



**Response to Review of not-for-profit governance
arrangements Consultation Paper and Australian Charities and
Not-for profits Commission Bill 2012 Exposure Draft**

January 2011

Introduction

Mission Australia welcomes the opportunity to provide comments on both the *Consultation Paper on Review of not-for-profit governance arrangements* as well as the *Exposure Draft of the Australian Charities and Not-for-profits Commission (ACNC) Bill 2012*.

Mission Australia broadly supports the principles-based approach to governance arrangements as proposed in the Consultation Paper. We believe such an approach which seeks to embody flexibility, proportionality and public confidence is appropriate given the diversity of the not-for-profit (NFP) sector. We support the ACNC adopting core governance principles similar to the principles based approach developed by the Charity Commission of England and Wales *Good Governance: a Code for the Voluntary and Community Sector*.

With regard to the draft legislation, we are generally supportive of the objectives, functions and regulatory powers proposed for the ACNC and welcome the transitional and staged implementation approach set out in the *Implementation design* Discussion Paper.

Our support for the above is given on the proviso that the proposed structures, governance rules and reporting requirements for the ACNC are focussed on strengthening the sector. As a company limited by guarantee with robust governance structures we would not wish to see additional regulatory burdens other than those currently operating under ASIC requirements.

Review of not-for-profit governance arrangements

Mission Australia welcomed the Government's acknowledgement, in the Final Report of the Scoping Study for a National Not-for-profit Regulator, of a preference for a principles based over a prescriptive approach to governance. We believe this reflects the diversity of the sector, and that most NFPs already have adequate governance procedures. We agree with the Government on the importance of the proposed role of the ACNC role in assisting smaller NFP entities move to best practice models of good governance which are appropriate and proportionate to their size.

Mission Australia is a not-for-profit public company limited by guarantee. The Mission Australia Board endorses the Corporate Governance Principles and Recommendations where appropriate, established by the Australian Stock Exchange (ASX) Corporate Governance Council. While Mission Australia has no obligation to adopt these principles, as a leading NFP we are committed to good governance principles and practice.

In 2011, Mission Australia's high standard of reporting and public accountability was recognised with a PwC Transparency Award, which recognises the quality and transparency of reporting in the not-for-profit sector.

Mission Australia's Board [Governance Charter](#) closely reflects the key governance guidance principles made available by the Charity Commission of England and Wales. The Charter sets out the role of the Board as providing "strategic guidance" for Mission Australia and "effective oversight of management". Under the Charter the Board is "the guardian of the founding purposes for which Mission Australia was established and is accountable to members for pursuit of that purpose and the performance of the Mission Australia Group". In this regard the emphasis is on a stewardship and oversight role for directors with "responsible individual's" including key management personnel in the organisation.

In response to the discussion points posed in the Government's consultation paper, the following section provides an overview of Mission Australia's governance principles under each point, and how these principles manifest in our organisation's day-to-day practice. We have commented on the specific questions the Consultation Paper poses but only where we have views.

6.1 Responsible Individual's Duties

The role of Mission Australia's Board is to provide strategic guidance for the organisation and its controlled entities (*Mission Australia Group*) and effective oversight of management. The Board is the guardian of the founding purpose for which Mission Australia was established and is accountable to members (see 6.5) for the pursuit of that purpose and the performance of the Mission Australian Group. Duties of individual directors include:

- *Decision making* – Directors should bring an independent judgment to bear on Board decisions and question, request information or raise any issue which is of concern to them so as to canvas fully all aspects of any issue confronting the Mission Australian Group. Directors cast their vote on any resolution according

to their own judgement. Outside the Boardroom, Directors support the letter and spirit of Board decisions.

- *Director Independence* – All Directors of Mission Australia must be independent.
- *Confidentiality* – Directors keep confidential Board discussions, deliberations and decisions which are not publicly known.
- *Code of conduct* – Directors will comply with the Mission Australia Code of Conduct and are expected to act ethically at all times whilst undertaking their duties.

Consultation questions

A good governance model requires that directors pursue the furtherance of an NFP entity's mission and purpose and determine how to implement that purpose. As custodians of a 'for purpose' entity, directors operating under a good governance model will exercise their duties in furtherance of the entity's purpose. We do not believe there should be any mandated requirements to consider any particular group of stakeholders as the duties of directors are owed to the company.

As a company limited by guarantee, Mission Australia's Directors and officers are subject to the Corporations Act provisions and general law governing the duties of directors and officers. These requirements provide sufficient clarity and an appropriate regulatory framework.

We consider the issue of qualifications for responsible individuals should be determined by individual organisations and not by the ACNC or through legislation. Further, we consider the standards of behaviour expected of directors do not vary whether the board is comprised of volunteer or remunerated directors.

