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The Treasury
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Via email: NFPReform@treasury.gov.au

PRINCIPAL MEMBERS



ACI would like to take the opportunity to thank Treasury for providing an opportunity for us to comment upon the proposed governance standards for the charities and not for profit sector.

ACI is the peak industry body for the practice of compliance, risk and governance in the Asia Pacific region. Our members are compliance, risk and governance professionals who are actively engaged in the private, professional services and Government sectors.

Generally, ACI supports the establishment of the governance standards for the not for profit and charities sector. However prior to making individual comment on the proposed six draft governance standards, we would like to make two general observations.

First we question why "the governance standards will not apply to entities that are basic religious charities". What is the rationale behind this given some of the charities run by religious organisations are amongst the largest in the country? ACI is concerned that the creation of this carve out creates a loophole for organisations that do not which to come under the regulatory authority of the ACNC and adhere to the governance standards. If this exemption is to be maintained, ACI would like to see clear requirements established as to what constitutes an organisation that "...is registered for a purpose that is the advancement of religion." and ensure these requirements are enforced. To do

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otherwise has the potential to undermine the attempts this policy initiative has in maintaining the integrity and public's trust in the charity sector while also providing organisations with cost and taxation advantages over commercial organisations that may provide similar products or services .

Secondly, ACI is concerned about the approach that has been set out in the consultation paper in terms of how the Australian Charities and Not for Profit Commission (ACNC) will exercise its regulatory enforcement responsibilities. ACI agrees that an important aspect of effective regulation is to ensure the industry being regulated is well educated and understands its compliance obligations. Therefore we support the regulatory approach advocated by Dr John Braithwaite that has been adopted by the ACNC.

The idea however that the ACNC would not ensure that charities meet the governance standards and would only decide if it needed to exercise its enforcement powers "...to address serious cases of non-compliance, including persistent and significant non-compliance." is akin to shutting the gate after the horse has bolted. This is a very high risk strategy than has the potential to do immeasurable harm to the public's confidence in the sector should a major compliance breach occur and the ACNC has not stepped in earlier to prevent this breach from occurring as the organisation was identified in the early stages of non-compliance.

ACI would recommend that the ACNC engage in an enforcement model that involves regular audits of registered charities that are undertaken on a risk based basis. That is, the charities that pose the highest risk to the public's confidence in the sector, are those that receive the most number of visits from the ACNC. Such charities may include the largest charities in the country or those that have international connections to countries that have been deemed high risk for bribery or corruption activities. This way the ACNC could target its limited resources to those parts of the sector that have the potential to do its reputation most harm should there be a significant compliance failure.

We would also advocate that as part of the ACNC's role in providing education to the industry to assist charities with their compliance with the governance standards, that consideration be given to the promotion of the Australian and New Zealand compliance standard (AS/NZS 3806) and the International Risk Management standard (ISO31000). Both documents are high level principles based models that will assist charities in creating their own tailored compliance and risk management frameworks. Over time these documents will also serve as good benchmarking tools. Both models can be easily adapted for the size, scale and complexity of the charity in question.

We will now turn our attention to addressing the six draft governance standards.

Draft Governance Standard 1: Purpose and NFP character of a charity

ACI agrees that it is essential that a charity clearly establishes and articulates that the purpose of the organisation is to undertake activities to meet a defined charitable end. We also agree that this statement of purpose should be made available to the public. We also support the establishment of governing rules that give support to these stated aims and objectives.

Our concern however, is that this alone is not enough to ensure both the public and the ACNC has confidence in the activities of the said charity. The crucial element of this standard is Part C which requires the registered charity to "...comply with its purpose and its character as a not-for-profit entity." The ACNC must ensure that this third element of the draft standard is adhered to and evidence of compliance needs to be demonstrated through the financial reporting that is undertaken by the entity. Audited financial statements need to be provided to ensure that the monies raised and spent are in keeping with this stated purpose. It is essential that the funds collected are being spent on the intended recipients less administrative expenses as per accepted industry guidelines. The focus of this governance standard needs to be placed upon assurances that

the stated organisational objectives are being met not merely with the fact the entity has in fact made a declaration in accordance with the standard.

Draft Governance Standard 2: Accountability to members

While ACI supports the sentiment behind this draft standard, the standard in its current form is both vague and immeasurable. Therefore not only will it be difficult for charities to comply with the standard, but enforcement will be next to impossible.

The objective as well as the two components to the standard will be easy to achieve if the ACNC specifies in the standard that registered charities need to issue an annual set of audited accounts to members (as a minimum). Our preference would be the production of an annual report that would also list such items as board meeting attended by directors, mission statements and an overview of activities for example.

