

27 January 2012

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Incomes Division
The Treasury
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By email: NFPReform@treasury.gov.au

Dear Manager

Review of not-for-profit governance arrangements and related matters

The Consultation Paper “Review of not-for-profit governance arrangements” (December 2011) noted the variety of legal structures under which entities operating in the NFP sector are established. One of these is incorporation by Royal Charter.

The Australian Red Cross Society (‘Red Cross’) has been a body corporate pursuant to a Royal Charter since 1941.

It is its legal status as a body corporate pursuant to Royal Charter which gives rise to this submission.

Summary of submission

Consultation paper - Section 3

Red Cross submits that the proposed ACNC legislation and/or core governance rules should be clear that:

- an organisation formed under a particular legal structure (such as a Royal Charter) may continue under that structure, provided it complies with the proposed new legislative requirements in relation to core governance principles and rules; and
- adequate time should be provided to enable an entity to change its existing rules (or constitution), to the extent that changes are necessary to comply with the legislation and/or core governance principles and rules, and should be as a minimum that time which is required by the entity to comply with its own rules, and allowing for a reasonable consultation period.

Consultation paper - Section 6.1

Red Cross submits that, in determining the requirements for meetings of members and related governance requirements, it is appropriate to allow for a variety of membership meeting and

voting structures (including models similar to that for Red Cross as summarised in this submission), as this allows for effective participation of members in the governance of the organisation as a whole whilst not imposing requirements which may be difficult and costly to implement.

Appropriate principles therefore could be included in either the legislation itself or in the guidance notes which it is proposed may be issued on a variety of subjects by the ACNC.

About the Australian Red Cross Society ('Red Cross')

The body which became the Australian Red Cross Society was formed as a branch of the British Red Cross Society at Government House, Melbourne on 13th August 1914 by Lady Helen Munro-Ferguson, wife of the Governor-General.

In 1938 Red Cross was formally recognised as an autonomous National Society, and was incorporated by Royal Charter in 1941. Its official name then became the Australian Red Cross Society. Red Cross is a member of the world-wide International Federation of Red Cross and Red Crescent Societies ('the Federation').

General activities of Red Cross

Today, Red Cross' mission is to be a leading humanitarian organisation in Australia, improving the lives of vulnerable people through a variety of community services and promotion of humanitarian laws and values.

In addition to its status pursuant to the Royal Charter as an auxiliary to the public authorities, which operate in times of armed conflict and in times of civil emergency (such as emergency and disaster relief in times of bushfires, floods, cyclones, etc), Red Cross currently provides a large range of community services, ranging from programmes for drug and alcohol education, refugee support and tracing services, family nutrition education, outreach to elderly and socially isolated people to programmes working with Aboriginal and Torres Strait Islander communities.

In addition, as a major component of its activities throughout Australia, Red Cross also operates the Australian Red Cross Blood Service which supplies blood products and services to the Australian community.

The breadth and organisational capacity of Red Cross allows us to work with a wide range of communities to affect meaningful and sustainable positive changes.

Following a major organisational review of its non-Blood Service activities, Red Cross is implementing a new Strategic Direction for those activities which aims to focus its services to benefit the most vulnerable people in the most vulnerable communities.

These activities have been outlined in other submissions in the context of NFP Reform and they may be referred to there (see, for example, the submission made by Red Cross in relation to the Definition of Charity, dated 20 December 2011).

Briefly, Red Cross has identified the following areas as its core priorities for action which include:

- **Emergency services in Australia**
Strengthening national emergency preparedness, response and recovery.
- **International programs**
Increasing international aid and development.
- **Aboriginal and Torres Strait Islander strategy**
Together as partners with Aboriginal and Torres Strait Islander peoples.
- **Social inclusion**
Overcoming social exclusion by providing bridges back into the community.
- **Stronger communities**
Tackling entrenched locational disadvantage
- **International humanitarian law**
Championing international humanitarian law.
- **Migration support**
Addressing the impact of migration.

Structure of Red Cross and its Governance

In 2010, Red Cross completed an extensive process of review of its governance and structure, so as to establish contemporary governance structures. The review process took into account the arrangements commonly made in relation to companies established under the *Corporations Act 2001*, in the light of the particular nature and needs of Red Cross. Revisions to the Royal Charter and the Rules were considered at length.

Subsequently, on 12 October 2010, the Governor-General issued a Fourth Supplementary Royal Charter and approved a completely new set of Rules for Red Cross (together these documents are the 'constitution' of Red Cross). The Governor-General did so after receiving advice from the Department of Prime Minister and Cabinet.

In brief, the Royal Charter continues to provide for the establishment and incorporation of Red Cross and for procedures to amend the Charter and Rules. In the case of the Charter itself, only the Governor-General may amend it, through the process of issuing an additional Supplemental Charter, usually upon request of the Society by resolution of the Council of Red Cross.

The Rules of Red Cross provide for the governance of Red Cross through a Council and a Board which is responsible for governance and delegates authority to management in respect of matters and in a way determined by the Rules.

The Rules of Red Cross may be changed by Red Cross (as set out in the Rules) but in any case the Charter and the Rules provide that any changes to the Rules do not come into operation until

they have been approved by the Governor-General (after having received advice from the Department of Prime Minister and Cabinet).

Council

The responsibilities of the Council include to receive reports and financial statements, elect office bearers and appoint members to the Board, appoint auditors and to amend the Royal Charter and Rules (which, as noted above, are the equivalent of a Constitution and subject to final approval by the Governor General).

