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**Governance Arrangements for Not-for-Profit Entities.**

Dear Sirs,

Thank you for this very limited opportunity to make a submission I do observe however that 19 working days for in excess of 600,000 organisations to make submissions. It cannot on any basis provide a proper opportunity for those organisations to make submissions.

What attempts were made to make these organisations aware of this limited opportunity?

I also note that your promised paper on Corporations limited by guarantee has not eventuated in your time frame I believe that this paper is relevant to any discussion on Governance.

The Government published regulations on the 9<sup>th</sup> December 2011 which makes provisions for Public Ancillary Funds yet nowhere have you discussed these funds or given any indication that the ACNC will be the responsible body . This seems to be an anomaly could you explain the reasoning behind this lack of discussion?

There has been no discussion on the possible state revenue effects( stamp duties) on any of the changes that the governance rules may require.

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There is no discussion of any procedure to have a formula for “cy-pres” schemes that could be dealt with by ACNC.

## **Context**

### **Items 22 & 23**

I believe you are being overly ambitious in these statements especially saying some duplication. There will not be any consistency between the States and the ACNC; therefore there will be large amounts of duplication and minor differences which merely add to red tape.

If you are unable to get the Agreement of the States and Territories within say 5 years .There should be a clear strategy to remove the additional governance requirements that are imposed as you will be merely adding to “red tape” which is not your proposed purpose.

## **Chapter 3**

### **Item 42**

One can appreciate the proposition of a principles based approach however it will leave a huge area to individual organisations to interpret.

I have far greater concern if you intend to cover accounting issues with this approach because this concept has failed with the AASB, one only has to look at some of the elements of the GFC to see where it failed, the continuing changing of definitions of profit and the changing terminology they use e.g. Profit & Loss, Comprehensive Income, Balance Sheet, Statement of Affairs and redefining ordinary meanings of words.

I find it disturbing that you are not controlling the whole process and are abdicating part of it the AASB (see the AASB press release 20/12/2011).The AASB is also talking about service reporting requirements though it has not promised any date for this, where will this fit in with your governance requirements? I note that the AASB does not intend to comply with your deadline of the 6<sup>th</sup> January. This effectively means that there will be no proper chance to discuss the accounting aspects of governance or even service reporting.

I would submit to you any standards in accounting are required to be presented in a form donors, beneficiaries, volunteers and the public at large can understand and not left to possible ambiguous interpretations.

## Chapter 4

### Paras 56 and 57

There seems to be little accurate evidence of the amount of fraud in the Charity sector in Australia.

UK research does suggest that fraud in this sector is approximately half that of UK Businesses as a whole. It interesting to note that the KPMG 2010 biennial Fraud and Misconduct Survey Australia and New Zealand suggests that public sector fraud is the greatest source of fraud.

## Chapter 5

### Para 5.4

You seem to have omitted Public Ancillary Funds. Is there any reason for this?

### Para 5.5

74. One would have to be very careful in designing governance rules for this group as it is a voluntary association of individuals who do not want to be given *red tape* to exist. It is probably best that the current provisions apply. Also you will have to address the right of freedom of association.

### Para 5.7

77. I am somewhat puzzled that little or no discussion has been given to co-operatives figures suggest that the top 100 have a turnover of in excess of \$14.7 billion

### Para 5.8

78. I think the statements about churches and religious entities require further analysis and understanding.

## 6.2

### Paras 104- 120

Your comments and discussion are at a very high level and do not recognise small unincorporated associations. Is there any reason behind this approach as it does not have been appeared to be addressed?

### Para 106

Is there any evidence to support the claim made in your first sentence?

### Para 107.

Who are you consulting? How representative of the 600000 will the consultation be?

### Para 109

These standards only apply to those parties who are subject to the AAASB.

### Para 110.

Accounting standards are only useful if they can be understood by all parties in receipt of the accounts.

### Para 111.

You have not provided any discussion on the tiered approach. How many tiers?

Should there be tiers for each of the groups you have identified in 5 and

then series of tiers within that group? The answer is YES.

I note that the standards referred to comprise some 198 pages of information yet nowhere have you discussed the tiers and the applicability to all the parties you have identified. The ACNC should be required to take a pro-active approach in dealing with the AASB to ensure that the end result is clear and understandable to all and not subject to their reviews in the future but reviews .by the ACNC otherwise you will create another level of supervision.

Para 117.

It is interesting to note that Choice has now compromised its independence by entering into commercial arrangements. It now has lost some credibility.

Para 118

I note you have not provided any guidance or suggestions on this view. Could I ask why? This probably is one the most contentious issues yet you have not offered any discussion.

Para 119

From you comments the ACFID's Code of Conduct seems to be an appropriate procedure.

Though how this would work with small unincorporated associations needs further thought and consideration.

Unfortunately it has been suggested that full disclosure of all levels of salary has meant increases of salaries for many persons the history of the disclosure provisions in the Corporations Act suggest that this is a valid argument .The provisions of the Corporations Act are deficient in that the highest paid person "income" does not always have to be disclosed. The other question is would it include award staff or not which maybe appropriate for small entities?

Para 120.

The question of payments to an international entity should be disclosed if it is above a certain %age of the organisations income or funds.

Para 126.

For certain entities in many cases an accountant or lawyer maybe a voluntary director but the entity may employ that persons firm to be carry out work either at concessional rates pro bono or full payment. The disclosure should be made to the Board and details of fees paid should be included in the accounts.

However I am not convinced that acting on the advice independently received in writing should preclude that person from voting.

All Board Members should be required to furnish to the entity a list of their interests similar to a corporation at least annually.

