



"Serving Still"

RETURNED & SERVICES LEAGUE OF AUSTRALIA

ABN: 73 941 765 364

(Victorian Branch) Inc.

Reg No.: A0028777L

ANZAC HOUSE, 4 COLLINS STREET, MELBOURNE VICTORIA 3000
TELEPHONE: (03) 9655 5555 FACSIMILE: (03) 9655 5500
Webpage: www.rslvic.com.au Email: rslvic@rslvic.com.au

Patron:
HER MAJESTY THE QUEEN
State President:
D J McLACHLAN AO
Chief Executive Officer:
MICHAEL ANNETT CSC

23rd January 2012

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

RE: RSL VICTORIA SUBMISSION IN RELATION TO REVIEW OF NOT-FOR-PROFIT
GOVERNANCE ARRANGEMENTS CONSULTATION PAPER.

Please find attached the submission from the Returned & Services League of
Australia (Victorian Branch) Inc. in relation to the above paper.

If you need any further clarification on any matter raised in our submission
please do not hesitate to contact me.

Yours sincerely,

Mark P Sherlock
Chief Financial Officer

per.

"The Price of Liberty is Eternal Vigilance"
LEST WE FORGET

SUBMISSION OF THE RETURNED & SERVICES LEAGUE OF AUSTRALIA (VICTORIAN BRANCH) INCORPORATED (RSL VICTORIA)

This Submission is made by RSL Victoria on its own behalf and on behalf of its RSL Sub-Branched (Sub-Branched) in Victoria. RSL Victoria is the parent body of the Returned & Services League of Australia Limited in Victoria. RSL Victoria is the principal organisation in Victoria representing the interests of veterans and their dependants. That RSL Victoria was formed in 1916 as a branch of the RSL and many of its Sub-Branched were formed after the First World War.

STRUCTURE:

RSL Victoria has a State Branch and 296 Sub-Branched. The Sub-Branched range from small Sub-Branched that meet monthly and do not have their own premises up to larger Sub-Branched that occupy substantial premises and carry out related hospitality and gaming activities which provide income to enable those Sub-Branched to carry out the RSL Objects. There are 63 Sub-Branched that carry out substantial commercial activities including operation of hospitality and gaming activities.

The Objects of Sub-Branched in Victoria have been accepted by the Australian Taxation Office (ATO) as charitable, and since 2003 as a result of lengthy negotiations between the ATO and RSL Victoria acting on behalf of its Sub-Branched. All Sub-Branched in Victoria have held the charitable status of Income Tax Exempt Charities and since 2005, held the status of Taxation Charitable Concession (TCC). The activities of Sub-Branched carrying out substantial related commercial activities have been supervised by RSL Victoria which advises the ATO on an annual basis of the compliance or otherwise of such Sub-Branched with a Criteria that has been agreed to between RSL Victoria, the Sub-Branched and the ATO as to the manner in which such Sub-Branched need to conduct their affairs to obtain and retain the charitable status of TCC. Attached hereto and mark A is a copy of the objects of an RSL Sub-Branch. RSL Victoria acts as the parent organisation for its Sub-Branched and it supervises the activities of the Sub-Branched in relation to the matters relating to their charitable taxation status as well as acting as a liaison between the ATO and the Sub-Branched.

All of the Sub-Branched carrying out the related commercial activities are incorporated associations pursuant to the provisions of the *Associations Incorporation Act 1981*. A substantial proportion of the smaller Sub-Branched are also incorporated associations. The balance being unincorporated associations.

The incorporated associations operate under a set of Model Rules that are prescribed by RSL Victoria and adopted by each Sub-Branch. These Rules provide that all office bearers and members of the Committee must be members of the particular Sub-Branch and elected by the members of the Sub-Branch. The office bearers and Committee members are all volunteers. It is to be noted in the case of Sub-Branches carrying out substantial commercial activities, the Sub-Branches employ staff including managers and persons to assist with the conduct of the financial affairs.

