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**The Smith Family's submission
to the Treasury
re the consultation paper *Development of
Governance Standards*
and the exposure draft *Requirements for Annual
Financial Reports under the ACNC Framework***

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Background on The Smith Family

The Smith Family is a national, independent charity committed to increasing the educational participation and achievement of Australian children and young people in need. It is a company limited by guarantee and operates in every Australian state and territory. It has Public Benevolent Institution and Deductible Gift Recipient status, and is an Income Tax Exempt Charity. The Smith Family is also a registered entity with the Australian Charities and Not-for-Profits Commission (“**ACNC**”).

The Smith Family has a strong focus on sustainability and, as such, has aimed to ensure its income is drawn from a range of sources. In 2011-12, The Smith Family’s annual income was just over \$70 million. A quarter of this was sourced from Government funding, 63% came from fundraising (donations and corporate support) and bequests, around 7% came from the VIEW (Voice, Interests and Education of Women) Clubs of Australia and 5% came from The Smith Family’s recycling operations and other income.

Introduction and context

The Smith Family welcomes the Consultation Paper and its implicit acknowledgement of the crucial role played by the not-for-profit sector in the social and economic wellbeing of Australia, in line with the findings of a number of reviews and inquiries conducted over the last decade.

The Smith Family’s comments are provided in the context of recognising that changes must not adversely impact either the sector as a whole or its participant organisations. This is particularly important in relation to minimum governance standards, given the large diversity in organisations which ultimately will be subject to them in terms of scope, size, structure and geographical dispersion.

Comments on the draft governance standards

One of the key roles of the ACNC over time is to provide a ‘one stop shop’ for the provision to the community of information on the charitable sector. Replacing the diverse governance arrangements currently in place as outlined in paragraph 2.3.3 of the Consultation Paper with a set of minimum governance standards which are sufficiently flexible to account for the diversity of the sector will assist in this process, and serve ultimately to increase the community’s levels of confidence and trust in the sector.

The Smith Family considers that the principles-based approach being adopted by the ACNC should provide diverse organisations across the sector with the necessary flexibility for structuring their individual governance arrangements to deliver the requisite outcomes. The Smith Family also agrees that most registered charities will already be meeting the proposed minimum standards, the spirit of which is likely already to be incorporated in present governance structures, and where this is not the case, registered charities should be able to meet the new standards within a short period.

The Smith Family’s responses are limited to those standards which we believe require clarification or amendment in relation to charities. The numbering of sections below reflects the numbering used in the Consultation Paper.

3.2 Draft Governance Standard 2: Accountability to Members

This standard is intended to apply only to those organisations which have members. While membership structures may be typical of charities which are required to be registered with the ACNC, as the requirements for not-for-profit entities other than charities to be registered are expanded, accountability may need to take account of other structures, and it would be useful for this to be incorporated in the wording of this draft standard so that it does not need to be amended in the future.

3.3 Draft Governance Standard 3: Compliance with Australian Laws

The majority of charities registered with the ACNC operate only within Australia and it is clearly necessary that they comply with Australian laws. However, given that the objective of the standard is 'to give the public trust and confidence that a registered entity is governed in a way that ensures its on-going operations and the safety of its assets...', limiting compliance requirements to Australian law in the case of registered entities which operate internationally may be too narrow a requirement. While we are not qualified to comment on the practicality of a change from a legal perspective, it is suggested that requiring compliance with the laws of jurisdictions in which registered entities operate may serve to meet this object more comprehensively.

3.5 Draft Governance Standard 5: Suitability of Responsible Entities

While draft standard 5 is appropriate for establishing the suitability of 'responsible entities', the meaning of the words 'responsible entities' is unclear. In our view the word 'entity' is commonly associated more with organisations than with individuals and it is recommended that the use of this wording be reviewed to ensure that the term can be clearly understood without reference to external definitions.

3.6 Draft Governance Standard 6: Duties of Responsible Entities

Draft standard 6 requires charities as registered entities 'to take reasonable steps to ensure that its responsible entities are subject to, and comply with' a range of duties'. In the case of companies limited by guarantee these duties were previously imposed directly on directors under the *Corporations Act 2001*, but the relevant clauses of the Act no longer apply to such companies which are also registered entities. While it is appropriate that the standard provides a range of protections, affected charities should be made aware that they need to review their constitutions to ensure that the duties imposed by the standard are clearly enunciated therein.

Comment on the draft requirements for annual financial reports

The Smith Family endorses the tiered reporting structure, the requirements for annual financial reports for those organisations required to prepare them, and the requirement for all organisations to prepare an annual information statement, as outlined in the Exposure Draft – Explanatory Material.



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Conclusion

As an organisation which is strongly supportive of a principles-based approach to governance, The Smith Family welcomes the opportunity to respond to the Consultation Paper and endorses in general the draft standards outlined therein, subject to the concerns raised above. Addressing these concerns would, we believe, not require significant changes to the standards themselves but would serve to improve their clarity.

The Smith Family would welcome the opportunity to discuss these matters more fully or to provide further information where this may be requested.