However I note that this does not deal with small unincorporated organisations. In many case the members would be aware of this

potential conflict. It again highlights the issues of a very general principled approach.

Para. 142

The current provisions are inappropriate. In all cases I think there should be requirement for a small company to notify all its members of the annual reports and give them an opportunity to receive a copy.

Para 143 & 144

The reports should be provided to all members. I realise this maybe contrary to normal corporate practice but as they represent a section of the community that depend on public trust and the providing of this information is evidence of disclosure. Perhaps the disclosure of small entities caught by this should be on the ACNC's website.

Para 145.

Audit statements should be measured against the ACNC standards and not those of an outside body.

Para 151

If all these organisations are required to register through the ACNC they should be required to lodge their Annual Reports with the ACNC.

**Consultation Questions.**

**1** The legislation should not impose additional responsibilities on responsible individuals beyond those contained in the constituent document of the entity.

**2.** A properly drafted constituent document would deal with these considerations.

**3.** It should be the minimum for Corporations and those set out in para 93.

**4.** There should be a differentiation of type set out in Para 95 for volunteers that work for the entity though this does not apply to volunteers that are responsible persons.

**5.** This argument is a rather difficult one to sustain society does not impose standards on politicians (our lawmakers) and many other occupations surely the minimum standard should be that of a company director. It is really a question of the responsible persons doing their duty properly. Perhaps consideration should be given to adapting 264-45 of the CATSI Act.

**6.** If you elect to take this approach the minimum standard should that of those persons entitled to have Statutory Declarations made before them. You should also have a tiered approach to this e.g. very small organisations (churches, tennis clubs touch football teams) could have difficulty in finding these persons which comply precisely.

**7** Yes, a standardised approach across all NFP's would require unnecessary red tape and implies that persons are not competent or honest.

**8** The question concerning volunteers really depends on their roles as volunteers if they are mere volunteers carrying out non responsible roles it would seem unnecessary for them to be held to a higher standard.

**9.** The standard of care does not differ because of size.

**10.** Core duties would be best based on existing standards rather than rewriting them and creating legal uncertainty.

**11** You have not identified the party to whom the information should be disclosed.

**12** See comments on para 119.

**13.** See comments on para 126.

**14.** Ideally one group should not receive a separate set of rules for conflict. The rules should be standardised.

**15** It should be based on the Corporations Act.

**16** Not all NFP's necessarily control funds from the public many only have members' funds especially in the small unincorporated associations.

**17.** If funds go beyond bank deposits there should be a requirement for an investment strategy. Strategy may have several meanings depending on the nature of the entity. Your comment really needs some clear explanation

**18 & 19** I think it would be good policy to have similar provisions to the requirements in the NSW Strata Titles Act.

**20** Your discussion does not really cover all the types of entities. I have problems with the requirement of depending on auditing standards as they allow too many decisions based on judgment which effectively leads to persons being unable to precisely compare reports. Surely the standard should be the ACNC's clear standards that are expressed in terms suitable for all the parties entitled to receive the accounts. The danger is every one ends up with a multitude of references to ascertain the correctness and accuracy of the accounts. This would be clearly contrary to your intent.

**21.** The current ATO rules and practices seem to be adequate for a bare minimum. The problem seems to be a different set maybe required for DGR, TEC's, Incorporated associations, unincorporated associations and co-operatives.

**22.** The role of ACNC should be minimalist in mandating requirements as it would become a strange and extremely lengthy document if it had to cover "religious beliefs", providing child care, tennis clubs and co-operatives.

**23** The basic role should be to assist and provide guidance to entities not one of being the enforcer.

**24.** It is not clear on what is meant by enforcement. If the ACNC is to be the registration body it should also have the right to approve alteration of governing rules which materially effect the status of the entity as a NFP and also it rights to any tax/Revenue Concessions. However the ACNC should have positive statutory obligation to assist entities and not be negative/policing body.

**25.** Model rules cannot cover all the categories you are addressing unless it is a very compendious document covering all NFPs and each of their variations.



**26.** This is a confusing issue as nowhere have you discussed all the types of entities to which you are referring. The entities range from Co-operatives to unincorporated associations.

**27.** None save for the right to obtain the information that you are proposing to keep.

**28** For entities of certain size it is appropriate but as you have failed to identify unincorporated associations in any detail it is hard to make a judgment.

**29.** I think there should be a distinction between those that are trading co-operatives, those that receive Government funds, those that raise moneys from the public and those that merely raise moneys from its members. The key issue is that the ACNC is placed under a positive obligation to assist each and every type of entity.

**30.** There is no hope on any basis that a one stop regulator could reduce Red Tape unless it obtains the consent and powers from all States and Territories to make a standard. If you believe to the contrary please produce clear evidence.

**31.** In the previous question you state you wish to reduce red tape it is hard if not impossible to see how any principle based legislation or regulations can cover all the entities you refer to except in very general terms which only leads to subjective interpretation. The proposed legislation could change over 400 years of case law therefore there should be a clear process for appeal against the ACNC to a Court not an administrative tribunal. The ACNC should be compelled to pay the all parties legal costs for such appeals for a period of at least 5 years until the law is established.

**32.** No comment but it should provide a consistent standard for all.

**33.** You not addressed the issue that the States and Territories fail to hand over their powers that is necessary to provide for a one stop shop .or how you propose to deal with the existing case law in each State & Territory . If you are unable to do this you will be merely creating a new level of red tape.

Please note I am one of those volunteers that you refer to in your paper and therefore do not have the time and resources available to work through these issues as much as I would like.

Yours Faithfully

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

John Church