The accounts of all Sub-Branches that are incorporated are audited in accordance with the provisions of the *Associations Incorporation Act 1981*. All Sub-Branches also have associated Patriotic Funds pursuant to the provisions of Part IV of the *Veterans Act 2005*. The accounts of such associated Trusts are also annually audited and filed with Consumer Affairs Victoria.

RSL Victoria desires to comment on certain questions raised in the Review of not-for-profit governance arrangements Consultation Paper – December 2011 (the Consultation Paper).

The following comments are made:

Question 1 and Question 2:

It is considered the key guidance for the conduct of the obligations of an organisation should be set out in its Objects or Purposes. The Objects should be clear and sufficiently detailed that the members of the organisation and its governing body are able from the Objects to determine the persons or matters that should be considered by the Committee in the conduct of the organisation. The use of detailed objects further has the effect of enabling all of the members of the association to understand the purpose(s) of the association and provide a touchstone for those members to judge the effectiveness and fidelity of the organisation to its stated Objects. It is the experience of RSL Victoria that the Objects of the Sub-Branches are amended from time to time to meet changing circumstances, and at that time substantial discussion takes place as the proposed amendments which focuses the attention of all members on the reason for the existence of the organisation. Attached hereto and marked B is copy of the Purposes of the Branch. It is submitted that Purposes such as these with this degree of detail make it a clear purpose of the organisation and deals with problems as mission drift. It is RSL Victoria's experience that Objects of a detailed nature assist members in holding their Committees to account.

Question 4:

It is submitted that the minimum duty of care ought to be applied on associations and all responsible individuals and that there should not be initiation of a higher duty of care of

employees as against volunteers. It is submitted that the purpose for the standard of care is for the assistance of the organisation in the fulfilment of its Objects and the conduct of its affairs and a lower standard should not be accepted in relation to volunteers.

Question 5, Question 6 and Question 7:

It is accepted by RSL Victoria that appropriate skill bases are desirable. However in an organisation such as the RSL which has a broad range of volunteers and would not be able to operate without its volunteers, it is desirable that whilst experience and skills are desirable, the experience of the RSL is that on occasions they are not available, particularly in small organisations. It is particularly so in an organisation such as the RSL which has an aging membership. It is submitted that the mandating of such requirements is likely to cause substantial difficulties to organisations that are membership based and membership accountable and where the Boards or Committees are recruited solely from the membership.

It is further submitted that when one views the Objects of the RSL and the fact that most of the members are themselves veterans, it is to be assumed that members will have an understanding of the Objects. It is accepted that if there is a requirement to have skills or experience, it should be in a tiered basis. Clearly, conducting a small Sub-Branch of twenty (20) members which is geographically situated say in a country district is substantially different from the administration of a Sub-Branch with over 1000 members that carry out substantial commercial activities.

It is pointed out that in the case of the RSL, the responsible individuals will be either the volunteer Committees or the employees of the association. In the case of the employees of the association, they themselves will be subject to the direction of the Committee.

Question 9:

It is submitted that in relation to the affairs of RSL Sub-Branches the areas where there may be a higher risk and therefore arguably a higher duty of care relates to the conduct of hospitality and gaming activities. It is noted that both of these activities are subject to a high degree of regulation by the State Authorities as part of the relevant licensing procedures. That regulation includes protection for the public by way of imposition of a responsible gaming and service of alcohol codes and a high degree of probity of all relevant parties. The RSL expects that such state regulation in relation to those activities imposes a very high standard and accordingly there is no need for the provision of a separate higher standard of care by the ACNC.

Question 11:

It is submitted that the nature of information that ought to be disclosed would include the following:

Copies of the Rules which Rules should include the requirements concerning conflict of interest and other such matters as set out in paragraph 126 of the Consultation Paper. There should also be disclosure to the members and filing with the ACNC of audited accounts together with the filing of policies in relation to occupational health and safety, sexual harassment and such related matters.

Question 12:

In relation to the matter of remuneration of responsible individuals, it is submitted that disclosure should be limited to the disclosure of remuneration (for say the top five (5) paid individuals in an organisation) and that there should not be disclosure of the precise remuneration package for each of the responsible individuals.

