LEADING AGE SERVICES
AUSTRALIA
QUEENSLAND

SUBMISSION

RESPONSE TO THE GOVERNANCE CONSULTATION PAPER AND FINANCIAL REPORTING REQUIREMENTS FOR NOT-FOR-PROFIT SECTOR

FOR: **Philanthropy and Exemptions Unit**

Indirect, Philanthropy and Resource Tax Division

The Treasury

Langton Crescent, Parkes ACT 2600

DATE: **15 February 2013**

CONTACT PERSON: **Mr Nick Ryan CEO**

Leading Age Services Australia - Queensland Inc.

6 Pavilions Close, Jindalee Qld 4074

Telephone: (07) 3725 5555
Email:Nick.Ryan@qld.lasa.asn.au

All age services.

OVERVIEW

LASA Q is a Queensland based not-for-profit (NFP) member organisation that has been established over many decades to represent providers of residential aged care facilities, community care organisations, retirement villages and pensioner rental facilities. It also operates a NFP Registered Training Organisation undertaking onsite and distance education and training for care and support staff working in the age care industry. It is part of the LASA national federation. In Queensland, the 350 membership base provides services and support across 800 sites around the state. They are predominately drawn from the NFP sector with many members in smaller regional and rural communities.

LASA Q welcomes the attention to this topic and the desire to support the sector in their pursuit of the public good. Our interests are directed to services to an ageing population. The impetus to provide consistency, clarity and support in terms of both governance arrangements and financial reporting requirements is both understood and welcome. LASA Q believes such measures can only assist in strengthening the contribution made by the NFP sector, particularly in view of other related reform measures in the sector. These parallel processes must be in accord if the best outcome for the NFP sector, Government and the Australian community is to be realised.

Over the last decade there have been significant reviews, inquiries and reports about the NFP sector. Their findings and submissions to the 2010 Productivity Research Report Contribution of the Not For Profit Sector clearly described the valuable role the sector plays in the domestic economy and the scope and breadth of the sector. Repeatedly they point out a number of diseconomies and disincentives for the sector because of:

- over lapping and sometimes contradictory Federal and State/Territory regulatory regimes
- inconsistent and ‘opaque’ regulatory framework
- burden of compliance
- confusion over the nature of the different categories of the sector
- difficulties regarding the establishment of a NFP entity
- unequal allocation of DGR status
- reliance on the common law definition of charity to ascertain when entities are eligible for tax concessions
- Accounting Standards and Guidelines do not take into account the specific characteristics of NFP sector entities and their users which causes problems, particularly when used as criteria for reporting thresholds or entitlements to concessions

Similar concerns are expressed by LASA Q members and in addition:

- Increased compliance regime for any Federal Government subsidised service such as aged care services
- Reduced subsidies/funding relative to CPI and other appropriate indices which reduces the viability of the sector and diminishes its' ability to expand service provision
- Short term nature of funding base with apparent limited appreciation by Government about financing and financial administration practices required to reassure bankers of the business case for operations
- Policy determination without regard to State/Territory regulatory requirements
- Compliance regimes required for volunteers has resulted in a decrease in volunteers and an onerous responsibility on the entity.

Minimum Governance Standards:

Generally the draft Standards circulated for comment are seen by LASA Q to be a step in the right direction. LASA Q agrees that the following draft Standards are appropriate in their intent, scope, and wording:

Standard 1 – Purposes and NFP nature

Standard 3 – Compliance with Australian Laws

Standard 5 – Suitability of responsible entities

- In addition, LASA Q supports in principle the disqualification of responsible entities under Standard 5, however, it is suggested that measures are implemented to ensure the cause, extent, timing and other relevant information related to the disqualification is available if required.

Standard 6 – Duties of responsible entities

Protections to Standard 6

- In addition, LASA Q does not consider additional protections are necessary for volunteer responsible entities. In fact, it considers there is a greater risk of lack of governance expertise for volunteer responsible entities, and therefore Standard 6 is critical in ensuring volunteer responsible entities are fully aware of their powers and duties to enable relevant stakeholders, including the public and Government, to have confidence in the NFP sector.

With regard to Standard 2 – Accountability to members; and Standard 4 – Responsible management of financial affairs; LASA Q offers the following:

While the commentary that current compliance with the requirements of State incorporated association's legislation indicates compliance with the draft Standard is valid, this will not in itself reduce the compliance burden of NFP entities.

LASA Q experienced an extremely onerous compliance burden in the past twelve months due to inconsistencies and the lack of harmony and alignment between State and Federal legislative requirements. For twenty years prior to joining LASA Q, our compliance officer was employed by three different State Government departments in Queensland and has stated she has never before experienced the level of bureaucracy or administrative red tape as that outlined below.

In March 2012 Aged Care Queensland Incorporated decided to change its name to Leading Age Services Australia – Queensland after becoming a founding member of a new national federation, Leading Age Services Australia. To ensure our preferred name was not registered by another entity prior to our SGM to have the members approve the change, the appropriate forms were submitted to the Queensland Office of Fair Trading (OFT) to register the business name. Due to the timing of our SGM, the subsequent application to the OFT to change the Association's name was submitted after 17 May 2012 when the responsibility for Business Names Registration transferred to ASIC. Due to an inconsistency between the Queensland Associations Incorporation Act 1981 and the Business Names Registration Act 2011, LASA Q was advised by OFT that we could not change our name to Leading Age Services Australia – Queensland as the name was already registered and therefore unavailable.

