

Manager
Philanthropy & Exemptions Unit
Personal and Retirement & Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: NFPReform@treasury.gov.au

Re: Consultation paper on current governance arrangements for the not-for-profit (NFP) sector and exposure draft legislation to establish the Australian Charities and Not-for-profits Commission (ACNC).

To whom it may concern:

The Australian Dental Association (South Australia) Inc. welcomes the opportunity to comment on the Treasury review of governance arrangements for the NFP sector and draft legislation to establish a regulating structure for the sector.

The Australian Dental Association (South Australia) Inc. (ADASA) is a branch of the federal Australian Dental Association, a professional association with 12,331 members¹ representing over 90 per cent of dentists in Australia. The ADASA aims to promote ethical standards in dentistry, improve the oral and general health of the community, advance the science and practice of dentistry and foster the interests of members. In December 2011, the ADASA had a total of 1,192 members² ADASA is funded by membership subscriptions, publications and investment income. As an incorporated body, it is regulated by the South Australian Government under the *Associations Incorporation Act 1985*.

The ADASA recognises the importance of good governance, internal financial and management controls, and is already reviewing its systems to meet best practice standards outlined by the Australian National Audit Office, the ASX, the World Bank and the OECD, among others.

The ADASA broadly supports the proposed Australian Charities and Not-for-profits Commission Act to promote confidence in the NFP sector, improve governance and reduce duplication of regulation. We accept the proposal to establish a national entity, the Australian Charities and Not-for-profits Commission (ACNC), to regulate all NFP associations, with differential requirements for different-sized entities. We note that for the Financial Year 2013-14, the ACNC will only register not-for-profit (NFP) entities as charities and not other types of NFPs. Presumably, incorporated professional

¹ Australian Dental Association Annual Report 2009-10
<http://www.ada.org.au/publications/adaannualreport.aspx>, p 4.

² ADASA membership data.

associations such as the ADASA will continue to be regulated under the state legislation until a new agreement between state and federal governments is reached.

In general, we support the principles outlined in the Treasury Review of NFP Governance Arrangements consultation paper (December 2011) that:

- A single entity should regulate all NFP associations.
- Transitional arrangements should be made while negotiations are concluded between states and territories and the new ACNC. These negotiations should be completed as soon as possible to relieve any duplication and associated administrative burden on incorporated entities.
- Interests of NFPs should align with those of their members.
- Governance structures should aim for transparency and financial accountability.
- Responsible decision makers should be required to act with care and diligence and in good faith.
- Responsible individuals should be bound by conflict of interest principles outlined in s126 of the Consultation Paper.
- NFP governance should be derived from principles, with reporting and accountability standards based on: the entity's size, the amount of public monies involved, the qualifications of the responsible individuals (although these should be commensurate with the required tasks) and the level of risk involved in the entity's activities.
- Detailed and prescriptive governance policies and reporting requirements should be avoided.
- A balance needs to be struck between burdensome compliance and effective measures for deterring malfeasance.
- It is desirable to create a culture of compliance, self-regulation and transparency.

In response to the questions outlined in the Treasury consultation document:

1. ADASA agrees that legislation should make it clear whom responsible 'decision-making' individuals must consider when exercising their duties, and to whom they owe duties.
2. Responsible individuals should take into account the impact of their decision on members and the public, as well as their organisational goals as outlined in an annual plan.
3. Duties of responsible individuals should be broadly defined to ensure that these individuals work in the interests of the organisation as a whole. Responsible individuals should be bound to act honourably and in good faith in the interests of the organisation but organisations should have the discretionary power to define the core duties of office bearers.
4. Responsible individuals should be bound to act with care and diligence and to the best of their ability in the interests of members. Where they are not skilled to perform a required

task such as financial oversight they should be required to seek suitably qualified assistance. Standards should not be a disincentive for volunteers. It is reasonable that the standards of care should be higher for paid employees than volunteers and for professionals rather than lay persons.

