

BAKER IDI RESPONSE TO:

REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS

ATT:

**Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600**

Stakeholder Details

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Legal Status: Incorporated entity limited by guarantee with health promotion charity status
ABN: 98 131 762 948

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Preamble

Baker IDI Heart and Diabetes Institute welcomes the opportunity to respond to the review of not-for-profit governance arrangements in the context of the creation of the Australian Charities and Not-For-Profits Commission (ACNC).

Baker IDI is one of Australia's largest independent medical research institutes and is by any measure, a large company, employing over 600 people within the institute and its subsidiaries, and with a group turnover in excess of \$70m annually.

Our mission is well defined, our relationships with stakeholders are strong and our governance structure is both comprehensive and effective.

Baker IDI cautiously welcomes the creation of the ACNC and recognises that its emergence has come following many sector reviews and extensive industry consultation. We appreciate that there are organisations within the not-for-profit sector that will benefit from the governance support, guidance and oversight that the new Commission will provide. We also see potential benefits to the

sector if the new Commission can bring about a national approach to issues such as fundraising regulation and provide the promised streamlining of governance arrangements and centralised reporting.

To be clear though, Baker IDI currently complies with comprehensive governance obligations and is firmly of a view that the introduction of the ACNC should not impose further reporting or other administrative burdens on this organisation.

Given our broad governance reporting requirements already include such stakeholders as ASIC, ATO, federal government departments such as the Department of Health and Ageing (DoHA), the National Health and Medical Research Council (NHMRC), the Australian Research Council (ARC), many state government funding bodies, philanthropic foundations and trusts, international funding bodies, commercial partners and professional auditors, and as a company limited by guarantee we are subject to all the obligations of the *Corporations Act 2001*, we would see an additional reporting requirement to be counterproductive.

Each of these bodies currently requires of the institute a plethora of often overlapping reporting and governance mechanisms. If the ACNC can somehow simplify these as the current proposals suggest then it will genuinely assist the not for profit sector, and be welcomed by Baker IDI. If it replicates them it will simply be a nuisance, and add no value. And if it adds to them it will simply reduce our efficiency without identifiably adding to the Institute's effectiveness or risk management.

As a large company with a lean administrative structure we, like other not-for-profit organisations, feel the burden of increased 'red-tape' and would seek assurance from the Australian Government that the new arrangements are phased in so as to avoid any duplication.

We note that the objective of the ACNC is to streamline governance arrangements and centralise reporting which we support however we also note comments from the Australian Government that the process of negotiation with states and territories in aligning requirements might take time and that some duplication during a transitional period might result. This should be avoided if at all possible, given the administrative costs associated with additional reporting diverts funds away from the Institute's core mission.

Baker IDI would very much welcome one annual report on its **fundraising activities** to the ACNC, rather than reporting separately and differently to each state. A focus by the ACNC on unifying the fundraising legislation to a national approach would be greatly appreciated as the entire sector struggles with the burden and expense of:

- (a) ensuring compliance with legislation that differs in every state and territory; and
- (b) the requirement to report separately and in a different form to each state and territory.

However, Baker IDI believes that rather than duplicating other reporting requirements, organisations that are currently governed by ASIC under the *Corporations Act* should be exempt from reporting requirements to the ACNC until all transitional arrangements have been finalised. There seems little that the combination of an annual comprehensive audit, regular reporting to the ATO, and maintenance of status as a NHMRC administrating entity currently achieves that the ACNC could improve on, as the purpose of the organisation is currently described.

