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25 January 2012

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

Email: [NFPReform@treasury.gov.au](mailto:NFPReform@treasury.gov.au)

Dear Sir/Madam

**Submission on Review of not-for-profit governance arrangements Consultation Paper**

Thank you for the opportunity to make submissions in relation to the Consultation Paper for the Review of not-for-profit governance arrangements (“**Paper**”).

**About Movember**

Movember’s vision is to have an everlasting impact on the face of men’s health. We do this by raising awareness and funds through the annual Movember campaign. On Movember 1<sup>st</sup>, guys register at [Movember.com](http://Movember.com) with a clean-shaven face and for the rest of the month grow their moustache and raise funds by seeking out sponsorship for their Mo growing efforts. Mo Bros effectively become walking, talking billboards for the 30 days of November, and through their actions and words raise awareness by prompting private and public conversation around the often ignored issue of men’s health.

The funds raised through the Movember campaign are allocated to programs in line with Movember’s vision and strategic goals. In Australia, funds are committed to programs supporting prostate cancer and male depression initiatives. Some of these funds are carried out directly by Movember and some through our men’s health partners in Australia; the Prostate Cancer Foundation of Australia and beyondblue: the national depression initiative.

The Movember Group Pty Ltd as trustee for the Movember Foundation is endorsed by the Australian Taxation Office as a deductible gift recipient and for various charity tax concessions.

Further information about Movember is available on our website at [www.movember.com](http://www.movember.com).

## General comments

Movember strongly supports the review of NFP governance arrangements as an opportunity to ensure fair and flexible governance arrangements for the diverse NFP sector. Movember maintains a strong focus on its own governance in recognition that the trust and confidence of our supporters is critical to our ongoing success.

We have reviewed the Paper and set out below our responses to the consultation questions.

## Responses to consultation questions

Qu.	Comment
5	<p><i>Should responsible individuals be required to hold particular qualifications or have particular experience or skills (tiered depending on the size of the NFP entity or amount of funding it administers)?</i></p> <p>Movember considers that imposing mandatory qualifications or skill/experience requirements on “responsible individuals” places too onerous a burden on NFP entities. We also believe that this approach would unduly restrict NFPs in their recruitment activities and may potentially prevent NFPs from attracting talented individuals with diverse backgrounds.</p>
8	<p><i>Are there any other responsible individuals’ obligations or considerations or other issues (for example, should there be requirements on volunteers?) that need to be covered that are specific to NFPs?</i></p> <p>Under the definition of “responsible individual” proposed in the ACNC Bill Exposure Draft, a responsible individual will include directors and trustees. Many directors and trustees of NFPs act in a non-executive and/or voluntary capacity. Whilst we consider that it is appropriate to impose general duties on these individuals, care needs to be taken that obligations on these individuals do not become too onerous, as this could have the effect of discouraging skilled people from volunteering their expertise to the sector.</p>
12	<p><i>Should the remuneration (if any) of responsible individuals be required to be disclosed?</i></p> <p>We support the disclosure of any remuneration made to responsible individuals by way of direct fee payment or related party transactions with non-executive responsible individuals.</p> <p>However, Movember considers that it is inappropriate to disclose salaries of responsible individuals that are employed by the NFP entity. Staff salaries are a cost to the NFP entity and therefore should be treated in the same way as other costs. We believe that there is no legitimate basis for treating this information differently to other cost information.</p> <p>As an alternative to disclosing salaries of responsible individuals employed by the NFP</p>

