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Dear Manager

I am pleased to have this opportunity to comment on your consultation paper entitled "Review of Not-for-Profit Governance Arrangements". I do so from the perspective of having been the Executive Director of UnitingCare NSW.ACT for 26 years and I welcome the establishment of the Australian Charity and Not for Profit Commission and the concomitant interest in the better governance and regulation of the Not for Profit sector. As I will explain, there is a poor understanding in the public of the special role of the not-for-profit sector and, in particular, of the role of Public Benevolent Institutions. For UnitingCare NSW.ACT this leads to some tension in our relationship within the Uniting Church in Australia and I will deal with this in responding to the questions in your consultation paper.

UnitingCare NSW.ACT is one of Australia's largest charities and Public Benevolent Institutions. It ranks in the top 20 Australian charities as listed in BRW Magazine, despite being based only in New South Wales and the Australian Capital Territory. It is the second largest State based charity in Australia, ranking only below UnitingCare Queensland in that category.

The current budgeted turnover for UnitingCare NSW.ACT in the 2011/12 financial year is \$600 million. It has a staff complement of 7500 people and net assets of \$601 million.

The Board of UnitingCare NSW.ACT is appointed by the Synod of NSW & the ACT of the Uniting Church in Australia and that Board in turn appoints two service group boards for UnitingCare Ageing and UnitingCare Children, Young People and Families. Further, the Board of UnitingCare Ageing appoints six regional boards based at Lismore, Newcastle, Wollongong, Leichhardt, Chatswood and Penrith.

UnitingCare NSW.ACT is an unincorporated association within the Uniting Church in Australia, NSW & ACT Synod, which itself is an unincorporated association operating under the Uniting Church Act 1977 of the NSW Parliament. Its legal entity is the Uniting

Church in Australia Property Trust [NSW]. UnitingCare NSW.ACT is a Public Benevolent Institution but is exempt, as a church body, under the Charitable Fundraising Act in NSW. It reports to funding bodies, eg, the Commonwealth Department of Health and Ageing. Its annual audited financial accounts are presented on its website.

Its legal status leads to a lack of clarity in regard to the responsibilities of its Board members and senior staff. Throughout your Consultation Paper reference is made to "the entity" and yet for members of the Board of UnitingCare NSW.ACT it is not clear whether the entity in question is UnitingCare NSW.ACT or the Uniting Church in Australia, Synod of NSW and the ACT. The Uniting Church in Australia, Synod of NSW and the ACT is a religious charity but is not a Public Benevolent Institution. The distinction between these two types of organisation is not clear and currently leads to some members of the Uniting Church believing that the assets, finances, and policies of UnitingCare NSW.ACT are able to be completely controlled by the Synod. The distinction between the two types of organisation is not made clear in the Consultation Paper and I would recommend clarity about this issue as the ACNC is developed.

In paragraphs 90, 91, 92 and 93 of your Consultation Paper it is stated that responsible individuals should act "in the best interests of the entity" but for members of the Board of UnitingCare NSW.ACT this creates some difficulties. For example, UnitingCare NSW.ACT is required to invest its funds in accordance with the policy of the Synod. That policy requires that all funds must be deposited with Uniting Financial Services, the investment arm of the Synod. UnitingCare NSW.ACT is the largest depositor with Uniting Financial Services, having term deposits of some \$350 million. Against this UnitingCare NSW.ACT has liabilities for aged care accommodation bonds of \$385 million. The prudent investment of these funds is a matter of concern to the Board of UnitingCare NSW.ACT but it is not able to act outside the policy of the Synod. If it acts in the best interests of UnitingCare, it would seek to diversify its investment of funds, but this is prevented because of the policy of the Synod. Again, some members of the Synod seem to believe that some of the assets of UnitingCare NSW.ACT could be sold and the subsequent income applied to other purposes of the Synod.

Although I cannot be sure, I would think that similar conflicts would arise with other Public Benevolent Institutions which, like UnitingCare NSW.ACT, are located within a religious charity.

