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Ref: DAH

15 February 2013

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

By email: NFPReform@treasury.gov.au

Dear Sir/Madam

ACNC – DEVELOPMENT OF GOVERNANCE STANDARDS

We appreciate the opportunity to provide comment on the draft governance standards for entities registered under the Australian Charities and Not-for-profit Commission Act 2012 (ACNC Act).

Pitcher Partners is an association of independent firms operating from all major cities in Australia. Our clients come from a wide range of industries and include a significant number of not-for-profit (NFP) entities across various sectors including charities, community groups, industry associations and other service providers. Consequently we provide audit, accounting and advisory services to a broad range of different size NFP entities with differing governance structures and interested parties.

Our comments are detailed below:

1. Terms used in this paper

“Responsible entity” is a term that is used in the Corporations Act 2001 in connection with registered schemes. While we recognise that this term is also separately defined in section 205-30 of the ACNC Act, we consider that a term such as “responsible officer” would be more meaningful. In particular, in respect of the governance standards, we consider that it would be preferable to relate responsibilities and expectation to individuals rather than by reference to a conceptual term.

2. Commencement date for governance standards

As explained under “Terms used in this paper”, governance means the set of practices and procedures in place to ensure that an entity operates to achieve its objectives in an effective and transparent manner. Consequently, the expectations regarding commencement of the governance standards from 1 July 2013 need to acknowledge that practices and procedures may take some time to be agreed and established within any organisation.

We concur with the view that the governance standards should provide entities with sufficient flexibility to determine how they go about managing the charity and how to advance the charity’s purpose and achieve its objectives. Given that these governance standards will be applied by many different types of organisations, with differing governance structures existing at commencement, it is appropriate that ‘best practice’ is considered in the context of the individual organisation. Therefore we concur with the view that a “principles-based” approach to governance is most appropriate.

A registered charity will be responsible for assessing its own compliance with the governance standards and the Commissioner will assume compliance, unless there is evidence to the contrary (section 2.3.5). It is unclear as to what might comprise “evidence to the contrary”.

3. Six possible governance standards

We concur with the topics for the proposed governance standards, and agree with the view that most registered charities will already be meeting these standards and have practices and procedures in place to cover them. However, we consider that it is unlikely that such practices and procedures will be formalised or documented, such that there is a clear understanding of the responsibilities under each classification.

For example under “suitability of responsible entities”, while it is highly probable that the individual responsible for running a charity (ie. the responsible entity) is a suitable person, it is unlikely that the charity will have documented criteria for the characteristics that identify ‘suitability’.

In respect of the drafting, we consider that “Object” should be “Objective” in respect of each proposed standard.

Standard 1: Purpose and NFP nature of a registered entity

- We concur with the principles established in this standard and consider that the wording is appropriately drafted.

Standard 2: Accountability to members

- We recognise that this standard will only apply to registered charities that have members and that accountability is required only to its members. In this context we concur with the principles established in this standard and consider that the wording is appropriately drafted.
- However, we also recognise that charities often have wider public interest and may receive donations and funds from a broader group rather than only members. We consider that the appropriate level of accountability to supporters, in addition to members, requires further attention.

Standard 3: Compliance with Australian Laws

- We concur with the principles established in this standard and consider that the wording is appropriately drafted.

Standard 4: Responsible management of financial affairs

- We consider that the responsibilities under this proposed standard are somewhat ambiguous. Terms such as “*responsible* management”, “in a way that *effectively* furthers” and “*responsible* manner” are subjective terms and expectations are likely to vary with the experience and abilities of persons involved in governance.
- Further, the example provided concerning insurance for volunteers involved in conservation work, implies the need for a formal risk assessment to be carried out and action taken to mitigate a possible financial risk.
- We consider that expectations for the management of financial affairs should be set in the context of the size and nature of the organisation.
- We consider that the objective should be “...to ensure that a registered entity manages its resources in a way that furthers its purposes and protects its resources from misuse.”
- We consider that the standard should be “A registered entity must take reasonable steps to manage its financial affairs.”

Standard 5: Suitability of responsible entities

- We consider that reference to “each of its responsible entities” is difficult to comprehend immediately. Reference to “responsible officers” would convey the intended meaning without confusion.
- The suitability of a person in this office is by reference to identifying the nature of persons who may NOT be appointed, rather than articulating characteristics that define “suitability”
- We consider that the standard should directly refer to the restriction that applies to appointment as a responsible entity [officer]. For example: “A registered entity must not appoint as a responsible entity [officer] a person who has been disqualified from managing a corporation, or who has been disqualified by the Commissioner.”

Standard 6: Duties of responsible entities

- Although we concur with the principles articulated in this standard, the drafting is lengthy and relatively difficult to navigate. We consider that the drafting of this standard and the protections need further work to ensure that the provisions are readily understandable.
- This is particularly important given that many responsible entities (officers) are likely to be volunteers who may not readily understand information presented in a legalistic format.
- We consider that the detailed content of the objective, standard and protections would be easier to understand if they were presented in a separate code of conduct, provided with the governance guidelines, written in plain English. The standard could then simply refer to adherence to the code of conduct.
- For example the objective might be: “The objective of this governance standard is to identify the minimum standard of behaviour expected from responsible entities (officers) of a registered entity.”
- For example the standard might be: “A registered entity must take reasonable steps to ensure that its responsible entities (officers) conduct themselves in a manner consistent with the code of conduct applicable to registered charities.”

4. Volunteer responsible entities

We concur with the view that responsible entities (officers) should exercise the same degree of care and diligence whether or not they are volunteers. Consequently it is important that the expectations of responsible entities (officers) should be clearly communicated in a plain English format.

Please refer to our comments under standard 6 above.

5. Transition and timing

Registered entities will need to document their practices and procedures to identify how compliance with the governance standards is achieved. Further, some practices and procedures may need to be revised to demonstrate that the registered entity has taken “reasonable steps”. We consider that as a minimum, an 18 months transition period will be needed.

Further, these requirements are likely to be particularly onerous for small and medium registered entities and will present considerable challenge to the ‘smaller-large’ registered entities. We consider that these governance standards should be mandatory for large registered entities only.

Please do not hesitate to contact me regarding any matters arising from this submission that you may wish to discuss further.

Yours faithfully
PITCHER PARTNERS



S D AZOOR HUGHES
Partner