6.2 Disclosure Requirements and Managing Conflicts of Interests

Mission Australia is not subject to the ASX Listing Rule disclosure requirements but adopts these principles to report to members. Mission Australia has policies, vetting and authorisation processes designed to ensure that announcements:

- are made in a timely manner and are factual;
- do not omit material information whether positive or negative; and
- are expressed in a clear and objective manner.

Mission Australia promotes and supports ethical and responsible decision making. A Code of Conduct applies to the Board, Management and staff of Mission Australia. It specifies practices necessary to maintain confidence in Mission Australia's integrity, including taking into account legal obligations and reasonable expectations of stakeholders.

The Code outlines expectations for personal and professional behaviour, including how to manage receipt of gifts and benefits and how to resolve a conflict of interest. Conflicts of interest and conduct are specifically mentioned in the Board Corporate Governance Charter. A separate, more detailed Conflict of Interest Policy is also enforced.

Day to Day Practice

An Ethics Committee has been established to deal with strategic and specific ethical issues. Mission Australia has established a Whistleblower Policy. An internal ombudsman-type function independent of operation activity exists to receive, inquire and investigate reports of unethical practices and wrongdoing. Support and protection for speaking up about wrongdoing is available to staff, volunteers, contractors and clients. An Integrity Hotline has been established to receive allegations of possible wrongdoing.

Consultation questions

Mission Australia supports the provision of audited financial statements and the current Corporations Act requirements on financial reporting.

In the interests of transparency Mission Australia would support the disclosure of responsible individual/key personnel remuneration in reporting to the ACNC. The Mission Australia Board has established a Remuneration Committee that sets remuneration strategies and approves remuneration levels for the Chief Executive and senior executives commensurate with the size of the organisation and the complexity of the tasks performed. We would be concerned, however, if disclosure were to have an unintended consequence of deterring donors through unhelpful remuneration comparisons and result in a “race to the bottom” rather than focus on organisational effectiveness.

Mission Australia does not consider it necessary for governance principles adopted by the ACNC to stipulate the types of conflict of interest that responsible individuals in NFPs should disclose and manage. The concept of conflict of interest is well understood under existing good governance principles. Stipulating a conflict of interest policy within the ACNC’s governance principles may be overly prescriptive and could result in a narrow interpretation of what conflict of interest could mean. Rather we consider the principle should be based on the Corporations Act understanding of conflict of interest, being a ‘material personal interest’.

6.3 Risk Management

The Board is responsible for oversight of material business risks and is assisted by the Board Audit and Risk Committee in this role.

The Committee has a formal Charter with responsibility to assist the Board to fulfil its corporate governance responsibilities particularly in relation to oversight of the:

- Maintenance of an effective framework of risk management, including compliance and internal controls;
- Reliability and integrity of the financial statements and external financial communication;
- Effectiveness of the external audit and internal audit functions;
- Adequacy of Mission Australia’s insurance coverage.

In addition to the work of the Board, management has established and implemented an enterprise-wide risk-management system that regularly assesses monitors and manages material operational, financial reporting and compliance risks.

Day to Day Management

Strategic Risk Registers for all Group entities are reviewed at least annually to address material business risks. Risk-treatment action plans are developed that align with executive annual strategic performance plans to ensure our activities are sustained and grow. Executive management reports to the Board and gives assurance there is a sound system of risk management and internal control and the system is operating effectively in all material respects in relation to financial reporting risks.

A risk-management policy and framework have been developed to embed risk management practices into existing management processes and procedures. Every person responsible for a financial project code is required to at least annually assess risk in the context of the project as part of an integrated, enterprise-wide risk management system. Annual attestations from those project managers are provided to support declarations by executive managers relating to the reasonableness of the internal control environment and risk-management processes. These executive declarations provide support for attestations by the Chief Executive Officer and the Chief Financial Officer to the Board prior to sign-off of the annual financial statements and report.

Consultation questions

Mission Australia notes the distinction made in the Consultation Paper between the accountability of directors and responsible individuals in for-profit entities to shareholders/members and the wider responsibility in NFP entities to donors, beneficiaries, volunteers, government and the public. However, we do not accept that accountability to these additional stakeholders warrants additional risk management requirements. Our risk management procedures, based on the ASX Corporate Governance Principles, are robust, effective and appropriate for a NFP of our size, and we do not believe any additional requirements would benefit the organisation or our members.

With regard to mandating minimum insurance requirements for NFPs, we agree this could be a worthwhile requirement; however we also suggest a careful cost benefit analysis should be undertaken to ensure insurance costs won't be prohibitive for smaller organisations. In the spirit of the Consultation Paper, we believe any insurance requirements should be proportional to the size, turnover and potential risks posed by an organisation.