5. While appointing suitably qualified office holders to responsible positions in NFPs is ideal – for their own sake as well as that of the organisation – it is sometimes difficult to find appropriately qualified volunteers. Therefore, having appropriately qualified office holders should be a guideline rather than a requirement and should reflect the risk associated with the responsibility (i.e. the size of the organisation or the funds administered).
6. Minimum standards of conduct should be applied to all responsible individuals/office bearers.
7. Duties of responsible officers ACNC should be broadly defined and allow for varying risk.
8. We are not aware of any special responsibilities of volunteer office bearers in NFPs beyond those of exercising appropriate care, due diligence and confidentiality.
9. We are not aware that professional associations in the health care sector pose any higher risk to the public and therefore require any special conditions.
10. The ADASA supports the alignment of corporate governance requirements with the Corporations Act, also recognising that there is a significant requirement for professional organisations in the health sector to act in the public interest in addition to members' interests.
11. Registered entities should be required to disclose financial income and expenditure, interests in other entities, employee benefits and government grants to ensure transparency in financial management for members, donors and/or beneficiaries.³
12. Remuneration of key office bearers should be disclosed in the annual financial reports.
13. Criteria in relation to conflicts of interest proposed reflect best practice management principles and are appropriate to protect the integrity of the organisation and the reputation of office holders.⁴
14. Conflict of interest principles outlined at s126 are appropriate.
15. ACNC governance obligations should be based on the Corporations Act understanding of 'material personal interest' given the broad scope of management responsibilities associated with NFP organisations.
16. NFPs should be required to have effective internal and external auditing processes to ensure they are able to meet their financial responsibilities, and to identify transactions or

³ See for example, OECD 1999, 2004, Principles of Corporate Governance, OECD, Paris., ASX Corporate Governance Council, 2003, ANAO 2003, the Uhrig Review of Corporate Governance of Statutory Authorities and Office Holders, 2003, Intellectual Property Branch, Department of Communications, IT and the Arts; Canberra; in the US, the Sartanes-Oxley Act (2002); in the UK, the Cadbury Report (1992), the Hampel Report (1998) and the Higgs Report (2003).

⁴ See for example, Australian National Audit Commission, Conflicts of Personal Interest and Conflicts of Role, Better Practice Guide No. 6, July 2003.

- agreements which may involve some inherent risk as outlined in s128. They should also have processes to manage breaches of the law and conflicts of interest outlined in s131.
17. New regulations should provide broad principles of financial management according to best practice outlined in the Corporations Act, by the Australian National Audit Office, the OECD and the World Bank.
 18. NFP entities should have at least some insurance to cover unforeseen circumstances, but associated costs might be prohibitive for small organisations. Guidelines rather than prescriptions should be adopted.
 19. The organisation should be required to have indemnity insurance for its responsible individuals to protect those individuals and members.
 20. ADASA agrees that financial statements should be internally and externally reviewed to provide a level of public/member confidence in NFP activities.⁵
 21. Governing rules should include as a minimum an outline of the organisation's purpose, standard definitions, provision for membership, roles and responsibilities of office holders and members, dispute processes, rules about funds, provision for winding up the association, provisions for meetings as outlined in s156.
 22. The ACNC should have a role in mandating requirements of the governing rules.
 23. The ACNC should be able to enforce the rules.
 24. The ACNC should have a role in the alteration of governing rules if a situation arises for which no provision is currently made within them.
 25. Model rules could be used to reduce the administrative burden on smaller NFPs.
 26. Governance rules should encompass meetings, quorums, voting rights, notice of meetings proxies, committee meetings and record keeping, in accordance with the Corporations Law, ASX governance principles and ANAO better practice guides.
 27. No comment.
 28. It is appropriate to have compulsory meeting requirements for all (membership-based) entities registered with the ACNC.
 29. No comment.
 30. The new governance regime for NFPs should aim to ensure that state and national reporting and administrative requirements are not duplicated and that requirements take into account the varying risks and responsibilities of NFP organisations and their office holders.
 31. Best practice management principles relating to transparency, duty of care, disclosure of information and risk management should be included to ensure that organisations act in the interests of their members and the public (where appropriate).
 32. No comment.
 33. No, we do not have any further issues for consideration.

⁵ See for example, ASX Corporate Governance Council, 2003, Principles of Good Corporate Governance and Best Practice Recommendations, Sydney, www.asx.com.au/corporategovernance accessed 29 Sept, 2011.