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Via email: NFPReform@treasury.gov.au

Re: Governance Standards under the ACNC Act

Thank you for the opportunity of providing comment on the December 2012 Treasury consultation paper on *Development of Governance Standards* under the *Australian Charities and Not-for-Profit Commission Act*.

SACOSS is the peak body for the non-government health and community services sector in South Australia and believes in justice, opportunity and shared wealth for all South Australians. We have a strong membership base across a broad range of interests and service providers in the social services arena, and as such have a vital interest in the legislation and governance standards applying to the sector. In making this submission, SACOSS has seen and fully endorses the submission made by the Australian Council of Social Services. Our comments below are limited to South Australian specific matters and are in addition to the points made in the ACOSS submission, although we would also say that we found the language in the Standards very cumbersome and legalistic and believe it will be difficult for many charities to interpret.

SACOSS notes that a number of the proposed governance standards duplicate or cover the same areas as rules applying to charities incorporated here under the *Associations Incorporation Act (SA) 1985* ("the State Act"). For instance:

- s30 of the State Act covers dis/qualification of directors which is also addressed in the proposed Governance Standard 5;
- s31 of the State Act covers disclosure of interest which is also covered in the proposed Governance Standard 6; and
- s39A of the State Act covers duties of officers which is also addressed in the proposed Governance Standard 6 (albeit indirectly via the organisation's responsibilities – see ACOSS submission).

The intent and wording of the above clauses is largely very similar, but even slightly different wording can lead to different interpretations and legislative responsibilities. Further, even if the wording were identical, charities should still not have to deal with and be responsible

under two different Acts for the same thing. This creates confusion, extra administrative burden and cost, and in worst case scenarios opens the possibility of conflicting responsibilities or being subject to double penalties for a breach.

This concern also applies to a range of areas where the governance standards may go further than the State Act, or vice versa. For example, the proposed Governance Standard 2 requires accountability to members and notes that this *may* include the holding of an AGM and providing members with an annual report. However, the State Act requires the holding of an AGM (for prescribed organisations with members), but does not require the provision of an annual report to members. We note the specific concerns raised by ACOSS in relation to Standard 2, but raise the additional point here about potential duplications and legislative conflicts as a further example of the need for there to be one clear standard applying in each area.

We recognise that the State Act applies to all incorporated associations, not just charities, and the proposed ACNC Governance Standards will apply to more than just incorporated associations (eg. companies limited by guarantee, trusts). However, for charities under the State Act, there should be one clear standard.

SACOSS has been in discussion with the South Australian government and understands that they are in the process of reviewing the State Act. SACOSS is encouraged by the attitude of the SA government on these issues, as without such agreement, the proposed ACNC Governance Standards would be a duplication of regulation and simply add to the administrative burden on charities.

On the assumption that the state government review eliminates the duplications (either by adopting the ACNC standards or exempting charities registered with the ACNC from the relevant provisions of the State Act), then SACOSS supports the proposed Governance Standards (subject to the addressing of the issues raised in the ACOSS submission).

Thank you for your attention to this submission. Should you require any further information, please contact me at ross@sacoss.org.au or by phone on 09 8305 4223.

Yours,

A handwritten signature in black ink, appearing to read 'Ross Womersley', written in a cursive style.

Ross Womersley
Executive Director