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Development of Governance Standards- Consultation Paper 2012

Dear Manager,

Thank you for the opportunity to comment on the above mentioned paper.

1. I note the very short time frame you have permitted for this consultation paper which effectively means that the consultation will be limited to those organisations that have the resources to attend to this and not many of the volunteer organisations will have the opportunity to provide their views.
2. There seems to be some ambiguity in the dealing with not for profits and charities. Fundamentally charities are only a subset of not for profits they are not in any real understanding one and the same. The whole concept seems to be driven by a revenue considerations and not principal.
3. The proposal maintains the distinction between religious bodies i.e. those that are described as “Basic religious charities” and those that are formed in other ways often I would suggest because they did not have the political power or interest to seek a separate Act of a Parliament. It is not clear whether this benefit breaches the Constitution. Section 116 says:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

It can be argued that this imposes a law on some and not other religious institutions certain freedoms that others are denied. I believe this to be a first time that religion has suffered this form of discrimination in Australia. I believe you have positive duty to explain this to all.

Standard 1

3.1.1 Again illustrates the confusion of not for profits and charities. This is something that should be addressed.
The concept of having an object and then a Standard is misleading. It would be clearer to have just a standard.

Provided you remove the object and just have the Standard it would seem to satisfactory.

Standard 2

Again having the object is unnecessary it should be the standard. If you cannot draft a standard without an object it merely adds to ambiguity.

Your further comments about Corporations and Incorporated Associations reveal that there will be 2 sets of standards. .Incorporated Associations should not be required to comply with both. Their compliance with State and Territory law should be absolutely sufficient as well as the form of that reporting It is your duty to get the States and Territories to agree rather than impose any dual obligation . One of The government’s publicly stated purposes is to provide clarity simplicity and reduce red tape.

I also note that again there has been no reference to those entities that are established by letters patent.

Standard 3

The object is again unnecessary as everything should be in the Standard.

The Standard should clearly set out what happens to the assets of the Charity in the case of a conviction.

Standard 4

The object could easily be incorporated in the Standard rather than having both.

Standard 5

This reveals a problem for many readers for a person to be defined as a responsible entity. We have a clear definition in our Corporations which refers to corporations and you have now created an artificial construct of calling “persons” entities which seem to be contrary to the government’s policy of clarity and simplicity.

The concept of putting in examples of reasonable steps does not add to clarity. The question immediately arises what has been left out. It is not clear.

A further thought do the responsible entities have to reside in Australia, be Australian citizens or permanent residents. Do a majority of responsible entities have to reside in Australia? How would you define the test you wish to impose on foreign persons?

I note on page 21 in the second paragraph you have issue of persons being responsible entities thereby not adhering to your definition. It seems unnecessarily confusing.

The concept of a register is reasonable but there is no discussion of review or an exemption.

One issue that occurs to me is a charity that provides aid to ex-prisoners would be totally forbidden to have an ex-prisoner as a member of its management. I think some of those persons may have reformed and want to provide informed assistance to a charity.

Standard 6

This standard is very complex standard and is not very clear. It should be redrafted to make it clear and simple. This Standard should be merely an interim standard for a period of time say 2 years until a common standard can be clearly developed for all charities. This will require work with the States & Territories which should be done in this timeframe. Yet there is no evidence that you are working to attend to this issue. You should make a time limit so it can be developed coherently for everyone to have a one stop point of reference not required to jump all over the place taking into account the various of the States & territories legislation and reporting requirements.

45.110 Protection 2

(d) The use of the word “rationally” is dangerous and merely adds ambiguity. There is no discussion of how this is determined. It is quite easy to envisage what is rational to one is irrational to another.

3.6.3

This paragraph is not clear Charities have I would submit 2 forms of volunteers yet you have not provided any distinction. I think you are duty bound to explain this apparent inconsistency.

Timing issues

The transitional arrangements are inadequate and confusing at best.

I have seen a press release from the CSA which reads as follows

While CSA thinks the proposed not-for-profit (NFP) governance standards are consistent with those currently in place for NFP entities and commercial entities in the

private sector, we are concerned that they will be very confusing to understand for those without a legal or governance background.

Our Members find the draft standards confusing, and we are in no doubt that many directors or members of a management committee of a charity will find them incomprehensible. This is particularly true of those standards relating to their duties. For example, the terminology used in the legislation — responsible entity, which refers to a person — is made even more incomprehensible by using the term ‘registered entity’ to refer to the charity itself. Put those two together in one sentence, as they are throughout the standards, and it becomes a puzzle trying to work out who or what is responsible for anything.

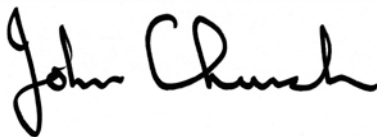
It is important to remember that directors of NFPs have the same fiduciary duties as their counterparts in private and public listed companies, so they need to understand the standards and how they apply. We recognise that some directors in the NFP sector will have the relevant experience, but there will be many who do not. Without the use of plain English, those who most need to understand the particular governance standards about directors’ duties could recoil from reading them due to the complexity of the language. Worse, they may need expensive legal advice to make sense of them.

The Press Release highlights the many inadequacies of the proposed governance standards.

It is quite clear these standards have been developed without any real analysis of the charity classification of small medium or large as well as giving certain charities that are religious a privilege denied to others.

I trust that you will take into account the Government’s policy objective of one stop, simplicity and clarity and redraft the whole document into a coherent simple and complete set of governance standards and address the discriminatory nature of your proposed standards.

Yours Faithfully,

A handwritten signature in black ink that reads "John Church". The signature is written in a cursive, slightly slanted style.

John Church,
14th Febraury2013