	<p>entity, the ACNC information portal could perhaps include the ability for NFPs to voluntarily publish their relevant remuneration policies. For example, Movember could publish its Board Policy that requires its Governance &amp; Best Practice Committee to review and make recommendations on the appropriate recommendation of management.</p>
<p><b>15</b></p>	<p><i>Should ACNC governance obligations stipulate the types of conflict of interest that responsible individuals in NFPs should disclose and manage? Or should it be based on the Corporations Act understanding of ‘material personal interest’?</i></p> <p>We believe that the Corporations Act understanding of ‘material personal interest’ is an appropriate concept for the ACNC governance obligations.</p> <p>Given the diversity of the NFP sector, we envisage that attempting to stipulate types of conflicts of interest would be a complex task. We believe that utilising the existing ‘material personal interest’ concept would align more closely with Treasury’s objective of introducing principles-based requirements.</p>
<p><b>16</b></p>	<p><i>Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?</i></p> <p>Movember would only support a principles-based approach to risk management. This could take the form of a general obligation for an NFP entity to have in place such measures as are reasonable and practicable bearing in mind the size and activities of the entity. If this approach were to be taken, we consider that it would be crucial that the ACNC support NFPs in this respect with education, templates and best practice guidelines.</p> <p>We consider that mandating any specific forms of risk management would be inappropriate and not necessarily effective. For example, Movember has a range of policies, activity streams, insurances and other tools to manage the various financial, operational, reputational, employee and other risks it faces. These have each been developed to deal with Movember’s own specific risks. It is difficult to conceive how legislative risk management requirements could be drafted that would encompass the different strategies that would need to be adopted by different NFPs.</p> <p>We note in this respect that in the proposed Annual Information Statement for NFP entities (Attachment D to the ACNC Implementation Design Discussion Paper) asks NFPs to indicate if they have a “risk management plan”. We are concerned that this implies a requirement for entities to have a single consolidated plan. As indicated above, Movember (and presumably many other NFPs) will deal with risks using a variety of tools. To require this to be consolidated would potentially require significant re-work of existing documents. We believe that the focus should rather be on the substance of risk management rather than the form.</p>

<p><b>19</b></p>	<p><i>Should responsible individuals generally be required to have indemnity insurance?</i></p> <p>Movember considers that requiring responsible individuals to hold their own indemnity insurance would place too onerous an obligation on these individuals. Please refer back to our comments in relation to question 8 in relation to the burden on voluntary responsible individuals.</p>
<p><b>30</b></p>	<p><i>How can we ensure that these standardised principles-based governance requirements being administered by the one-stop-shop regulator will lead to a reduction in red tape for NFPs?</i></p> <p>As a charity that operates nationally, one of the largest sources of red tape for Movember is the overlapping, but not identical, regulatory requirements at the State and Federal level.</p> <p>Just to give one example, the <i>WA Charitable Collections Act (1946)</i> requires an auditor to sign an “Auditor’s Certification Statement” that the audit has been carried out in accordance with the requirements of that Act. At the same time, the Exposure Draft of the ACNC Bill requires an auditor to form an opinion regarding whether or not an entity’s financial report is in accordance with the ACNC legislation requirements. The result of this is increased audit costs for NFP entities.</p> <p>Movember would urge the Government to proceed as rapidly as possible with its negotiations with the States to reduce regulatory duplication.</p>
<p><b>33</b></p>	<p><i>Do you have any recommendations for NFP governance reform that have not been covered through previous questions that you would like the Government to consider?</i></p> <p>Many charities start out very small, run entirely on a voluntary basis. Because of this, they will often choose a legal structure that is lowest cost to establish, as is noted in the Paper at paragraph 155. However, if an NFP entity is successful it may outgrow its initial structure and find that the structure ultimately becomes inefficient or unwieldy. However, there are limitations on what the entity could do to convert to a more suitable structure as it evolves. There are various legislative restrictions that prevent an entity changing its legal form, and creating a new entity causes unnecessary complexity for the NFP entity in relation to continuity of contractual relationships, employment issues and so on.</p> <p>To deal with this issue, we suggest that the ACNC be given the power to approve applications by registered NFP entities to change their legal form. The ACNC could develop appropriate criteria for approving such conversions and could be empowered to impose appropriate conditions eg to protect members rights if necessary.</p> <p>Movember considers that allowing NFP entities to change to legal structures that more appropriately fit their current operations would provide substantial benefit to NFP entities currently tied to inefficient structures.</p>



Please contact me on (03) 8416 3900 or via email on [astrid@movember.com](mailto:astrid@movember.com) if you would like to discuss these submissions in further detail.

Yours sincerely,

Astrid Heward  
**General Counsel**