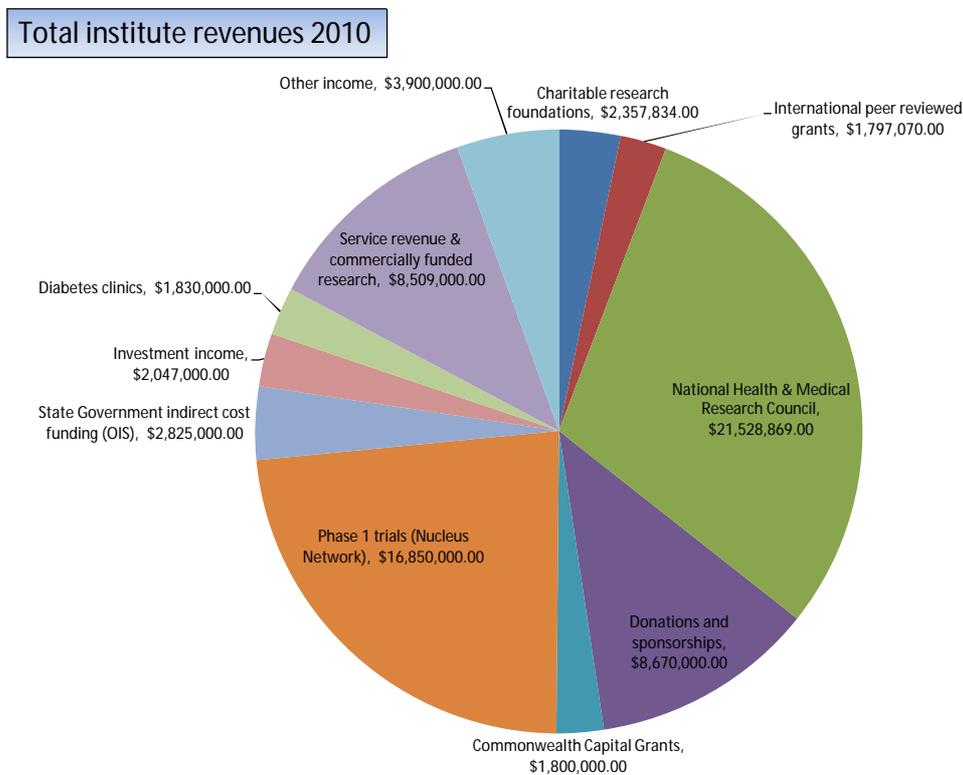
This should include the proposed transition of governance responsibility from ASIC to ACNC and an agreement from other government agencies at state and federal level to recognise ACNC governance reporting and hence reduce their reporting requirements of us.

About Baker IDI

Baker IDI Heart and Diabetes Institute is an independent, internationally renowned medical research facility. Our work extends from the laboratory to wide-scale community studies with a focus on diagnosis, prevention and treatment of diabetes and cardiovascular disease.

Baker IDI was created in 2008 after the merger of the Baker Heart Research Institute and the International Diabetes Institute (IDI). The Baker Heart Institute was established in 1926 and last year the merged entity celebrated 85 years of medical research.

As one of Australia's largest medical research facilities Baker IDI employs in excess of 600 people across three Australian states as well as Singapore. The Institute receives annual revenue in excess of \$70 million from a broad range of sources and the following visual representation of Institute revenue from 2010 is provided for reference.



In terms of governance we are a public company limited by guarantee, subject to the requirements of the *Corporations Act*, with a board of experienced directors who have responsibility for overseeing the company's affairs. The Institute must act in accordance with the objects in its Constitution, which are clearly defined and are consistent with its not for profit status as a health promotion charity. Director responsibilities and duties are provided for by the *Corporations Act*, the Institute's constitution and other Institute policies and board representation is reviewed regularly to ensure relevance to our mission.

Subsidiaries are established for specific purposes when necessary, with independent or management boards, and with constitutions consistent with their needs. These have usually been established for commercial purposes, such as for the commercial translation of a specific piece of intellectual

property that has emerged from the institute's research, or to service the needs of a particular client group. Another example is the wholly Baker IDI-owned phase 1 clinical trial unit Nucleus Network, which employs around 85 people and in 2010 had a turnover of \$14m.

As a large corporation, the Institute has policies and frameworks to manage a range of governance issues including conflicts of interest, investment strategy and risk management. The latter is managed via an audit and risk management committee that meets twice per year and reports from which are tabled annually with our auditor.

Our wide range of funding partners ensures an equally wide range of reporting requirements. Each of the federal government through DoHA and NHMRC, state government, commercial partners, philanthropic trusts and foundations and international research funders like the Juvenile Diabetes Research Foundation (JDRF), require evidence of our robust governance structure when applying for funding as well as comprehensive reporting on our grant expenditure against contractual obligations.

As a deductible gifts recipient we are required to comply with ATO governance and reporting requirements, and are subject to annual audit by our external auditors Ernst Young.

Responses to consultation paper questions

Baker IDI provides the following responses to questions of relevance from the consultation paper.

Consultation questions

Responsible Individuals' Duties

1. Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?

