

20 January 2012

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

Dear Sir/Madam

SUBMISSION: Treasury review of not-for-profit governance arrangements

Campbell Page Limited (Campbell Page) is a not-for-profit organisation¹ committed to helping disadvantaged Australians combat poverty through employment, community services and philanthropic activity. Last year we helped over 91,000 Australian's including some of the hardest to help and hardest to reach. We provide an increasing range of services each year including delivering government funded community, disability, employment and training services across 100 locations in Australia. We are about helping people stabilise their lives and pursue opportunities through community services, training and ultimately stable employment.

Improving corporate governance and administration to make it easier to deliver more services for people most in need is wholeheartedly supported by Campbell Page. That's why we welcome and support strengthening and streamlining governance arrangements for the NFP sector.

At Campbell Page our **purpose** is getting Australia working – we believe work is central to a healthy and resilient society. We work closely with the Australian government through, for example, Job Services Australia, but our community work extends well beyond this. Examples include, but are not limited to Youth Centres, crisis accommodation, drug and alcohol counselling, keeping at risk young people in education and a suite of Indigenous services.

In these challenging economic times Australia has areas of great prosperity as well as real social disadvantage. Our **mission**, regardless of the challenges, is to wage war on poverty. We are committed to creating the conditions to achieve personal independence by enabling people to:

- Overcome personal challenges to work readiness
- Complete their education
- Gain workplace skills
- Find and keep a job

¹ CPL is an endorsed Public Benevolent Institution by the Australian Taxation Office and holds Deductible Gift Recipient status.

Public policy outcomes which genuinely remove duplication or burdensome arrangements and free up resources to help those most in need are supported by Campbell Page.

The establishment of the Australian Charities and Not-for-profits Commission (ACNC) and thorough consultation with the NFP sector is to be commended.

This submission outlines in broad constructive terms our feedback, support and, where appropriate, concerns with the detailed development of new governance arrangements for the NFP sector.

As one of Australia's larger secular NFPs, we understand the need for robust governance. Over the last 25 years we have grown from a volunteer based youth service to a national NFP organisation with assets in excess of \$20 million, annual revenues exceeding \$70 million, and more than 500 employees. This growth has required the highest standards of governance, accountability and transparency.

Campbell Page would welcome the opportunity to engage with the Treasury and Australian government through targeted confidential consultations on the draft law as outlined in the *Review of Not-for-Profit Governance Arrangements Consultation Paper* (December 2011). We strongly believe public and community resources and funds require the most robust standard of care.

Getting the balance right in making NFP governance more robust as well as more streamlined is not without challenges. Campbell Page has had to grapple with many of these issues over the last 25 years.

We make the following submission in light of that experience, in support of the principles and intentions of the review, and in a sincere effort to avoid adding extra overlap or additional bureaucracy to a sector Australians rely on every day for assistance.

For further information please contact me on email: dale.cleaver@campbellpage.org.au or mobile: 0417 156 047, or Xavier Crimmins (after 7 February 2012) on email: Xavier.crimmins@campbellpage.org.au or mobile 0418 256 047.

Yours sincerely

Dale Cleaver
Acting Chief Executive Officer
On behalf of Xavier Crimmins, Chief Executive Officer

Campbell Page Submission: Treasury review of not-for-profit governance arrangements

Campbell Page supports principles based governance arrangements which facilitate flexibility and proportionality for the NFP sector. We believe clear ‘one-source’ governance requirements would assist reduction of multiple government requirements (including varying degrees of compliance particular to different states).

Unfortunately the present governance arrangements for PBI/DGR are burdened with multiple layers of regulation. Legislation, individual grant provider governance and reporting requirements are duplicated numerous times over by state, territory and federal legislation and vary across a diverse range of agencies in different jurisdictions.

That’s why the ACNC and a streamlined system are so important. Introducing a new ACNC framework must be accompanied by rationalisation and abolition of other levels of regulation and overlap. To introduce a new best practice federal framework, in the absence of reform (particularly at the state level) would be counter to the principles of the NFP governance review and detrimental to the sector as a whole.

