



23<sup>rd</sup> January 2012

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

Dear Sir/Madam

**Response to Consultation Paper December 2011 on “Review of not-for-profit governance arrangements”**

In response to the Government’s request for feedback and comments on the above Consultation Paper we are pleased to offer the following:

**1 Introduction**

Legacy is a uniquely Australian organisation which cares for the families of deceased and incapacitated veterans. In Australia, the Legacy organisation is comprised of 49 independent and autonomous clubs constituted and operated in accordance with a set of Legacy Statutes and State/Territory/Federal legislation as applicable to such charitable organisations. The first Club was established in 1923. The majority of the clubs are incorporated associations. Some are companies limited by guarantee. Legacy Australia Council, which is forwarding this submission, is a coordinating body established by the Clubs, in essence to implement the decisions of Legacy clubs taken at National Conferences and to facilitate a coordinated position to various issues that might arise between biennial conferences and which may affect Legacy. There are some 6,000 volunteer members of Legacy clubs throughout Australia.

Due to the specified duration and timing of the call for submissions on the Consultation Paper it has not been possible for us to receive detailed input from many of the individual clubs and hence this submission is more strategic in nature rather than being club specific. This is not to say that some clubs may have provided their own direct response.

**2 General Comments**

Legacy clubs across the country vary significantly in size from annual turnovers in the millions for the larger clubs to less than \$50,000 for smaller ones. Similarly, as a volunteer-based organisation, the breadth of experienced and/or professionally qualified people to take on the various roles and responsibilities within the clubs varies across those clubs.

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*Caring for the families of our deceased veterans*

Accordingly, as a general comment, the proposal for a principal based approach to governance with tiered expectations could be a suitable basis for use by Legacy clubs. Clearly, it will be the detail that ultimately determines the level of success of the selected model “to reduce red tape and minimise compliance burdens for the (NFP) sector” generally and the suitability or otherwise for Legacy in particular.

While the Treasury objective to “reduce red tape and minimise compliance burdens” is admirable, we suspect that increased requirements, responsibilities and costs will be a likely outcome for some organisations. Accordingly, in considering the suitability of any model to be adopted the benefits must outweigh the costs. Four important factors for Legacy are:

- How will this initiative benefit our primary stakeholders, particularly the beneficiaries of the services we provide and the donors (mainly the public) who support our organisation and have done so for many decades? Of course, whilst we now receive a small proportion of our direct income from governments we also receive indirect financial support as a charitable organisation and hence governments, and particularly the Federal Government, are stakeholders.
- What will it cost to establish and maintain any new processes? As a volunteer based organisation principally funded by private donations we are acutely aware of the expectations of those donors and the public at large to maximise returns of those donated funds to assist the families of deceased and incapacitated veterans. Any diversion of these funds towards administration, compliance and similar activities are already heavily scrutinised and kept to a minimum within the clubs.
- It must be recognised that any additional government “red tape” and increased burdens placed on dedicated volunteers in clubs like Legacy, will force many (if not all) in some locations to resign their “responsible” positions causing clubs to wind up and create considerable hardship on those we serve. This will be particularly the case in those areas with limited access to a breadth of experienced and/or professionally qualified people prepared to voluntarily take on additional responsibilities. Volunteers must be recognised for the excellent work they do and every effort must be made to ensure that this remains.
- Model rules or ‘core rules’ must be no more onerous than those currently included in existing State and Territory legislation for Incorporated Associations and other organisational types and under no circumstances should all organisations be expected to meet the same requirements as imposed under the Corporations Act for Companies Limited by Guarantee.

### **3 Responses to Consultation Questions** (shown in bold type following questions in italics)

1. *Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?* **Only if it could be done in an unambiguous and meaningful way. Otherwise we would expect the result would be achieved through basic governance and management practices with general guidance in a Reference Manual.**

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?* **Would include those mentioned plus others. Refer to answer to Q1.**

3. *What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation? Such duties are well documented in various publications already. The four covered in clause 93 are worthy of consideration.*

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? From an overall Governance perspective it is likely to be difficult to legislate different standards across the spectrum of organisations and personnel involved in them. Clearly applying the same standards to professionals and paid staff as opposed to lay persons and volunteers will create a disincentive to volunteerism and increased burdens on organisations, resulting in increased costs and reduced opportunities for volunteer participation. Overall this is likely to have a negative impact on the community. How one would legislate or courts interpret words such as “reasonable”, “good faith” etc to cover this spectrum is a challenge.*

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)? This is supported for key positions subject to the qualification in brackets.*

6. *Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity? It is difficult to see in today’s environment how it could be any other way particularly if all responsible individuals have the same vote in decision making.*

7. *Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC? Very much depends upon the specific nature of the duties e.g. those stated in clause 93 could apply throughout.*

