



The peak organisation representing the non-government mental health sector in Tasmania at a state and national level

## Response to Treasury re Draft Not-For-Profit Governance Standards

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**Format of this submission**

The Mental Health Council of Tasmania appreciates the opportunity to make a submission regarding the proposed Governance Standards for Not-For-Profit organisations that will be registered with the Australian Charities and Not-for-profits Commission (ACNC).

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**About the MHCT**

The Mental Health Council of Tasmania (MHCT) is the peak body representing the interests of consumer, carer and community mental health sector organisations, providing a public voice for people affected by mental illness and the organisations in the community sector that work with them.

The MHCT advocates for effective public policy in relation to mental health for the benefit of all Tasmanians, and a strong commitment to participating in processes that contribute to the effective provision of mental health services in Tasmania.

## **General Comments**

One in five Australian will experience a mental health issue in any one year, and one in tow will experience one at some stage during their lifetime. Many will require only minimal assistance from family, friends and workmates and will fully recover, resuming previous roles after only a brief respite. Many, however, will require formal assistance from mental health workers, with a significant amount of mental health care being provided in community settings by (Not-For-Profit) NFP organisations.

Strong governance of NFP organisations is important to ensure they are well run and to provide funders and donors confidence that the organisations they support are pursuing and delivering on stated objects. The Mental Health Council of Tasmania welcomes the development of Governance Standards for charities registered with the ACNC.

The draft Governance Standards circulated via the Treasury website are broadly appropriate to a diverse range of NFP organisations, ranging from small volunteer run organisations with a very local and specific focus through to those employing hundreds or thousands of staff and delivering a wide range of services in geographically diverse locations.

The Mental Health Council has a few concerns about how organisations may be assessed to meet / not meet the governance standards. Whilst the standards are not onerous, the requirement to prove that it meets the governance standards may impose an additional burden of red tape, particularly on smaller organisations. This would have the unfortunate (albeit unintended) consequence of diverting an organisations resources and attention away from core business. In order to avoid this pit fall, MHCT suggests that there be no requirement for organisations to prime face prove to ACNC that they meet the standards. Rather, organisations should only have to demonstrate to ACNC that they meet the standards where ACNC reasonably believes they have failed to do so and that such a failure, were it proven to exist, would be material to the ongoing operation of the charity. The assumption by ACNC should be that organisations meet the standards unless sufficient and satisfactory evidence to suggest otherwise is forthcoming. Organisations should still be able to answer reasonable questions posed by members, donors and funders about how they meet the standards, but this should not require an additional reporting or administration burden in order to address any reasonable question.

Whilst not a concern specifically with the Governance Standards, MHCT does have some concerns about how the ACNC will deal with complaints made against charities where there is an allegation that charities have failed to meet the governance standards. We feel that ACNC will become a magnet for every person or organisation with an axe to grind with any NFP organisation and that this could swamp ACNC with calls and accusations about registered charities. Whilst some will undoubtedly warrant serious attention and action by ACNC, it is likely that many will be misdirected and some will be trivial or vexatious. Based on ACNC's recent presentation in Hobart, it is clear to us that they see themselves as having a significant complaints handling role. We are concerned that the ACNC doesn't have sufficient expertise or resources to adequately triage and manage the likely high number of complaints, most of which wont be substantiated, that will be made. It is likely there will be a mismatch in expectations of what ACNC can and should do with regards to complaints, with complainants, organisations, donors, boards, staff, governments and the broader community probably having differing ideas of what

constitutes an appropriate course of action with regards to specific complaints. The ACNC's educative and regulatory roles could, at times, be seen to conflict with each other, although it is noted that regulatory intervention is the least desired option and likely to be explored only where previous efforts have failed to allay concerns or breaches are quite serious.

### **Comments on specific standards**

Refer to above general statements about the standards for overarching comments. It should be assumed that MHCT supports the wording of specific standards unless otherwise stated. Some comments on specific standards:

45.15 Standard 3 – compliance with Australian laws.

MHCT supports the intent of this standard, however the draft guidelines suggest that the ACNC could deem the standard to be breached even if a charity is not charged or convicted of an indictable offence. This contradicts the principle of an entity or person being deemed innocent until proven guilty in the eyes of the law. Whilst we fully support strong action against charities found guilty of breaking the law, we believe natural justice demands that they be assumed innocent in the eyes of the law until proven otherwise. We do not think it reasonable that the ACNC have the power to apply a lower standard of natural justice than other government and quasi-government organisations.