



Mr Chris Leggett  
The Manager  
Philanthropy and Exemptions Unit  
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The Treasury  
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*By email:* [NFPreform@treasury.gov.au](mailto:NFPreform@treasury.gov.au)

Dear Mr Leggett

### **Review of Not-For-Profit Governance Arrangements - Consultation**

Please accept this letter as the submission by Hepatitis Australia to the Treasury Consultation process on governance arrangements for the not-for-profit sector.

#### **About Hepatitis Australia**

Hepatitis Australia was founded in 1997 as the national peak body for hepatitis community organisations within Australia. We work in partnership with the Australian government, researchers, the healthcare workforce, professional organisations and other community organisations. Through national leadership, advocacy and strong partnerships, our mission is to ensure effective action on hepatitis B and C to meet the needs of all Australians. Our members are the eight state and territory peak hepatitis organisations.

We are an Incorporated Association currently investigating a move to becoming a Company Limited by Guarantee. As a registered health promotion charity, we have been endorsed by the Australian Taxation Office to access the following tax concessions: Income Tax exemption; GST concessions; FBT exemption and Deductible Gift Recipient.

For further information about Hepatitis Australia, please see [www.hepatitisaustralia.com](http://www.hepatitisaustralia.com)

#### **Key points in response to the consultation questions**

Hepatitis Australia is concerned with the general suggestion that there is a need to introduce additional layers of complex new regulation purely for not-for-profit entities; we do not support this approach. Instead, we advocate for a strong alignment between the Charities and Not-for-profit regulation and the existing requirements for a Company Limited by Guarantee under the Corporations Act 2001. If this alignment was applied, it would quite simply

provide a comprehensive response to many of the consultation questions posed.

A highly prescriptive and complex regulatory approach which applies varied standards for different categories of boards and organisational circumstances must, in our view, be avoided. Additionally, as the end goal of the reform is to establish better governance practice, we suggest that a greater focus should immediately be placed on how the Australian Charities Not-for-profits Commission (ACNC) can support registered organisations to apply the principles of good governance.

While occasional failures of good governance have been evident in the not-for-profit sector, this has also been the case in the commercial sector. We believe that good governance is best achieved through building the capacity of the not-for-profit sector rather than a heavy reliance on stringent regulations and external compliance monitoring and enforcement. In addition, the regulatory reforms must not increase the administrative and reporting requirements on not-for-profits; these are already a considerable burden, particularly for those not-for-profits funded through federal government grants.

The current focus of the ACNC appears to be predominantly an 'enforcement agency' mandating governance practice (see questions 11, 12, 16, 17, 18, 19 for example). In our view, the role of the agency should be largely reorientated towards an 'assistance agency' which would support good governance within not-for-profit entities. Overall, a much greater emphasis needs to be placed on the provision of practical support and assistance to individual organisations to help them to apply the principles of good governance. Any other approach for a sector which is largely both time-poor and resource-poor would be counterproductive.

To illustrate these points, Hepatitis Australia can see no reason for taking a prescriptive approach mandating the qualifications, skills or experience of board members (question 5). Assessment of qualifications, skills and experience is subjective and the needs will vary from organisation to organisation. Ensuring inexpensive training opportunities are available for board members to enhance their ability to fulfil their obligations would be a much more appropriate and productive approach. Another example can be provided related to registering conflicts of interest (see questions 13 -15). If organisations seeking to register with the ACNC already have a 'conflicts of interest' policy in place, this can be referenced as part of registration process. If an appropriate policy is not already in place, the organisation should be supported by the ACNC to develop one as part of the transition process.

Any suggestion that not-for-profit Boards should be accountable under the regulation to donors, beneficiaries or the general public is also of great concern to Hepatitis Australia (question 2). Hepatitis Australia believes that the Boards of not-for-profit organisations must be able to act in the best interests of the entity itself. The mission and purpose of the organisation is of course a central consideration when strategic decisions are being made by the Board. However, any suggestion that the Board might have a higher level of duty to donors, beneficiaries, funders, or the public in general is fraught with difficulties and would inevitably result in constant conflicts of interest which could cripple

effective decision-making. Hepatitis Australia would actively oppose the introduction of any regulation making the Board formally accountable to donors, funders, beneficiaries or the general public.

Not-for-profit organisations usually rely upon the goodwill of volunteers to serve as members of the board and many of these organisations exist (and are funded through public monies) to implement effectively the work that governments find inappropriate for government agencies to undertake. This role in the community is necessary and is accepted by those working in those not-for-profit organisations, including those volunteers serving on boards.

When considering the impact of regulatory changes, Hepatitis Australia wishes to draw to your attention the impact on volunteer board members. The not-for-profit sector has a high percentage of volunteer, unpaid board positions. Additional regulatory burdens and personal liabilities placed on volunteer board members would most likely have a negative impact on the ability to recruit and retain suitable board members. This impact must be considered when drafting the regulations as good governance would not be supported by not-for-profit organisations having unfilled board positions.

**Additional comment**

Notwithstanding the extension to the consultation period, Hepatitis Australia finds it both surprising and disappointing that such an important paper has been afforded such a short consultation period. The inadequate timeframe for responses, incorporating the Christmas period, has compromised our ability to provide a more comprehensive response to this important consultation paper.

We trust our comments are of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Helen Tyrrell', written in a cursive style.

Helen Tyrrell  
CEO, Hepatitis Australia  
27 January 2012