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? There are fundamental obligations on all members of organisations including volunteers. Such obligations will vary as discussed in 4 above. As an organisation mainly comprising volunteers, Legacy clubs and their members are very conscious of their basic obligations but it is fair to say that increasing responsibilities in various areas of compliance is becoming more burdensome and costly to administer.*

9. *Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied? Yes there are and many of our clubs’ members and staff deal with them regularly in relation to children and the aged. Generally it is the current State/Territory and Federal standards which must be applied here and it is difficult in such specific situations to see how there could be different standards applied for the same roles.*

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? Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to? Typically those applying to incorporated associations - Refer also to answers to Q1, 3 and 7.*

11. *What information should registered entities be required to disclose to ensure good governance procedures are in place? No more than currently required by legislation.*

12. *Should the remuneration (if any) of responsible individuals be required to be disclosed?* **We see no reason for this to be disclosed, certainly in absolute terms, for Legacy clubs where the majority of decisions are made at Board or Committee level the membership of which is virtually all volunteers. Some clubs will employ General Managers or CEO's who would likely be classified as responsible individuals. If deemed essential such disclosure of these salaries could be done within bands.**

13. *Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?* **Probably yes for NFP's and charitable organisations. The only reservation is that in some instances it may be in the interests of the organisation and individuals to declare perceived conflicts as well.**

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)?* **Yes.**

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'?* **No preference, although the latter, which typically applies now, would be sufficient for Legacy's clubs.**

16. *Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?* **No more than required by current legislation and a requirement for appropriate risk management practices for such organisations.**

17. *Should particular requirements (for example, an investment strategy) be mandated or broad requirements for NFPs to ensure they have adequate procedures in place?* **The latter which could be subject to disclosure to the ACNC upon request.**

18. *Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?* **One would expect that with good governance, organisations would recognise that insurance was a necessary part of risk management without the need for legislation.**

19. *Should responsible individuals generally be required to have indemnity insurance?* **Typically in Legacy, and in most responsible organisations, responsible individuals would have indemnity insurance.**

20. *What internal review procedures should be mandated?* **Those relating to finances which are generally required now.**

21. *What are the core minimum requirements that registered entities should be required to include in their governing rules?* **The existing governing rules contained in the various State/Territory legislation and model Rules/Constitutions appear to be an adequate level for most NFP's and charitable organisations.**

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?* **Only to the extent covered now as referred to in the answer to Q21.**

23. *Who should be able to enforce the rules?* **Likely those who control the registration.**
24. *Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?* **This should be addressed as an outcome of the above three questions.**
25. *Should model rules be used?* **Model rules are useful guides in the development of an organisation's own rules. They need to be framed in a way which is useful in determining mandated requirements and options for addressing these and other suggested requirements for good governance. There is a cost and it does take time to convert an organisation's rules if they have not previously been developed in accordance with a suitable model. This should be considered if and when determining the introduction of compliance with any particular model.**
26. *What governance rules should be mandated relating to an entity's relationship with its members?* **Again basically those already contained in existing good governance documents.**
27. *Do any of the requirements for relationships with members need to apply to non-membership based entities?* **Not applicable to Legacy and no comment.**
28. *Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?* **Yes and again basically those already contained in existing good governance documents.**
29. *Are there any types of NFPs where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFPs?* **A Reference Manual specific to this initiative, plus opportunity for familiarisation/training sessions held around the country and financial support in engaging specialist help would all be of assistance to many NFP's particularly those with limited resources.**
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?* **This is seen as a challenge. Whilst this may be an objective in introducing increased governance across the board, it will be a challenge. Some suggestions are covered in the answer to Q29.**
31. *What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?* **The principal based approach to governance as per the England and Wales Commission example with tiered expectations is worthy of consideration as a base from which to work.**
32. *Are there any particular governance requirements which would be useful for Indigenous NFP entities?* **Not applicable to Legacy and no comment.**
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?* **The main one to emphasise is the need for assistance to organisations in terms of provision of a Reference Manual, templates (in a format to reflect the tiered approach) to guide organisations in their documentation, familiarisation/training sessions and financial support for at least the implementation phase particularly those organisations with limited resources. The Arts Sector in Australia did go through a similar process in the late 1990's and early 2000's where much of this assistance was provided in one form or another.**

We thank you for the opportunity to provide feedback and comment on this important initiative and ask to be informed of future similar opportunities during the development and implementation phases.

This submission was emailed to [NFPreform@treasury.gov.au](mailto:NFPreform@treasury.gov.au) on Monday 23<sup>rd</sup> January 2012.

If you have any queries please do not hesitate to contact the undersigned.

Yours faithfully

Rachel Helyer  
Executive Officer  
23<sup>rd</sup> January 2012