Baker IDI believes that the current position, as prescribed by the *Corporations Act* is already clear, appropriate and should continue. Directors and officers of the Institute owe their formal legal duties to the Institute and the Institute must act in accordance with the objects and purposes enshrined in its Constitution, which inherently have regard for its mission, and therefore its beneficiaries and the donors who wish to contribute to that mission. In the context of a company limited by guarantee the proposal to alter the law is perplexing as there are already extensive laws, for example the fundraising legislation, which are designed to protect donor interests and many donations and other financial support are subject to complex and extensive contractual obligations. To create additional conflicting duties would simply lead to unnecessary legal complexity, which could serve to discourage not for profit directors such as ours, who volunteer their time and expertise on an unpaid basis.

Baker IDI also has an active stakeholder management plan, which includes state and federal government agencies, public and private funding bodies and clients, end-users of medical technologies developed through the institute's research work including biotech and pharmaceutical companies, other charities that provide funding for our work such as the National Heart Foundation, and the various bodies that regulate specific aspects of our work such as (for example) the Office of

the Gene Technology Regulator. Much of this is specific to our work and no two medical research institute's stakeholder lists would be the same. We believe therefore that each NFP may be reasonably asked for confirmation that it has addressed this question, but that a 'template' for response to the question in the form of regulation would be unhelpful.

2. Who do the responsible individuals of NFPs need to consider when exercising their duties? Donors? Beneficiaries? The public? The entity, or mission and purpose of the entity?

Baker IDI believes that all of the above are well covered by existing laws – see above. The Institute considers all of these and more including institute funders such as state and federal governments, commercial partners, philanthropic trusts and foundations etc.

3. What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation?

Description of broad principles may be beneficial for smaller entities seeking support to establish and maintain governance arrangements, however Baker IDI does not believe that core duties for those NFPs that are structured as companies limited by guarantee should be outlined in the new legislation, as it is already comprehensively covered by existing legislation (see above). It is not clear that ACNC legislation would improve on existing mechanisms to assure good governance for companies whose governance approach is already consistent with ASIC requirements.

4. What should be the minimum standard of care required to comply with any duties? Should the standard of care be higher for paid employees than volunteers? For professionals than lay persons?

See above. We note that the Institute's directors volunteer their time, however they are currently held to the same standards as any other director under the *Corporations Act*.

5. Should responsible individuals be required to hold particular qualifications or have particular experience or skills (tiered depending on size of the NFP entity or amount of funding it administers)?

No. As an independent corporation Baker IDI is keen to preserve the right to manage its governance affairs according to the current principles and framework that we operate under. This includes the right to appoint on individual merit any staff member, board director or otherwise for the Institute, subject to any requirements currently applied by ASIC as a company limited by guarantee.

6. Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?

See above.

10. Is there a preference for the core duties to be based on the Corporations Act, CATSI Act, the office holder requirements applying to incorporated associations, the requirements applying to trustees of charitable trusts, or another model?

It depends on the size of the organisation. The core duties that Baker IDI has under the *Corporations Act*, would most probably be too onerous for a smaller entity. A standard set of core duties that would be suitable across the NFP sector may be difficult to determine given the variety within the sector alluded to above.

Disclosure Requirements and Managing Conflicts of Interest

11. What information should registered entities be required to disclose to ensure good governance procedures are in place?

The current governance environment that Baker IDI operates within is entirely appropriate and this should be the model by which entities such as ours are required to continue operating. The threshold for this should be un-qualified audit by an independent auditor consistent with the requirements of the *Corporations Act*.

12. Should the remuneration (if any) of responsible individuals be required to be disclosed?

No, Baker IDI does not see any benefit from requiring responsible individuals' remuneration to be disclosed. Such a requirement will not result in reinforced public confidence in the sector and, indeed, it may serve to create confusion.

13. Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?

Yes they are broadly appropriate, although again it should be noted that the major funding bodies that support health and medical research in Australia already require comprehensive conflict of interest disclosure and management regimes. A reasonable threshold for this matter for independent medical research institutes would be status as an administering institution with NHMRC. It is unlikely that any conflict of interest regime ACNC could develop would be more comprehensive than that already in place for such institutions.

14. Are specific conflict of interest requirements required for entities where the beneficiaries and responsible individuals may be related (for example, a NFP entity set up by a native title group)?

Possibly so, but again given the diversity in the NFP sector it is hard to imagine legislation that would adequately address this for everything from large independent research institutes to under-16 football clubs. Every organisation will be 'special'.