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?*

Yes. The *Corporations Act 2001* provides a robust framework and definition of responsible individual. However it is not consolidated for a PBI with DGR status.

As a public company limited by guarantee we are bound by the *Corporations Act* (2001). Our constitution and governance arrangements reflect this standard. Further, as an organisation that periodically enters into financing arrangements, we are also responsible to such financiers with regard to financial and governance specifications. Through these mechanisms it is already evident for a NFP of our size, who our ‘responsible individuals’ must consider in the exercising of their duties.

As a PBI with DGR status there is multiple legislation and annual reporting across all levels of government. It is accepted that any receipt of public monies and private funds donated (for a specific project or general benevolent use) should be appropriately recorded and reported and that our ‘responsible individuals’ are accountable for the usage of such monies and funds. The consolidation of all relevant acts, federally and at a state and local government level, will assist clarity and if clearly legislated, should meet all disclosure

requirements of the various relevant interested public and private individuals and organisations.

As a larger NFP, Campbell Page supports and complies with the standards of the Corporations Act and ASIC regulations. We also recognise the benefit in establishing a principles based approach with a sliding scale of care based proportionally on the size of the entity and amount of public funding. This approach makes sense for smaller NFPs. This legislative approach is found in instruments such as *The Fair Work Act* and other appropriate legislation covering SMEs and would be an appropriate model for the NFP sector. We support the ACNC having flexible requirements for smaller entities.

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?*

The responsible individuals should give regard to all parties identified in this question with an overarching consideration of the NFP's purpose. All activities should either be a direct activity achieving the purpose of the entity or be an activity (referred to as 'unrelated business activities') that generates monies to fund the purpose of the entity. The aim of the legislation is to encapsulate any reasonable reporting requirement within the Annual Report. As there are many multiple measurement criteria as to what constitutes an 'outcome' it is not recommended that all criteria be reviewed but rather an audit approach be adopted to give comfort that stated outcome levels are 'fair and reasonable'. The current spread of 'line-by-line' budget acquittals places an unreasonable administrative burden upon PBIs and the NFP sector.

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

The duties of the responsible individuals are well set out in the current legislative requirements of the *Corporations Act 2001*. Campbell Page Limited believes this provides a robust and transparent model framework for the ACNC.

All duties of responsible individuals would necessarily be specified in their position description as established by the NFP employing each responsible individual.

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?*

The minimum standard of care needs to be clearly articulated and should be harmonised and standardised. At present the minimum standard of care applicable to all persons should be that which is found within existing state legislation (eg: Civil Liability Act 2003 (Qld); The Civil Act 2002 (NSW); Civil Law (Wrongs) Act 2002 (ACT); Civil Liability Act 2002 (Tas); Personal Injuries (Liabilities and Damages) Act 2003 (NT); etc). There is also volunteer

specific legislation which gives guidance to standards of care, such as Volunteer Protection Act 2001 (SA) and the Volunteer (Protection from Liability) Act 2002 (WA). The common theme here is what an ordinary, reasonable, and prudent person would do in given circumstances. This applies to both paid and unpaid persons.

There is a reasonable expectation that specialists, professionals and paid persons maintain a higher standard of care than volunteers, however this should not limit the standard due from a volunteer. It can be argued that volunteers be appropriately trained by any organisation which is utilising their time and existing skills.

Existing legislation needs to be urgently harmonised.

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)?*

There would not be any material benefit in the ACNC adding an additional regulatory burden in this area. We do not consider it the role of the ACNC to determine if responsible individuals need to hold particular qualifications. Any qualifications determined as necessary to perform a role within the NFP should be assessed and defined by the recruiting Board/management. To specify that qualifications are 'required' would disadvantage and possibly discriminate those individuals who may have extensive and valuable work and life experience but do not have the formal qualification. Common sense would dictate that a responsible person and/or volunteer would have been assessed by the recruiting person/s as being appropriately skilled for the role they are engaged to perform.

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

Guidelines as to expected levels of proficiency may be useful for smaller organisations in raising the understanding and awareness of requirements such as 'fiduciary duties'.

