

21 December 2011

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

Dear Sir or Madam,

### **Review of Not-for-Profit Governance Arrangements – Consultation Paper December 2011**

Ports Australia welcomes the opportunity to comment on the Consultation Paper covering the review of governance for not-for-profit entities.

#### Ports Australia

Ports Australia is the peak industry body representing all port authorities and corporations, both publicly and privately owned, at the national level. Information about our membership, role and activities can be found at [www.portsaustralia.com.au](http://www.portsaustralia.com.au)

#### Ports Australia's Governance Arrangements

Ports Australia supports the creation of the Australian Charities and Not-for-profits Commission (ACNC). We support the principles-based approach to governance and we are pleased to note that the proposed governance rules will take into consideration the different sizes of entities, their turnover, the governance procedures they already have in place, the oversight and regulation currently applicable.

Ports Australia was an incorporated association under the NSW Associations Incorporation Act which restricted our operations to within NSW. Advice from our solicitors recommended that the Association (as it then was) instead become a not-for-profit company limited by guarantee under the Corporations Act 2001 (Cth).

The members accepted this advice and voted unanimously in favour of the Association becoming a company limited by guarantee under the Corporations Act which occurred on 20 February 2009.

Ports Australia now has a Company Constitution, a Board of Directors comprising 10 directors, the CEOs of capital city and regional ports around the country.

This change in our status did not affect our not-for-profit status. In accordance with the guidance provided by the ATO ("Income Tax Guide for Non-Profit Organisations", ATO 2007), Ports Australia self-assesses annually to determine that the company continues to meet the requirements as a tax exempt organisation.

The company auditor is appointed at the AGM. Company accounts are prepared and audited and the financial statements lodged with ASIC. We are required to lodge our financial reports within four months of the end of our financial year. We would like to retain this four month period and not have it shortened to three months as required for disclosing entities or registered schemes under s. 319 of the Corporations Act. We need the four month period to ensure that our accounts have been audited, then checked by the Audit Committee of the Board, approved by the Directors and circulated to members prior to the AGM.

We are funded by annual subscriptions from our members. We receive no funding from either state governments or the federal government.

We note that it is envisaged that current governance requirements under Commonwealth laws will be replaced with new uniform governance requirements. We support the proposal that these new arrangements would not be in addition to our current reporting requirements to ASIC but would replace the current requirements so that we will be reporting instead to the ACNC.

We note the recommendation in the Final Report concerning the governance of the NFP sector that organisational governance rules should be proportional to the size of the entity and in accordance with the degree of risk. Ports Australia is a small company limited by guarantee and we report to ASIC in accordance with the requirements set out in the Corporations Act. Whilst we support the recommendation that the ACNC should assume governance arrangements of NFP companies limited by guarantee from ASIC, we would like to see the provisions of the Corporations Act retained. The Corporations Act serves all companies well, regardless of their size and status. Case law under the Corporations Act provides further guidance for appropriate governance.

We thank you for the opportunity to provide comment on this important policy initiative. We will be participating in the community consultation process and attending the Sydney session on 13 February to learn more about the ACNC and the requirements of those organisations which will come under its umbrella.

Yours sincerely,

**David Anderson**  
**Chief Executive Officer**