6.4 Minimum Requirements for an Entity's Governing Rules

Mission Australia's governing rules are set out in the organisation's Constitution, the legal document incorporating the organisation. Mission Australia's legal capacity and powers exist solely for the purposes of furthering the organisation's Objects.

Other governing rules outlined in the Constitution include (amongst others):

- Membership;

- Liability and contributions of members;
- Distribution of property and winding up;
- Procedures for calling general meetings and proceedings;
- Powers and duties of Directors;
- Inspection of records.

Consultation questions

As a company limited by guarantee, Mission Australia believes that the rules framework provided under the Corporations Act is appropriate as the minimum requirements for an NFP entity's governing rules. We also consider that having robust governing rules should be required as part of the registration process with the ACNC, and these requirements could be complimented by guidance on good governance principles similar to those adopted by the Charity Commission of England and Wales.

6.5 Relationships with Members

As a company limited by guarantee, Mission Australia does not have shareholders but does have members. Our communication policy supports open, regular and timely information to members and stakeholders using electronic or other means.

Mission Australia has many stakeholders including our clients and their families, those we partner with in the provision of services, our donors and benefactors, staff and volunteers, the broader community, our suppliers and the government agencies who provide us with funds and regulate our operations. We adopt a consultative and transparent approach in dealing with all of our stakeholders.

Mission Australia's reports formally to members through the Annual Report and Annual General Meeting.

Consultation questions

The relationship between an NFP and its members is fundamental to an entity achieving its mission and objectives. It is in the best interests of an NFP to communicate openly with its members. We consider existing good governance practice makes it unnecessary for the ACNC to mandate governance rules for members and our preference would be for a guidance approach based on existing principles.

Conclusion

Mission Australia supports the ACNC principles based approach to governance for the NFP sector proportionate to size and risk as canvassed in the Consultation Paper. We believe best practice governance principles focussing on an entity's mission and purpose are sufficient to ensure accountability to the range of stakeholders NFP directors and responsible individuals need to consider. We welcome an approach that assists NFPs adopt good governance principles, and would support the ACNC making available guidance materials on governing principles and best practice.

Exposure Draft – Australian Charities and Not-For-Profits Commission (ACNC) Bill 2012

Mission Australia considers the Exposure Draft of the ACNC legislation to be a generally balanced approach to enhancing the independence and effectiveness of the sector, while also providing a framework to enable NFP's to meet obligations to donors, contracted partners, members and clients. We consider the proposed staged implementation of the ACNC to be appropriate and support the Government's commitment to appropriate transitional arrangements to allow NFPs sufficient time to make changes under the evolving regulatory framework.

The following section gives Mission Australia's views on the key elements of the legislation. Please note we have commented only on those issues where we have questions or suggestions.

'One-stop shop'

Mission Australia strongly supports the establishment of the ACNC as a 'one-stop' regulatory shop. In particular, we believe implementation of a "report-once, use-often" general reporting framework for charities will significantly reduce the complex and duplicative reporting requirements NFPs currently face.

While supporting the concept of a *Charity Passport* for the Government's purposes, we would envisage an ongoing requirement for program specific reporting to government agencies where services are funded by and provided under contract.

We also support the Commonwealth's intention to work with the states and territories on a national regulatory framework. We believe a progressive national approach to rationalise overlapping legislation and remove the duplicative reporting requirements for NFPs will in time strengthen the sector and remove inefficiencies.

Reporting and auditing

The Exposure Draft notes the *Final Report of the Scoping Study for a National NFP Regulator* found that NFP entities should provide information for reporting purposes, proportional to the size of the entity, risk factors and level of sector and government assistance. However, the Exposure draft states that reporting requirements categories – small, medium and large registered entities – will be based primarily on the annual revenue of the entity (size), disregarding the advice of the scoping study, to include risk factors and level of government assistance in the assessment. We believe these factors to be important in determining the level of reporting required and suggest this be reconsidered. Given, for example, the financial risks and complexities involved in the provision of social and affordable housing, we would support specific governance and reporting requirements for housing associations.

With regard to special purpose reporting, Mission Australia would ask the Government to clarify in what circumstances special purposes reports may be required from an NFP entity, as well as the likely circumstances in which the

Commissioner may require a registered entity to provide additional information in their information statement or financial report.¹

Conclusion

As outlined above, Mission Australia generally supports the objects, functions and regulatory powers proposed for the ACNC set out in the Exposure Draft. We are supportive of the staged implementation approach proposed in the legislation.

¹ Clause 1.110 – 1.115 in the Explanatory Materials to the Exposure Draft: Australian Charities and Not-For-Profits Commission Bill 2012