Under the Rules, the Council is made up of the President and 53 voting members:

- the President, the Deputy President, the Chair - Audit and Risk Management Committee (being the three office bearers of Red Cross), elected by the Council
- the Youth Member, elected by the Council
- up to six Special Councillors, elected by the Council
- the Chair of each of the eight Divisional Advisory Boards of the States and Territories (or another member of the Divisional Advisory Board who is elected by that Board), elected as set out below
- the Chairman of the Australian Red Cross Blood Service,
- up to three Appointed Members; and
- 32 other elected Council members, being 4 persons elected by each of the Divisional Advisory Boards for each the State and Territory divisions of Red Cross (making a total of 32 persons).

There is a Divisional Advisory Board for each State and Territory Division of Red Cross which is elected by the members of the Society in that Division. Each Divisional Advisory Board elects its Chair and the other members of the Council of Red Cross from that Division.

The Governor-General or her representative is the Patron of the Society and is a non-voting member of Council.

The Council usually meets once a year at the Annual General Meeting but may meet more frequently if required.

All members of the Council are volunteers who donate their time, energy and professional expertise to Red Cross.

Board

Subject to the powers of the Council, the Board is the governing body of the Society and exercises all the powers of the Society that are not, under the Charter and Rules, required to be exercised by the Council.

The Board consists of 16 persons:

- The office bearers referred to above (the President, the Deputy President, the Chair - Audit and Risk Management Committee),
- the Youth Member,
- the Chair (or other member of the Divisional Advisory Board appointed by it) of each of the eight Divisional Advisory Boards from each of the States and Territories,
- the Chairman of the Australian Red Cross Blood Service; and
- up to three Appointed Members.

The Board governs all of the functions of Red Cross and meets at least eight times a year.

It appoints the Chief Executive Officer and the Chief Financial Officer and delegates certain powers and authorities to them under the Rules.

All members of the Board are volunteers who donate their time, energy and professional expertise to Red Cross.

The Chief Executive Officer

The Board delegates day-to-day management of the affairs of Australian Red Cross to the Chief Executive Officer (CEO) (known in the context of the International Federation as the Secretary-General). The CEO manages these delegations through the senior leadership group, the National Leadership Team.

The CEO is accountable to the Board for implementation of the Strategic Plan and the Board's decisions, and for oversight of operational management according to the policy and systems which the Board establishes. The CEO also provides advice and recommendations to the Board, especially for the future directions of the organisation.

Members

Red Cross has a large number of members who participate in governance of Red Cross in the manner outlined above.

Consultation questions

Section 3 - New core governance rules

The Consultation Paper refers in Section 3 to the overall approach of establishing core governance rules and principles for new entities, and to providing for appropriate arrangements to be put in place to allow a smooth transition for existing entities.

In the submission of Red Cross, it should be clear under the proposed legislation and governance principles and rules that, if an organisation complies with those core principles and rules (when they determined), it should not be necessary for the entity to change its legal character.

So, in relation to a body like Red Cross, it should be able to maintain its character as a body incorporated by Royal Charter, provided it does so under its Charter and Rules in a manner which is consistent with the core governance principles and rules.

Red Cross also notes that it is proposed that provision will be made for a smooth transition to occur.

In this context, Red Cross requests that adequate time for any changes which may be required to its rules be provided, as its procedures for changing its Rules can take some time (the Council must be provided with them 2 months prior to a vote) and, if so approved, there is then a period of consultation with the Department of Prime Minister and Cabinet before the rule change is able to be approved by the Governor-General. Consequently if any rule changes are required to give effect to new governance requirements, those changes may take some time to implement and accordingly a generous period should be allowed for that to occur.

Red Cross therefore submits that the proposed ACNC legislation and/or core governance rules should be clear that:

- an organisation formed under a particular legal structure may continue under that structure, provided it complies with the proposed new legislative requirements in relation to core governance principles and rules; and
- adequate time should provided to enable entities to change its existing rules (or constitution), to the extent that changes are necessary, and should be as a minimum that time which is required by the entity to comply with its own current rules and reasonable consultation time.

Section 6.1 – Relationships with members

The Consultation Paper refers to a number of different ways in which governance arrangements are currently established under the various legal structures which an NFP entity may utilise.

In respect of section 6.1 of the consultation paper, dealing with relationships with members, the paper notes the usual requirements under different legal frameworks for there to be general meetings of members.

In this respect it is to be kept in mind that there are many types of legal entities – ranging from local bodies, to regional, State- or Territory-based through to others which are organised nationally (an example of the last being Red Cross). An organisation which is established on a national basis in particular may be faced with substantial costs and practical difficulties if rigid requirements are established. On the other hand opportunities for membership participation in governance are of great importance.

Consequently Red Cross submits that, in the consideration of requirements for meetings of members and related governance requirements, that it is appropriate to allow for a variety of membership meeting and voting structures (including models similar to that described above for Red Cross), as this allows for effective participation of members in the governance of the organisation as a whole whilst not imposing requirements which may be difficult and costly to implement.

Appropriate principles therefore could be included in either the legislation itself or in the guidance notes which it is proposed may be issued on a variety of subjects by the ACNC.

If there are any queries in relation to this submission, Red Cross would be very happy to provide any further required information.

Yours sincerely,



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