It did not matter that the registration was in fact made by LASA Q. Apparently, prior to business name registrations being transferred to ASIC, as the responsible entity for both functions, OFT was able to process the necessary administrative changes to deal with such a situation, however, since the functions were now split between one State and one Federal entity, this was no longer the case.

Accordingly, LASA Q was required to de-register our business name with ASIC (losing the registration fees paid to OFT), provide evidence to OFT when the de-registration occurred (28 days later) so that the change of name application could be processed, then re-register the business name with ASIC (again paying a fee) once the de-registration interim period had elapsed. Further to the requirements to be met for OFT and ASIC, there were also applications required to be submitted to the ATO, again taking 28 days to finalise.

This overall process was finalised in January 2013 having taken ten months and a significant amount of time and effort of our governance officer, in addition to the time and effort of officers in OFT, ASIC and ATO, particularly following inconsistent and contradictory advice received from OFT and ASIC on the process required to rectify the situation.

In view of this example, it would seem that the less prescriptive approach taken in Standards 2 and 4 and based on the assumption that compliance with State legislation would suffice, might not in fact lessen the compliance burden for NFP entities as intended, due to more prescriptive and generally unaligned requirements in State legislation.

While LASA Q has an officer whose responsibility includes governance and compliance, many NFP entities do not have the resources to continue to meet the requirements of multiple compliance regimes.

Reference is also made to a consultation undertaken by the Queensland OFT in 2012 to review the Queensland Associations Incorporation Act 1981. LASA Q found that all but one of the consultation questions were clearly aimed at national harmonisation and reduction of duplication in view of the creation of the ACNC, however, one question relation to financial reporting requirements inconsistently sought to maintain onerous reporting requirements at a State level in addition to those implemented at the Federal level. LASA Q provided comment to this effect in that consultation.

Therefore, while the draft Standards are appropriate in intent, LASA Q expects that the lack of harmony will only lead to ongoing duplication, and an onerous burden on NFP entities effectively having to meet the demands of more than one regulator.

Accordingly LASA Q argues that the harmonisation of State and Federal legislations that are intended to be complementary is critical and should be an immediate priority to progress the 'one stop shop' intent of the ACNC.

In addition, there are currently numerous papers in circulation by legal professionals regarding the steps to be undertaken by NFP entities to become compliant with the new Standards, such as review of the entity's Constitution.

While LASA Q will manage its compliance in house with existing resources, there is some concern that SMEs in the NFP sector will not only be at risk of incurring additional costs for professional services, but for those in the age services sector in the midst of significant reform and dealing with real term funding reductions, the additional layer of change to meet the governance Standards will impact the ability of some entities to deliver core services.

Notwithstanding the above, LASA Q considers the proposed transition period for compliance with the Standards to be reasonable, however, as with any change management process, there has to be adequate education and information provided to all NFP entities, to ensure they are best placed to achieve compliance.

Financial Reporting Requirements:

As with the governance Standards, LASA Q welcomes the introduction of consistent and clear direction for the NFP sector on financial reporting. More importantly, LASA Q considers this an important step towards the national harmonisation of legislation and the NFP regulatory framework.

The ACNC intent to collaborate with the ATO and State departments is considered by LASA Q to be a significant positive step. The ability for NFPs to operate with a reduced compliance administrative burden, as well as with clear criteria and guidance of both governance and reporting requirements, would be viewed favourably in the sector. The current environment of duplication and the need to provide information multiple times in varying formats requires a financial investment across the sector that could be better applied to the delivery of core services for the public good.

LASA Q falls within the large registered entity category and currently complies with relevant accounting standards in the production of its annual financial reports, therefore the benefit for the association will be in the direct reduction of reporting requirements as a result of future harmonisation. However, LASA Q considers care should be taken in further developing the requirements of the annual information statement. Like many others in the sector, LASA Q operates in the commercial environment through its events management and training organisation, with all revenues reinvested in the core purpose of the association. LASA Q agrees there is value in making validated and relevant information about NFP entities available to the public through the ACNC, however, there is a risk that information regarding the association's competitive edge in its commercial functions could potentially be made public and therefore cause harm to its future growth and operations.

It is suggested that the experiences of the private sector be researched to ensure the right balance and approach is achieved in this regard.

A number of LASA Q's members, particularly those operating in rural, regional and remote Queensland, will potentially have greater reporting requirements on implementation of the Act. It is also likely that members will find themselves moving from one category to the next over time as their operations grow in response to the demands of an ageing population.

Recognition by the ACNC that the setting of financial threshold based criteria will have an impact on a number of NFP entities required to meet new reporting requirements is an important factor. Again, it will be critical that the sector is supported through education and information sessions to ensure widespread awareness and understanding, particularly for responsible entities, and to enable NFP entities to achieve compliance at the lowest possible cost. As the NFP sector grows with new entities registered and existing entities expanding, it is also important to ensure ongoing support and education continues to be provided.

LASA Q and LASA's other state offices could assist in facilitating education and information sessions for age services providers around Australia for both the governance Standards and financial reporting requirements. This could be undertaken in conjunction with the other national organisation with NFP members operating in the aged care sector, Aged and Community Services Australia (ACSA). Again LASA could facilitate this approach.