We welcome the educative role of the ACNC as foreshadowed in the discussion paper. However having the ACNC determine minimum standards of person/s engaged by the NFP registered entity would be something of an overreach.

7. *Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC?*

Legislating the duties required of responsible individuals may result in the reduction of persons willing and able to volunteer services, especially at Board level. Through appropriate industry consultation, the harmonisation of existing 'duties' legislation would be welcomed. This should not, however, exceed current legislative requirements under the Corporations Act 2001. It should

also be noted that individual organisations may require different roles, duties and experience from responsible individuals that is relevant to their objects etc, and as such standardising duties may not be appropriate.

8. *Are there any other responsible individuals' obligations or considerations or other issues (for example, should there be requirements on volunteers?) that need to be covered which are specific to NFPs?*

Aside from the current legislative requirements under the Corporations Act 2001 and existing standard of care legislation (allowing for harmonisation of such) there should not be further legislation placed on the NFP industry and it's volunteers.

9. *Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?*

It would be unfortunate if the ACNC added further complexity and regulatory overlap in this area.

The operation of a NFP in line with it's purpose and constitution necessarily defines the level of risk undertaken in performing the benevolent activity. Operation of 'unrelated business activities' are no more risky than for a 'for-profit' entity. All activities undertaken by the NFP would necessarily be reported in it's Annual Report. The granting of both public monies and/or private donations would necessarily be made by those bodies/individuals on the basis of the reputation of the organisation and the way in which the money is used, along with its compliance with relevant requirements.

If ACNC were to consider applying higher minimum standards to what they consider higher risk NFP cases this would seem to entail assessment of individual organisations to either place them in a high risk category or even apply individual standards. This in itself would add a layer of complexity and increase the administration required of organisations and potentially cause delays whilst going through the process this assessment would require.

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?*

Yes - our preference is to base the core duties on the Corporations Act 2001. We currently apply this standard of care and responsibility.

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?*

Our preference is to base the disclosure on the Corporations Act 2001. A statement already exist as to the Directors responsibilities within this legislation.

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

Our preference is to base the disclosure on the Corporations Act 2001. A level of disclosure already exists for Directors and Executives within this legislation.

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

The criteria specified is broadly appropriate. However the suggestion of resignation we believe is excessive.

We have a conflict of interest register and it is specified in our Board Charter that any conflict, perceived or actual, is disclosed. On matters where conflict may exist the respective Board members are excluded from any required vote.

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)?*

There should be no distinction between the requirements of all NFP entities. Should a material conflict of interest exist it is in the interest of the individual/s so potentially compromised that they refrain from the vote.

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'?*

We believe any governance obligations should be based on the Corporations Act understanding of 'material personal interest'. The usual accepted business practices of conflict of interest should be applied. The ACNC could take an educational role with smaller NFPs to help support their understanding of these issues.

Risk management

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

We believe that risk management should not be differentiated between for-profit and NFP's.

Given the Governments intended 'unrelated business activity' definition it would be restrictive for NFPs to be differentiated from for-profits with respect to risk management.

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

It is best practice to have an investment strategy coupled with a risk management policy. We have documented a Strategic Plan as well as a Risk Management policy and plans. On this basis we support a broad requirements approach which allows for appropriate business decisions to be made by the responsible individuals which best serve the fulfilment of the entity's purpose, mission, vision and values.

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

It is already a requirement of all government contracts to hold appropriate insurances (eg: public liability, workers compensation, etc) across national and state jurisdictions. A mandated level of insurance is not warranted for a NFP organisation of our size.

There may be a need to consider mandating in circumstances where smaller NFPs don't receive government funding. This could be tiered depending on size of the NFP entity or amount of funds it administers.

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

It is already a requirement of all government contracts to hold appropriate insurances (eg: public liability, workers compensation, etc) across national and state jurisdictions. A mandated level of insurance is not warranted for a NFP organisation of our size. It is in the responsible individual's interest to have appropriate indemnity insurance.

There may be a need to consider mandating in circumstances where smaller NFPs don't receive government funding. This could be tiered depending on size of the NFP entity or amount of funds it administers.

