



31 January 2013

Manager
Philanthropy and Exemptions Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Please find attached a submission from Palmerston Association, a pre-eminent Western Australian drug and alcohol service and not for profit charity in response to the discussion paper on draft governance standards. The Board of governance of the organisation has carefully reviewed the paper and wishes to acknowledge the work that has been undertaken to develop the discussion paper.

We would welcome any feedback you may care to give.

Yours faithfully

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Chief Executive Officer
Palmerston Association Inc

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Submission on draft governance standards

Introduction

Palmerston Association is very pleased to provide feedback on this discussion paper and acknowledges the work of the Federal Government in the reform of the not for profit (NFP) sector. The Board and management of Palmerston Association support the introduction of a standards framework for the NFP sector in Australia to provide a sound and transparent basis for effective accountability. Therefore the Board resolved to make a brief submission on what we see are some of the issues of interest or concern.

The purpose and functions of Palmerston Association

Serving the community for over 30 years, Palmerston Association is one of the largest specialist non-government providers of alcohol and substance use education and counselling in Western Australia, operating from nine offices in Western Australia, including the South Metro Community Drug Service (SMCDS), Great Southern Community Drug Service Team (GSCDST), Palmerston Perth and Palmerston Farm (a therapeutic community south of Perth).

Core services include:

- early intervention supporting individuals, families and the community
- counselling and group work for people experiencing alcohol or other drug problems
- family support for those experiencing difficulties with a family member's drug use
- groups specifically designed for women, men, young people, parents or families
- education and training for other service providers, client groups, and the general community
- support and consultation to the local community and organisations such as schools, community groups, other service providers and private enterprise
- outreach counselling for youth
- an integrated service with the WA Health Department 'Next Step' program offering pharmacotherapy services
- Needle and Syringe exchange program

Our vision is to be recognised as the employer and partner of choice in the Alcohol and Other Drugs sector, offering best practice, flexible services throughout Western Australia, and as a leading advocate for harm minimisation policy reform.

Our purpose is to assist and support individuals, families and communities across Western Australia, by reducing the harm of alcohol and other drug use through counselling, therapies and education.

The Board of Palmerston Association discussed the draft standards in detail at its meeting on 29 January 2013 and resolved to offer the following comments.

Overall, the proposed standards are acceptable and in line with what Palmerston Board expects of itself and the organisation.

There are several important aspects of the standards that a prudent Board would be wise to note and these relate to responsible entities and disqualifications for Board members.

The standards are principle based, specifying an outcome not the means to achieve that outcome. They are a minimum set rather than best practice. The Board felt that this was a positive move.

The Board also noted that the individual charity will be responsible for its own compliance – self assessment, not externally monitored. This is also positive.

Draft Standard 3 (compliance with Australian Laws) requires that a charity must not engage in conduct that may be an indictable offence (imprisonment for longer than 12 months). A charity need not be charged with an indictable offence to be in breach of this standard. If the ACNC reasonably believes a charity has engaged in fraud, the charity would be in breach of this standard and the ACNC could take action.

The Board felt that this gives the ACNC significant power over a charity, however the draft paper gives no guidance on the strength of the evidence the ACNC needs in order to make this assessment. The Board therefore felt this could benefit from further revision, and further consideration.

Standards 5 and 6 relate to the responsible entities (ie those running the charity – Board member and executive). The obligation to comply with the standards referring to 'responsible entities' is placed on the charity.

The Board was of the view that this could put the organisation in a difficult position vis à vis the individual members of the Board or its management.

A charity needs to take reasonable steps to ensure the responsible entities have not been disqualified from managing a corporation under the meaning of the Corporations Act or disqualified by the commissioner. The paper suggests that reasonable steps could include searching the ASIC disqualified persons register and requiring a responsible entity to sign a declaration that they do not have relevant criminal convictions (offence involving dishonesty, or an offence under the Corporations Act or non compliance with an insolvency agreement or convicted for an offence against the law of a foreign country punishable by imprisonment greater than 12 months).

The Board strongly suggests that for small, resource poor charities this could become a bewildering, onerous requirement and they may need assistance in this regard. The ACNC could provide such assistance.

It might be helpful if the ACNC could develop a web link to the ASIC register of disqualified persons, so that charities can check via the ACNC and not have to find their way around the ASIC website.

The Board would like to point out that there appeared to be no clear definitions of terms such as “responsible entities” other than “those who run or control a charity”. A clear definition would be helpful.

Standard 6 imposes on boards the same fiduciary responsibilities that are bestowed on directors and officers under the Corporations Act, including not allowing the charity to operate while insolvent.

There are protections for board members in terms very similar to the business judgement rule of the Corporations Act and there is a protection against operating while insolvent if there were grounds to expect that the entity was solvent at the time.

The Board noted that the provisions for directors’ duties and the protections were virtually a mirror of the Corporations Act. Whilst it had no issue with this and saw it as good governance, it did express the concern that this will be overwhelming for many boards. NFPs are not funded to employ legally trained personnel or company secretaries. Thus the ACNC in deliberating on the extent of the standards need to be cognisant of the resource implications of these proposals.

In relation to the provisions for insolvency, it is essential that funders ensure that they pay moneys in advance to avoid small charities with little reserves being placed in technical insolvency.

Finally, the Board wished to make the point that most of these reforms result in an increase in so called ‘red tape’, not a decrease particularly when most of us operate in two jurisdictional systems (state and federal). It is seen as critical that discussions continue to ensure uniform regulation and that we have only one regulatory regime as soon as possible.