15. Should ACNC governance obligations stipulate the types of conflict of interest that responsible individuals in NFPs should disclose and manage? Or should it be based on the Corporations Act understanding of 'material personal interest'?

The Corporations Act definition is appropriate and has been well examined over time by the case law.

Risk Management

16. Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?

None beyond the requirements that we already meet under the *Corporations Act*.

As a large corporation Baker IDI has a risk management framework which is supported by a risk management committee that meets twice per year and reports from which are tabled annually with our auditor.

It should also be noted that public funds always come with their own contractual risk management requirements, often already onerous, conflicting and bureaucratic. Anything ACNC can do to reduce this would be welcome, but the government should hesitate before adding to it.

17. Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?

A principled-based approach would be more appropriate here indicating broad requirements for adequate procedures. The range of sector players would suggest that particular requirements would not be suitable for every organisation. Whilst every organisation with funds under management should have an investment strategy, the ACNC should not mandate what such strategies should consist of unless it is happy to share the blame when those investment strategies are unsuccessful.

18. Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?

This depends on the organisation.

Baker IDI already is required to hold various insurance policies in order to apply for competitive funding from various bodies – for example state and federal government agencies.

19. Should responsible individuals generally be required to have indemnity insurance?

20. What internal review procedures should be mandated?

No more than those inherent in the *Corporations Act* for organisations such as Baker IDI

Minimum Requirements for an Entity's Governing Rules

21. What are the core minimum requirements that registered entities should be required to include in their governing rules?

22. Should the ACNC have a role in mandating requirements of the governing rules, to protect the mission of the entity and the interests of the public?

23. Who should be able to enforce the rules?

24. Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?

25. Should model rules be used?

For all questions 21-25:

Baker IDI has a robust governance framework in accordance with requirements under the *Corporations Act*. We would be opposed to any further regulations beyond those currently applied to the Institute as a corporation limited by guarantee.

Summary

26. What governance rules should be mandated relating to an entity's relationship with its members?

27. Do any of the requirements for relationships with members need to apply to non-membership based entities?

28. Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?

For all questions 26-28:

Baker IDI's relationship with its members is detailed within governance frameworks and meets the requirements of the Corporations Act as a company limited by guarantee. These arrangements are clear, appropriate, well understood, and accordingly we would have a preference for these not to change.

29. Are there any types of NFPs where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFPs?

Yes, smaller entities that are currently not subject to specific governance requirements could derive benefit from a supportive government agency with a mandate to assist them to improve and develop their governance structures, so long as the size and capacity of the organisation to respond to these was understood by ACNC. The ACNC could find it stifles the emergence of new NFPs with red tape unless it is sensitive to this.

30. How can we ensure that these standardised principles-based governance requirements being administered by the one-stop shop regulator will lead to a reduction in red tape for NFPs?

Baker IDI is satisfied with the current governance arrangements and is firmly of the view that the introduction of the ACNC should not impose further reporting or other administrative burdens.

As a large company with a broadly corporate administrative structure we, like other not-for-profit organisations, feel the burden of increased 'red-tape' and would seek assurance from the Australian Government that the new arrangements are phased in so as to avoid any duplication of existing governance requirements.

We note that the objective of the ACNC is to streamline governance arrangements and centralise reporting which we support however we also note that the process of negotiation with states and territories in aligning requirements might take time and that some duplication during a transitional period might result.

Baker IDI would argue that rather than duplicating reporting requirements, organisations that are currently governed by ASIC under the Corporations Act should be exempt from reporting requirements to the ACNC until all transitional arrangements have been finalised.

This should include the proposed transition of governance responsibility from ASIC to ACNC and an agreement from other government agencies at state and federal level to recognise ACNC governance reporting and hence reduce their reporting requirements of us.

31. What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?

It should be stated in the preamble to the legislation that its purpose is to facilitate and support the further development of the NFP sector given its contribution to Australian society (rather than to

regulate it to within an inch of its life and catch it out when with good intentions is gets things wrong).

32. Are there any particular governance requirements which would be useful for Indigenous NFP entities?

No.

33. Do you have any recommendations for NFP governance reform that have not been covered through previous questions that you would like the Government to consider?

Baker IDI would very much welcome one annual report on its **fundraising activities** to the ACNC, rather than reporting separately and differently to each state. A focus by the ACNC on unifying the fundraising legislation to a national approach would be greatly appreciated as the entire sector struggles with the burden and expense of:

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