It is in this light that I have prepared responses to the questions in the Consultation Paper.

1. Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?

Definitely. As outlined above this is a critical question for the members of the Board of UnitingCare NSW.ACT. However, a distinction needs to be made between a religious charity and a Public Benevolent Institution.

2. Who do the responsible individuals of NFP's need to consider when exercising their duties? Donors? Beneficiaries? The Public? The entity, or mission and purpose of the entity?

The mission and purpose of the entity should be very important. Responsibility to donors should be in proportion to donations received and whether any special conditions apply. The main responsibility should be to the clients of the entity. This is particularly true in the case of UnitingCare NSW.ACT where there is a clear responsibility to residents of aged care centres who have deposited accommodation bonds. As a Board of the Synod, UnitingCare NSW.ACT needs to operate within the Synod and to assist the Synod where appropriate.

3. What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation?

Risk management, the protection of assets, regulatory compliance, the standard of service delivery, O.H&S obligations are key issues for members of the Board of UnitingCare NSW.ACT.

4. What should be the minimum standard of care required to comply with any duties? Should the standard of care be higher for paid employees than volunteers? For professionals than lay persons?

See answer to 3 above. The volunteer Board members and the paid employees should be equally required to comply.

5. Should responsible individuals be required to hold particular qualifications or have particular experience of skills?

Persons who are employed in financial management roles or care delivery roles should have relevant skills and qualifications. However, Board members should not be appointed on this basis. In the case of UnitingCare NSW.ACT Board members are appointed by secret ballot at a Synod meeting and it would not be appropriate to require particular skills. Nevertheless, a good Board of governance will certainly have a range of skills among its members.

6. Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?

I believe that it would be unwieldy to require this.

7. Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC?

There would be benefit in the ACNC providing assistance and advice to the sector with a view to improving the general level of governance capability. This educational and improvement role should be a main purpose of the ACNC. Providing guidance to the members of the Board of UnitingCare NSW.ACT about their duties would certainly be welcomed in the current circumstances.

8. 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 which are specific to NFP's?

It should be remembered that in the case of UnitingCare NSW.ACT (and this would apply to many other organisations), the members of the 9 boards within the organisation are volunteers themselves. Therefore the requirements in regard to members of Boards and committees would often have to apply to volunteers.

9. Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?

Clearly the NFP sector is very diverse and the ACNC would be well advised to create different categories. One way would be on the basis of financial turnover or another would be in regard to the type of activities undertaken. Organisations like UnitingCare NSW.ACT would expect to meet higher standards than, say, a local community legal centre.

10. Is there a preference for the core duties to be based on the Corporations Act, CATSI Act, the office holder requirements applying to incorporated associations, the requirements of charitable trusts, or another model?

I believe that in regard to larger organisations such as UnitingCare NSW.ACT there would be distinct advantages for the duties to be based on the Corporations Act. Indeed the ACNC should require unincorporated organisations of the size of UnitingCare NSW.ACT to become companies limited by guarantee under the Corporations Act.

11. What information should registered entities be required to disclose to ensure good governance procedures are in place?

Once again, some differentiation between organisations may be required with larger groups having more obligations. Annual reports with audited financial statements should be required. The disclosure requirements proposed in the further Consultation Paper regarding the ACNC could be met by UnitingCare NSW.ACT.

12. Should the remuneration (if any) of responsible individuals be required to be disclosed?

Currently Board members of UnitingCare NSW.ACT do not receive remuneration. I do not see any good purpose in such disclosure and it may lead to the sort of competition for higher salaries of CEO's that has been seen in the corporate sector.

13. Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?

Yes. All meetings of UnitingCare NSW.ACT have an agenda item for members to declare any conflicts of interest and the by laws of the organisation require that any conflict of interest must be declared and that any person declaring a conflict of interest must not be present when the matter is being considered and must not vote on the matter.

14. Are specific conflict of interest requirements required for entities where the beneficiaries and responsible individuals may be related (for example, a NFP entity set up by a native title group).