Question 13:

It is submitted that the Criteria in relation to conflict of interest as set out in paragraph 126 is appropriate save and except that in relation to the matter of the conflict being declared, it is thought appropriate that the individuals should not attend the meeting save and except for the purpose of giving an explanation and should thereafter withdraw from the meeting.

Question 15:

It is submitted that the governance obligations that stipulate precise forms of conflict of interest would be less than satisfactory as there will be many and various conflicts of interests of various types given the wide range of organisations that come within the legislation. It is thought appropriate that the test of material personal interest as based on the *Corporations Act 2001* and as interpreted from time to time by common law is the appropriate standard.

Question 16:

It is considered that in relation to the control of funds, the appropriate reporting to members and the provision at General Meetings of audited accounts is a satisfactory arrangement in relation to an organisation which is a participatory charity and has a broad membership which is the case in relation to RSLs. It may well be that there needs to be different standards where the membership does not play a dominant role in the conduct of the

association. However, in the case of Sub-Branches considered, the memberships represent a very substantial restraint and accountability on Committees.

Question 17:

It is submitted that at least in initial stages the appropriate requirements ought to not be mandated, but rather there should be broad requirements that would then enable the not for profit to develop adequate procedures. Those procedures could then be dealt with pursuant to the educative arrangements that are proposed for ACNC.

Question 18:

It is submitted that the relevant minimum insurance requirements ought to relate to public liability. It is suggested that sum may well be \$20,000,000. It is submitted that insurance covers particularly for officers and directors and indemnity insurance can be very expensive, the result being that an organisation can spend a significant amount of its money that would otherwise be directed to charitable activities in fulfilling insurance requirements. If there is a requirement to have indemnity insurance for responsible individuals, such insurance should be paid for by the association and should work on a tiered level. It is to be assumed that responsible individuals will be entitled to an indemnity from the assets of the association pursuant to the Rules of the association and that in most cases, that is an adequate indemnity and protection for the public.

Question 20:

It is submitted that the general review procedures are going to be partly dealt with by a requirement that there be proper audits to the various appropriate accounting standards depending on the tier involved. It is further submitted that such audited accounts should be made available to all voting members of the association and not simply filed with an authority. That has the effect of improving the accountability. It is further considered that paragraph 139 of the Consultation Paper sets out appropriate procedures although the point is made that in relation to a volunteer organisation such as a Sub-Branch, it would be difficult to obtain people with the necessary skills to constitute an Audit Committee.

Question 21:

It is submitted that the core minimum requirements should include as has previously been set out in this Submission, the following matters:

- (a) Clear and comprehensible Objects that clearly define the activities to be carried out by the association and the aims to be achieved;

- (b) A clear dissolution clause so the members of all other parties are clear as to what is to happen to the assets if and when the organisation ceases to exist, including dissolution clauses that are in compliance with the relevant ATO requirements.
- (c) The mode of election to Committee and the persons who are entitled to stand for Committee and have a vote to elect a Committee;
- (d) There be an audit by a suitably qualified auditor in accordance with the appropriate Accountant Standard;
- (e) There be at least an Annual General Meeting with a power for members to require a further General Meeting and a clear statement as to the voting rights and the requirements in relation to quorum and related matters.

Question 22:

It is noted at present that there is minimum requirements under the *Associations Incorporation Act 1981* for matters that must be dealt with in an association's Rules and it is submitted that it is appropriate for the ACNC to adopt similar minimum requirements.

Question 23:

It is submitted that the Rules ought to be able to be enforced by members and that is the arrangement in Victoria in relation to the *Associations Incorporation Act 1981* with a power to go to the Magistrates Court of Victoria. It is further submitted that the supervising body in the case of incorporated associations, Consumer Affairs Victoria has the ability to enforce the Rules. In the case of organisations that are under ACNC, there should be an ability by the ACNC to also take action for enforcement of the Rules.

Question 24:

It is considered that until the power to regulate incorporated associations and other non-corporations is migrated to the Commonwealth, the responsibility for enforcement and alteration of governing Rules, etc should rest with the present regulatory authorities being in the case of incorporated associations in Victoria, Consumer Affairs Victoria.

