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Manager,
Philanthropy and Exemptions Unit,
Personal and Retirement Income Division,
The Treasury,
Langton Crescent,
PARKES ACT 2600

By Email: NFPreform@treasury.gov.au

Dear Sir

RE: Response to Consultation Paper- Review of not-For-profit Governance Arrangements and Exposure Draft-Australian Charities and Not-For-Profit Commission Bill 2012

Thank you for the opportunity to comment on the above Consultation Paper and Exposure Draft. This is a single submission to both of the above documents.

I have read and add my support to the submission by Philanthropy Australia .

My interest in making this submission emerges from my being the trustee of a Charitable Trust for 27 years and a Committee member and Public Officer of a small Charity for 4 years.

The Charitable Trust was established with the approval of the ATO in 1984 and distributes monies annually in the form of grants to various charities. It distributes from income from its investments. The Charity was established in 2006 as an incorporated association under the Victorian Associations Incorporation Act 1981. The Charity provides community welfare and health services to the public. It receives funds to operate from revenue raised by its volunteers at an Opportunity Shop , some grants from various Charitable Trusts and Fed Govt and Local Govt monies.

The issue of governance has always been taken seriously by both the Charitable Trust and by the Charity.

As to the Charitable Trust the onerous obligations imposed upon the trustees by the Deed of Settlement and the Trustee Act of Victoria have meant that great care is taken in the management of the Trust Funds and in the decisions of distribution of income. The trustees have a spread of experience covering community needs combined with financial and legal skills. It would be my submission the any governance principles contemplated in the legislation should be pitched at the high level only so as not to require detailed disclosure and reporting by the Trustees. I would also make the point that trustees must act in accordance with the duties created by the terms of the Deed and generally in accordance with trust law. Trustees must be free to exercise their duties without any additional constraints. Any other obligation(s) that would seek or have the effect to fetter or hinder trustees in the performance of their duties would be detrimental to the good governance and may have the unintended effect of reducing the pool of persons willing to undertake this role.

The Trustees undertake their roles with a great sense of responsibility. They are aware of the importance of the carrying out of their role to the public, the Federal Govt (providing tax concessions) and generally under trust law and to the various relevant statutory entities. I would emphasise that none of the trustees would wish to have to make personal disclosure beyond that which at present exists. In fact, I would say that the founder of the Charitable Trust (now deceased) who was a wealthy individual and successful in business always sought to maintain a low profile in relation to his involvement in the Trust . This is a feature that is uniquely Australian and needs to be respected by legislators. I fear the unintended consequences of pushing for disclosure by trustees will result in a reluctance by wealthy Australians to becoming future benefactors to the community through establishing charitable trusts or Public Ancillary Funds. As these trusts operate in perpetuity the benefit to future generations of trusts established today would be greatly retarded.

I would also seek to comment on the matter of governance at the Charity level. The Charity I am involved with has an annual income of approximately $250,000. It has succeeded in obtaining as committee members a number of persons representing various interests in that part of the community it seeks to serve. A substantial number hold important employment positions and give of their remaining time voluntarily to support the running of the charity so that it can have the maximum good impact upon those needy persons it seeks to assist. The obligations under the Associations Incorporations Act mean officers are appointed and decisions are made in accordance with the procedures set out in the constitution. An annual audit is undertaken and submitted to the Department of Consumer Affairs. An annual general meeting is held and an annual report is produced and circulated. In this Charity there are no employees and all the administration and community work is undertaken by volunteers. I would therefore submit that governance principles be set at the higher level so that another layer of disclosure and reporting be avoided. In short I would stress that additional governance requirements of disclosure and reporting should not become so onerous as to become a deterrent to volunteers who would be involved at the officer level of a charity.

To put matters into a proper context I am unaware of any reported perceived or actual misconduct or acting in bad faith by any organisation in the philanthropic or charity sector. In my view the sector has been governed well for the sole reason that only persons with noble intent wish to be involved. This is why people of ability and skills are attracted.

The comment that is made about the need for public confidence in grant makers is in my view overstated. The sector runs well both at the grant maker and grant seeker levels. Disappointment to grant seekers is always going to happen from time to time but this should not be the basis of any conclusion that there is a lack of public confidence in the administration of charitable trusts.

In conclusion I would submit the governance principles be only at the high level and that disclosure and reporting be kept to the minimum so to ensure the continuance of the creation of charitable trusts by wealthy Australians, the participation by capable members of the community to act as trustees and the involvement of community members to take up senior roles in charities, many of whom only want to do so on a voluntary basis.

Yours Respectfully,

J.N.Martin