Conflicts of interest can easily arise in Uniting Church organisations because of the participation of the same members of the Church on different organisations. Personal conflicts of interest are relatively easy to identify but organisational conflicts are more problematic. For instance, the General Secretary of the Synod as a member of the Board of UnitingCare NSW.ACT may be inclined to make decisions which favour the interests of the broader Synod rather than the particular interests of UnitingCare NSW.ACT. Therefore any rules should make clear that the responsibility of Board members should be to the entity which is controlled by the Board, not to a wider constituency.

15. Should ACNC governance obligations stipulate the types of conflict of interest that responsible individuals in NFP's should disclose and manage? Or should it be based on the Corporations Act understanding of 'material personal interest'.

Given the potential for conflicts of interests within NFP's any definition should be clear and easily understood.

16. Given that NFP's control funds from the public, what additional risk management requirements should be required of NFP's?

There should be adequate risk management requirements when large amounts of funds are involved. For instance, through the Commonwealth Department of Health and Ageing there are specific requirements of organisations which receive aged care accommodation bonds. Unfortunately, the current requirements are complicated and simpler rules would be more appropriate. A clear list of authorised investments would be helpful.

17. Should particular requirements (for example, an investment strategy) be mandated or broad requirements for NFP's to ensure that they have adequate procedures in place?

This would be taking the role of the ACNC into detail which is not appropriate. If the guidelines referred to in 16 above are clear it would not be necessary.

18. Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?

In very general terms.

19. Should responsible individuals generally be required to have indemnity insurance?

Yes. In the case of UnitingCare NSW.ACT Board members and staff are indemnified by the Uniting Church "except in the case of fraud, criminal act, gross negligence or wilful misconduct". The Church carries appropriate insurance in this regard.

20. What internal review processes should be mandated?

The audit requirements set out in the Consultation Paper are appropriate.

21. What are the core minimum requirements that registered entities should be required to include in their governing rules.

They should make clear that the assets and income of the organisation are devoted to the purposes of the organisation and cannot be distributed to other parties. They should not allow arrangements whereby parent organisations can provide services on a fee for service basis and charge the NFP for those services at rates higher than can be obtained in the market place. There should be a dissolution clause which makes clear that, should the organisation be dissolved, any residual assets can only be applied to similar purposes.

22. Should the ACNC have a role in mandating requirements of the governing rules, to protect the mission of the entity and the interests of the public?

Certainly.

23. Who should be able to enforce the rules?

The ACNC.

24. Should the ACNC have a role in the enforcement and alteration of the governing rules, such as on wind-up or de-registration?

Yes, when organisations are wound up there should be clear procedures and ACNC should ensure that assets are properly allocated to the purposes for which they were acquired.

25. Should model rules be used?

A template of model rules would be useful.

26. What governance rules should be mandated relating to an entity's relationship with its members?

UnitingCare NSW.ACT is not currently a member based organisation so there is no provision apart from reporting to the 18 month Synod meetings. However, if the rules of incorporation required it, then an AGM would be instituted.

27. Do any of the requirements for relationships with members need to apply to non-membership based entities?

All organisations should be open and transparent, provide standard information about themselves on web sites, including details of the membership of the governing body and the audited financial statements.

28. Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?

No comment.

29. Are there any types of NFP's where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFP's?

In the introduction to this submission I have briefly outlined the circumstances of UnitingCare NSW.ACT which is an unincorporated Public Benevolent Institution within a religious charity. Specific attention should be given to this situation.

30. 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 NFP's?

By keeping regulation simple and applying it on a scaled basis so that smaller entities do not have the same requirements as larger ones. By ensuring that all State based requirements are discontinued.

31. What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?

Organisations should serve a public benefit and they should provide full information to the public.

32. Are there any particular governance requirements which would be useful for indigenous NFP entities?

No comment.

33. 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?

Refer to issues discussed in the introduction.

Thank you for this opportunity to contribute.

Yours sincerely



Rev Harry J Herbert
Executive Director