It is further submitted that as the ACNC is going to determine the taxation status of a charity, that the ACNC should be advised of any alteration to the Objects or to the Purposes of an association or as to its winding up or deregistration as those amendments may be relevant to the continuance of the existing charitable status.

Question 25:

It is submitted that Model Rules should be prescribed but they should be a minimum requirement and there should be a power for an association to have its own Rules that better fit the organisation. In the case of an organisation such as the RSL, the Rules need to be tailored to the long historical arrangements of the RSL. It is submitted that the use of generic Model Rules does not give the same clarity to members and lack of clarity in relation to Rules is an important matter from the point of view of transparency and appropriate governance.

Question 26:

In the case of the RSL, various classes of members have various voting rights. For instance, social members have lesser voting rights than service members. Accordingly, it is submitted in relation to mandating arrangements, they need to have flexibility to take into account the particular characteristics of an organisation. Taking that into account, the mandated rule should include such matters as the requirement for an Annual General Meeting, the requirement that there be audited accounts presented and made available to members, the Rules be available to members, the members have a power to call Special General Meetings for the purpose of (if necessary) removing the Committee, that there should be provisions in relation to mediation of disputes between members and disputes between members and the association.

Question 28:

It is the RSLs view that it is important that there be compulsory meeting requirements in member-based entities and that the power to call such meetings should not only reside in the Committee, but should also reside in the membership. There will be circumstances in an organisation where one Annual General Meeting will not adequately attend to governance issues that may arise in an organisation and the members need to be empowered with the ability to call Special General Meetings to deal with important matters including governance matters.

Question 30:

It is noted from the commentary that it is expected to be some years before the State controlled organisations are migrated to Commonwealth power and in fact it may well be that in some cases, no such migration will be agreed between the States and the Commonwealth. In those circumstances, it may well be appropriate for the ACNC to consider the acceptance of copies of State filed documents as an appropriate arrangement for annual reporting, particularly in Tier 1 and Tier 2 organisations, and particularly where the

requirements of the *Associations Incorporation Act 1981* have substantial responsibilities in relation to auditing.



* RSL SUB-BRANCH INCORPORATED RULES

1. Name

The name of the Sub-Branch shall be the * RSL Sub-Branch Incorporated.

2.1 Statement of Purposes of the Sub-Branch

The objects for which the Sub-Branch is established are:

- (a) Provide for the sick, helpless, wounded, aged, disabled, destitute and needy among those who are serving or who have served in the Australian Defence Forces, the various British Commonwealth Defence Forces, members of allied Defence Forces and their dependants;
- (b) Perpetuate the close and kindly ties of friendship created by the mutual service in the Australian Defence Forces or in the forces of nations traditionally allied with Australia and the recollections associated with that experience;
- (c) Maintain a proper standard of dignity and honour among all past and present members of the Australian Defence Forces and set an example of public spirit and noble hearted endeavour;
- (d) Preserve the memory and records of those who suffered and died for Australia, erect monuments to their valour, provide them with suitable burial places, and establish and preserve, in their honour, the annual commemoration day known as ANZAC Day;
- (e) Encourage loyalty to Australia and secure patriotic service in the interests of Australia;
- (f) Protect the good name and preserve the interests and standing of members of the Australian Defence Forces;
- (g) Encourage a Member as a citizen, to serve Australia with that spirit of self sacrifice and loyalty with which they served as members of the Australian Defence Forces;
- (h) The promotion of a social organisation and Sub-Branch of the Branch composed of those who are serving or who have served in the Australian Defence Forces, the various British Commonwealth Defence Forces, Members of Allied Defence Forces, their dependants and such other persons who from time to time may be admitted to membership in accordance with these Rules.
- (i) To establish, maintain and conduct a Sub-Branch of a non-political and non-sectarian character and to provide, furnish, equip and maintain Sub-Branch rooms, reading rooms, recreation rooms and refreshment facilities; to establish and maintain billiard tables and facilities for other lawful games, sporting facilities and recreation for its Members for the maintenance and improvement of friendly relationships amongst the Members and generally to afford to Members and their friends and guests all the usual privileges, advantages, conveniences and facilities of a Sub-Branch.
- (j) To provide means of social interaction between persons who are Members of the League and in particular Members of the * RSL Sub-Branch of the Branch and their friends and guests.

