



14 February 2013

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SUBMISSION: DRAFT GOVERNANCE STANDARDS FOR THE NOT-FOR-PROFIT SECTOR

Dear Sir/Madam

The Public Trustee of Queensland welcomes the Government's commitment to maintaining the integrity of Not-for-Profit Sector through more consistent governance practices. In response to the *Draft Governance Standards for the Not-For-Profit Sector*, The Public Trustee of Queensland would like to take the opportunity to provide feedback on the questions raised in the consultation paper.

Background

The Public Trustee of Queensland is Trustee for several of Queensland's leading philanthropic charitable trusts. In the main these Trusts maintain their capital in perpetuity for future generations of Queenslanders. Some Trusts continue to grow their capital bases due to the generous support of philanthropic minded people who choose to leave a lasting legacy to Queensland.

The philanthropic charitable trusts maintained by the Public Trustee have provided a direct source of funds for over 185 charitable organisations in the last 12 months. The ongoing resources provided by these public ancillary funds assist local and national charities to achieve lasting differences in areas of significant need.

The major funds include The Queensland Community Foundation; Lady Bowen Trust; Forde Foundation; the Queensland Aboriginal and Torres Strait Islander Foundation and the Gladstone Foundation. These five major trusts maintain a combined capital base of approximately \$110m.

General comments

The Public Trustee of Queensland supports a principles based approach to governance standards in the not-for-profit sector.

The proposed governance standards aim to consolidate and deliver an element of consistency to the broader governance arrangements for charities. While the principles included in the draft guidelines represent a significant step forward in attempting to establish a unified standard for the charitable sector, the Public Trustee of Queensland is concerned that the opportunity to apply a level of consistency in expectations throughout the corporate and not-for-profit sector may have been missed. For example, an alignment between the guidelines under the ACNC and the *ASX Corporate Governance Principles and Recommendations* would have simplified the approach, and demonstrated a consistent level of governance expectations in Australia regardless of the sector.

Specific comments

Standard One: Purposes and NFP character of a charity

This draft standard establishes an appropriate principle, and the wording of the standard is appropriate.

Standard Two: Accountability to members

The Public Trustee of Queensland contends that the principle as currently drafted is narrow in its application, and should be broadened beyond members to include certain classes of stakeholders. These should include accountability to donors as a minimum, but may extend to accountability to volunteers and employees.

The Public Trustee of Queensland cautions against the reference to "transparency" in the object with no supporting standard to clarify how this should be achieved.

Standard Three: Compliance with Australian laws

Whilst the wording and standards are appropriate to the principle conveyed, the Public Trustee of Queensland would suggest that is superfluous that these guidelines require that a registered entity must comply with all Australian Laws.

The Public Trustee of Queensland further cautions against any guidelines that would give the Commissioner the power to act based on his reasonable belief that a charity may have engaged in some illegal or offensive behaviour prior to any appropriate legal process having taken place.

Standard Four: Responsible management of financial affairs

This draft standard establishes an appropriate principle, and the wording of the standard is appropriate.

Standard Five: Suitability of responsible entities

It is the contention of the Public Trustee of Queensland (a corporation sole established by statute) that the state and territory Public Trustees within Australia should be specifically exempt from this guideline. Such statutory appointments are already subject to a higher degree of scrutiny than the proposed guidelines, and it is the position of the Public Trustee of Queensland

that conferring power to the Commissioner to apply discretion in this instance would be wholly inappropriate.

Further, the Public Trustee of Queensland considers that the maintenance of a register by the ACNC would represent duplication with the register already maintained by ASIC.

Standard Six: Duties of responsible entities

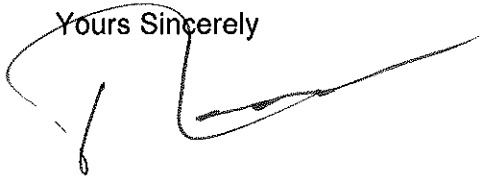
This guideline results in inconsistent outcomes for different responsible entities dependant of their regulatory status and their commerciality. This draft guideline then fails in respect the core desired outcomes of the guidelines which is consistency.

It is the first contention of the Public Trustee of Queensland that this guideline ***be removed in its entirety.***

Should the guideline not be removed in its entirety, then the Public Trustee of Queensland strongly contends that the state and territory Public Trustees should be specifically exempt from this guideline. This will also serve to mitigate inconsistent outcomes for different Public Trustees who are structured differently in respect of the *Corporations Act*.

The Public Trustee of Queensland welcomes the opportunity to contribute to the reform of the sector in order that regulation is fairer, simpler and more efficient. If we can be of further assistance in support of this submission, please do not hesitate to contact us.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Peter Carne', with a long horizontal flourish extending to the right.

Peter Carne
Public Trustee of Queensland