Component 2 of the standard would be best addressed by mandating within the standard the need for the charity to hold and Annual General Meeting (AGM) that allowed directors to be questioned by members, for the directors and executive to report to members, for election of office bearers to take place or be ratified and the acceptance of the financial accounts by the members.

Draft Governance Standard 3: Compliance with Australian laws

ACI supports this draft standard in that its intention is both clear and measurable. Therefore it can be achieved by the entity and the regulator should be able to easily enforce compliance with the standard.

As discussed in our preamble, we would recommend that the ACNC refer charities to AS/NZS 3806 to assist charities with meeting this standard.

Draft Governance Standard 4: Responsible Management of Financial Affairs

As with our comments on the other draft standards, while we support the objective outlined we are concerned that the standard is not specific enough to ensure both compliance and enforcement.

At present the Corporations Act 2001 specifies the financial obligations that must be undertaken by directors and Treasury currently has a consultation paper out for public comment that specifies the financial reporting requirements of registered charity. ACI believes that compliance with this standard and therefore its enforcement would be greatly improved if reference to these requirements were specified as part of the standard.

Draft Governance Standard 5: Suitability of Responsible Entity

Draft Governance Standard 6: Duties of Responsible Entities

Once again ACI is supportive of the draft standard and its objective, we however question some of the methodology that has been proposed in the execution of the standard. In particular we question the use of the term "Responsible Entity" as a replacement for the widely understood term "director", especially given the nature of the selection process of individuals chosen for the role and the responsibilities they need to exercise. This would appear to replicate some if not all of those that would be exhibited by a director.

During the consultative meetings conducted by the ACNC, one of the stated objectives was the minimisation of red tape, regulatory duplication and overlap. Consequently, ACI does not understand why Treasury has not used existing legislation and regulations that have been developed overtime, rather than creating new terms and definitions. While ACI appreciates the need to remove complexity and to ensure the regulatory requirements are scalable and therefore affordable for charities, the approach taken

would appear to be counterintuitive given the stated goal of creating regulatory simplicity.

ACI also believes that the term “Responsible Entity” is confusing on a number of fronts. First people will be attempting to understand what is the difference between a director and a responsible entity, and how these responsibilities differ in their execution. At present, ACI is unable to understand this difference. Should this difference not exist or be miniscule in nature then we believe people will revert to the use of the term director, creating a situation where the terminology in the standard will differ from practice.

Secondly, from a definitional perspective, the term entity would suggest an organisation or group rather than an individual, particularly when used in the context of charities and not-for-profits. In contrast, the term director is clearly defined in legislation and common law and some understanding of this position is held by most of the wider public and business community.

Finally, there is the very real possibility that the term Responsible Entity would be abbreviated to RE. This would not only cause possible confusion with the abbreviated of a Registered Entity, but Treasury Officials would be aware that within the context of the financial services industry, there is a need for AFSL holder to employ Responsible Executives also widely knows and RE’s.

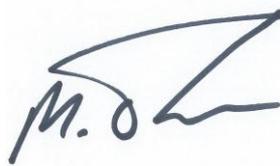
ACI is concerned the term will become confusing especially when used within the confines of the draft standards as they are currently presented. For example Page 20 of the consultation paper provides the following example, “A registered charity is looking for a new director...”. While ACI believes most people would understand exactly what the intent of this sentence, it is in fact incorrect as the charity would actually be seeking a new Responsible Entity, therefore applying the ACNC’s terminology, the same example should have been written as follows: “A registered entity is looking for a responsible entity...”.

This issue is highlighted again in Draft Standard 6 – Duties of Responsible Entities states in standard 2 on page 22 where it states “A registered entity must take reasonable steps to ensure that its responsible entities are subject to, and comply with the following duties:”. This standard would be so much clearer and easier to understand if it read as follows; “A registered charity must take reasonable steps to ensure that its directors are subject to, and comply with the following duties:”.

ACI believes that reverting to the commonly understood terminology of a director would not only remove this potential for confusion but would also minimise the creation of unnecessary regulatory duplication.

Once again ACI would like to thank Treasury for providing an opportunity for to make comment on draft governance standards for charities and not for profits. Should you require any additional information or require clarification on the comments that appear in this submission please do not hesitate to contact ACI on +612 9290 1788.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Tolar', with a stylized flourish extending to the right.

Martin Tolar CCP

Managing Director

Please note that the views expressed in this submission represent those of the collective ACI membership. Consequently, individual members and organisations may hold a different perspective on some of the points raised and therefore reserve the right to make comment in their own right.