new

regulations specifically designed for charities proposed in the consultation paper. This extension will create a regulatory burden, particularly for small charities and small not-for-profit associations, which could mean that a very large administrative burden is placed on those smaller entities without the mischief which is designed to be cured by the legislation being properly identified.

- 3.3 Master Builders calls on the Government to provide greater clarity in this area of regulation by immediately advancing the statutory definition of a charity and by making it clear how industrially registered organisations would be treated as well as confirming that they will be excluded from the coverage of the ACNC Act.
- 3.4 Master Builders also calls on the Government to strictly limit any new governance proposals to those charities which are not currently regulated by the ASIC scheme under the Corporations Act and to make it clear that if other not-for-profit entities are to be regulated by the ACNC, there will be a new comprehensive review as to the appropriate standards which would apply rather than those outlined in the consultation paper.

## 4 Conclusion

Master Builders contends that it would not be appropriate to extend any governance standards as outlined in the consultation paper adopted for charities (howsoever they may be described for the purposes of the ACNC Act) to the wider not-for-profit sector. In that context, Government should immediately clarify that industrially registered organisations are exempt from the broad ACNC Act regulatory proposals and that Government will maintain the separate regulatory construct for that sector. At the point when the not-for-profit sector generally might be regulated under the ACNC scheme, full review mechanisms must be adopted to tailor any new regulation. In particular, duplication with ASIC regulation under the Corporations Act must be avoided.

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