Internal and external reviews

20. *What internal review procedures should be mandated?*

It is already a right of government agencies to audit the processes and practices of our organisation under the numerous government contracts we hold. Further, it is a requirement of the Corporations Act 2001 that our financial accounts be audited. It has also been a right of our main financier

when we have had loan facilities to request any additional information not already disclosed in our Annual Report and their required quarterly reports. We are independently audited.

Internal review procedures are already conducted by our internal Business Review unit. This is best practice, however the extent and times any internal review is undertaken should be the responsibility and decision of the responsible individuals. It should not be mandated by a government administrative body.

Campbell Page therefore does not support the mandating of internal review procedures by ACNC.

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?*

The core minimum requirements should include the requirements of a company constitution under the Corporations Act 2001. Campbell Page Limited also has a Board Charter which underpins the integrity and maintenance of our 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?*

An appropriate framework for the ACNC can be found under the Corporations Act 2001. Adding to this administrative standard would not facilitate the removing of red tape as envisaged by the NFP governance review. The adherence to the mission of the entity, avoiding fraud and mission drift, is a core responsibility of 'responsible individuals', in particular the Board (or their delegated representative, in our case the Chief Executive Officer). This responsibility should not be diluted or duplicated by further mandated positions.

23. *Who should be able to enforce the rules?*

The Australian Securities and Investment Commission (ASIC) already has jurisdiction with regard to the Corporations Act 2001. We do not believe this should be changed, in particular for organisations of our size.

Duplication would not be helpful for the NFP sector in this area. Should the ACNC take on this role it should be *instead of* rather than *as well as* ASIC.

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

No. In our view, that would be an overreach for the ACNC. The provisions currently within our constitution already stipulate the ways in which surplus assets are to be distributed upon an event such as winding up. We do not

believe there is a public benefit in enacting further legislation to empower the ACNC to administer what is already well legislated and understood in the NFP sector.

25. *Should model rules be used?*

Model rules are useful and form the basis of our constitution. However, upon legal advice, Campbell Page Limited has appropriately modified the model rules to ensure we can conduct activities which best meet our purpose. We support the continuation of the use of the Corporations Act as a basis for constitutions, allowing however for divergence where deemed appropriate by responsible individuals, in particular the Board of Directors. New model rules under the ACNC would not benefit corporate governance standards for the NFP sector.

Relationships with members

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

Governance rules are appropriate in regard to the relationship with members. Our members are governing members from which our Board of Directors are drawn based on invitation and majority vote. This is drawn from the requirements of the Corporations Act with regard to the appointment of Directors. We believe this is an appropriate base and should not be amended.

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

This is not applicable to Campbell Page Limited.

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

It is appropriate to have compulsory meeting requirements. As a public company limited by guarantee this is already stipulated under the Corporations Act.

Summary

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

Central reporting requirements, such as dictated by the Corporations Act, are sufficient for the majority of disclosure requirements. Additional reporting requirements, such as 'outcomes' for benevolent activities can be very subjective and extremely difficult to standardise regulation given the range of

activities which are benevolent (eg: from placing long term unemployed in full time work to housing victims of domestic violence to rehabilitating an individual who has suffered from substance abuse). Government contracts already dictate what is to be measured; the general public assesses the veracity of claims. Creating an additional administration burden would not be desirable.

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?*

Standardised principles-based governance requirements can lead to a reduction in red tape. Campbell Page would support a one-stop shop regulator should other legislative requirements be appropriately superseded and amended to reflect this.

31. *What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?*
32. Campbell Page would support a one-stop shop regulator should other legislative requirements be appropriately superseded and amended to reflect this. The Corporations Act provides a robust framework for new legislation or guidance materials produced by the ACNC.
33. *Are there any particular governance requirements which would be useful for Indigenous NFP entities?*

Direct negotiation should be undertaken with Indigenous NFP entities to address this issue to ascertain if there are particular requirements unique to those entities. Our Indigenous division is governed by our universal governance policies and procedures.

34. *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?*

We endorse deferral to the Corporations Act for the substantive governance issues. NFP specific issues, such as adherence to the definition of a Charity should be addressed by separate legislation.

END.