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- (k) To make contributions to any charitable relief benefit commemoration or memorial fund of any kind whatsoever as the Committee may deem advisable.
 - (l) To make application pursuant to the appropriate legislation from time to time enacted and currently in force, or any re-enactment or amendment thereof, to:
 - (1) Liquor Licensing Victoria for a Club Licence or any other licence, permit or authority issued under the Liquor Control Reform Act or any re-enactment or amendment thereof;
 - (2) The Victorian Commission for Gambling Regulation for a Venue Operator's Licence or any other licence, permit or authority issued under the Gambling Regulation Act or any amendment or re-enactment thereof;
 - (m) To further the interests of and to support the Branch.
 - (n) To provide for the sick, helpless, wounded, aged, disabled, destitute and needy.

2.2 Powers of the Sub-Branch

- (a) To take over and acquire and take a transfer of all the assets and the liabilities of the present unincorporated association known as * RSL Sub-Branch and/or * RSL Club.
- (b) To purchase, take on lease or in exchange or otherwise to acquire any land, buildings, easements of property real or personal which may be required for the purposes of or be conveniently used in connection with any of the objects of the Sub-Branch and for the purpose of managing revenue the better to finance the operations of the Sub-Branch and the maintenance of any premises owned by it to lease, sell, demise, mortgage, give in exchange or otherwise dispose of the same or any part thereof from time to time and to grant easements in, through, over or upon any land and to acquire easements or other rights of any kind or nature over any other real or personal property provided that if the Sub-Branch takes or holds any property which is subject to any Trusts the Sub-Branch must deal with the property in such a manner as is allowed by law having regard to such Trusts.
- (c) To borrow or raise money or to secure the repayment of any debt, liability or engagement incurred, undertaken or entered into by the Sub-Branch by the issue of bonds, debentures, bills of exchange, promissory notes or other obligations or securities of the Sub-Branch or by way of overdraft or by mortgage or charge on all or any part of the property and assets of the Sub-Branch.
- (d) To encourage the fullest liaison and co-operation with other responsible persons and organisations in the community as the Committee shall decide, with particular emphasis to encouraging the use of the rooms of the Sub-Branch when such use shall be calculated to benefit the community.
- (e) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, debentures and other negotiable or other transferable interests.

Part 3

Purposes and Powers of the Branch

3.1 Purposes of the Branch

The purposes of the Branch are to:

- (a) provide for the sick, helpless, wounded, aged, disabled, destitute and needy among those who are serving or who have served in the Australian Defence Forces, the various British Commonwealth Defence Forces, members of allied Defence Forces and their dependants;
- (b) perpetuate the close and kindly ties of friendship created by the mutual service in the Australian Defence Forces or in the forces of nations traditionally allied with Australia and the recollections associated with that experience;
- (c) maintain a proper standard of dignity and honour among all past and present members of the Australian Defence Forces and set an example of public spirit and noble hearted endeavour;
- (d) preserve the memory and records of those who suffered and died for Australia, erect monuments to their valour, provide them with suitable burial places, and establish and preserve, in their honour, the annual commemoration day known as ANZAC Day;
- (e) encourage loyalty to Australia and secure patriotic service in the interests of Australia;
- (f) protect the good name and preserve the interests and standing of members of the Australian Defence Forces;
- (g) encourage a Member as a citizen, to serve Australia with that spirit of self sacrifice and loyalty with which they served as members of the Australian Defence Forces;
- (h) ensure that the Branch is a non-sectarian, and in relation to party politics, a non partisan association.
- (i) ensure that the Australian flag depicted in part 1 of schedule 2 to the Flags Act 1953, as in force on 12 September 1985, be retained as the Australian Flag and not be altered in any manner whatsoever;
- (j) encourage the maintenance of a constitutional monarchy in Australia and to oppose any move to change Australia into a republic; and
- (k) at all times promote and defend the standing policy of the League.