

15 February 2013



**Institute of  
Chartered Accountants  
Australia**

Manager, Philanthropy and Exemptions Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2601

By email: [NFPReform@treasury.gov.au](mailto:NFPReform@treasury.gov.au)

Dear Sir

### **Consultation Paper – Development of Governance standards**

The Institute of Chartered Accountants in Australia (Institute) welcomes the opportunity to make a submission to the Treasury to assist with its consultations on governance arrangements faced by the not for profit (NFP) sector.

We are pleased to see a significant improvement in the proposals since the last public consultation, 12 months ago. We support the concept of a set of principles based standards for governance of NFPs. We agree that this approach will provide those entities with flexibility to determine how they achieve those outcomes in the context of their organisation's particular circumstances.

However, we do not consider that 'principles' standards should be referred to as 'minimum governance standards'. Principles are defined as 'rules by which conduct may be guided'. We do not consider this is consistent with the notion of minimum requirements.

Generally, we agree that these standards provide sound principles, and we support the need for further development of guidance by the ACNC Commissioner to assist charities understand and comply with the standards. However, we would encourage the ACNC to publicly consult on such guidance prior to its issue, in a similar vein to that regularly done by the Australian Securities and Investment Commission in respect of any regulatory guidance they issue.

Our specific comments on the six Governance Standards are included in Appendix A.

If you have any queries on our comments please contact Ms Kerry Hicks, the Institute's Head of Reporting via email at [kerry.hicks@charteredaccountants.com.au](mailto:kerry.hicks@charteredaccountants.com.au) or phone on (02)9290 5703.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lee White', with a horizontal line underneath.

**Lee White**  
**Chief Executive Officer**  
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### 1. Purposes and NFP character of a charity

We support this requirement, as it is important for stakeholders of a charity to be clear as to the purpose of a charity. However, we question the term 'comply', as it does not seem consistent with the nature of a principle. We suggest this word is replaced with an appropriate alternative.

### 2. Accountability to members (for those charities with members)

We support this requirement, as accountability to members will give members the ability to understand the organisation and this, combined with opportunities for member input, will ensure any members' concerns are aired.

We would propose that any guidance developed around this standard suggest either the preparation of a governance statement to inform members, or perhaps the completion of an annual declaration that the entity has met the requirements of the Governance Standards. It may also be necessary to define the term 'member' given that within the NFP sector, particularly in faith based organisations, it can have a different meaning to that contained in the Corporations Law.

### 3. Compliance with Australian laws

This standard is too prescriptive, and not consistent with the other standards that have been drafted more like principles. We question whether the restriction on the ACNC taking action against minor breaches of law, which we understand is the purpose of this standard, is better located elsewhere in legislation or in the ACNC's regulatory approach.

### 4. Responsible management of financial affairs

We believe the standard should be extended to include broader operational affairs and not just financial affairs. We anticipate that this will cover assessment of risk for the organisation and the managing of risk (in a similar vein to the ASX Corporate Governance Principle 7 – *Recognise and Manage Risk*).

Further, we consider the object to be too narrow. It currently states:

'...manages its resources responsibly, in a way that effectively furthers its purposes and protects its resources against misuse'.

We consider that protecting resources from 'misuse' is one narrow element of responsible management, and hence this needs to be broadened.

Appropriate risk management for a charity would include policies designed to ensure reasonable steps are taken to guard against the charity risking the loss of its assets through mismanagement. It would include the requirement to ensure that charities consider the management of their financial affairs and identify issues related to their financial affairs. However any other risks, such as operational risks, relevant to the achievement of the charity's purposes as identified in standard 1 should also be considered and managed in an appropriate way.

## 5. Suitability of responsible entities

The term 'Responsible Entity' is not known within the NFP sector and already has been easily confused by many not-for-profit stakeholders. The term could easily be confused with that of 'Registered Entity'. We would recommend changing the term to use language that is known and understood such as 'Those Charged with Governance' or ordinary language such as 'director or member of a management committee or a trustee'. If necessary the term 'responsible entity' could then be used after the ordinary language in brackets, to help people with their interpretation of the law.

## 6. Duties of responsible entities

We reiterate our comments expressed above regarding the term 'Responsible entities'.

Other than the terminology issue noted above, we support the standard which mirrors the Corporations Act requirements to act honestly, carefully and in the Charity's best interests.

In regards to the protections, we do have concerns about the drafting of Protection 2 – 1b) which states 'the responsible entity does not have a material personal interest in the subject matter of the decision'. We bring your attention to many NFPs where directors have personal interest in certain activities of a NFP, often the reason why they are on the board in the first place. For example, parents of school children are often board members on a school board, human service delivery organisations often recruit directors whose relatives receive service from the organisation, in order to provide their perspective on service delivery. We recommend that guidance is necessary to guide responsible entities in the assessing of a 'material personal interest' in regards to the operation of this protection. In this guidance, we consider that a responsible entity would discharge their duty if they gave standing notice of a conflict of interest in the manner set out in section 191 of the Corporations Act 2001. Section 191 deals with the Director's duty to notify other directors of material personal interest when conflict arises.

### Other

Page 9 discusses what will happen if a charity breaches the governance standards. We note the majority of charities under the regulation of the ACNC will either be state incorporated bodies or unincorporated bodies. The ACNC will therefore be required to work with other regulators in order to enforce its own regulations. We believe this increases complexity, both for the government and for the registered charity. Therefore we question the effectiveness of the ACNC enforcement powers, if enforcements are generally limited to 'federally regulated entities'.