



COMMUNITY EMPLOYERS WA

14 February 2013

Manager
Philanthropy and Exemptions Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam,

RE: Draft Governance Standards and Financial Reporting Consultation Papers

The purpose of this submission is to provide Community Employers WA's (CEWA) comments on the consultation papers for the Development of governance standards and on the Requirements for annual financial reports under the ACNC framework.

CEWA is a registered Employer Organisation with the Industrial Relations Commission of Western Australia, and represents non-government, not-for-profit employers in the community services sector of Western Australia. CEWA now has 118 members comprising many of the largest and smaller Community Sector employers in WA, and continues to grow in numbers and influence.

CEWA is pleased that the sector has been consulted in relation to the development of the governance standards and the ACNC draft Financial Reporting requirements. We are however extremely concerned at the limited time given to respond to the papers, particularly over the Christmas / New Year period which is customarily a time when many Not-For-Profit boards and senior management take a break from the extremely arduous work they undertake. In future **we would strongly recommend a 3 month consultation period be set** and that where possible, this not be done in December / January.

Overarching comments:

The CEWA Board is **opposed** to the increased level of regulation and administrative burden the Governance Standards and Financial Reporting regulations will place on the NFP Sector. With over 70% of charities falling into the small category as defined by the ACNC, **the standards will add another layer of reporting, paperwork and compliance to already stretched smaller organisations.** It is questionable as to whether many of these charities have the skill sets to undertake this new regime of reporting and it will lead many to ask whether they are simply becoming bureaucratic administrators for the Government or are they really assisting their clients and fulfilling their mission. Additionally, many of the medium and larger charities have also indicated to CEWA that they will be forced to employ additional resources to generate the information required under these standards and that there will be further external costs in auditing and investment in systems and training. All this must be paid for out of the limited budgets they operate under, which will in turn negatively impact on the services they can provide to the less fortunate and marginalised in our community.

We have heard the ACNC and other government parties at both a Federal and State level claiming that in time there will be less reporting, with concepts such as a 'Charity Passport' being touted. However, it was acknowledged recently by the ACNC Commissioner that the implementation of these Governance Standards and Financial Reporting requirements, will for many charities, **increase the administrative burden immediately.** There appears to have been no agreements between the Commonwealth and WA Governments to reduce Red Tape and the Administrative burden other than a 'general desire' over the coming years. Indeed, the recently released Regulatory Impact Assessment paper whilst identifying areas of additional burden, **provides no direction** as to how and when this will be reduced.

The regulatory and reporting burden will also place even greater responsibility on volunteer boards and management committees of such organisations, who in many cases struggle to attract volunteers to be non-executive directors. As the Government and the ACNC continue to ramp up the workload, risks and responsibilities for directors, the challenge of finding appropriately skilled people who are prepared to deal with the myriad of complex reporting and governance issues, will increase commensurately.

In reflecting on the rationale for the proposed imposition of such governance standards and financial reporting requirements, one must ask **why are the Government and the ACNC pursuing this increased regulatory and compliance approach.** Presumably there is concern that the current system of reporting and control is insufficient or isn't working. Yet we would ask, where is the tangible evidence of such a proposition? No doubt there will be isolated cases that can be highlighted, however we do not support the use of a 'sledgehammer to crack a nut'.

It is apparent that the process the Government and ACNC is adopting, is one of increased regulation with the vague hope that over the course of time, government departments will 'come to the party' and reduce their administrative requirements. **CEWA's very real concern is that this won't happen** – there is no meaningful driver across government and departmental levels to eliminate processes and red tape. With governments continuing to 'outsource' to the community sector much of the support for the marginalised, and with the significant increases in demand for services and support in the

sector, there needs to be greater focus on demanding reduction in reporting, on simplifying the amount and frequency of tenders and in reducing the onerous compliance obligations.

Draft Governance Standards:

CEWA notes and supports the proposal for self assessment of compliance with the governance standards. What however is not clear in the paper is when and how the ACNC will chose to exercise its wide ranging powers when they form a view of non-compliance. It is stated that the “enforcement powers will only be used to address serious cases of non-compliance”. We appreciate that the enforcement powers are contained in the ACNC Act, however believe that the powers will give the ACNC a high level of discretion as to what is considered a serious case of non-compliance.

Furthermore, pursuant to Draft Governance Standard 3, the paper states that a registered charity does not need to be actually charged with an indictable offence to be in breach of the proposed standard. This will give the ACNC substantial power to take action if it reasonably believes a charity has engaged in an offence or fraud. Again, the ACNC could potentially pre-empt considerations and decisions by other agencies, and there is **no real guidance provided as to what basis the ACNC would look to take any action.**

Draft Governance Standard 4 states that an entity must take *reasonable* steps to manage its financial affairs in a *responsible* manner. It would however appear that the interpretation of *reasonable* and *responsible* is open to the discretion of the ACNC. **We believe the standard would benefit from greater supporting clarity of what these terms mean.** Is it simply open to the interpretation of the ACNC at any point in time, or are there specific requirements that the ACNC will require all Boards and organisations to comply with. For example, there is discussion about appropriate insurance being in place. The risk appetite of all organisations varies, as does the financial capacity. It may thus be helpful to indicate what is meant by *appropriate* insurance.

Draft Governance Standard 5 requires registered charities to take reasonable steps to ensure compliance with all its entities not being disqualified from managing corporations. The complexity of ensuring this should not be underestimated by the ACNC as community sector organisations are unlikely to be overly familiar with ASIC systems and processes. **It is recommended that the ACNC provide clearer guidance and training on how organisations should undertake these steps.** This may include training on a step by step process, links on the ACNC website to relevant ASIC databases and template blank declarations for directors to complete.

Draft Governance Standard 6 sets out a number of duties of a registered entity and again uses the generic term *reasonable steps*, which is open to interpretation at the discretion of the ACNC. Additionally many of the duties are negative in their nature – saying what the registered entity must not do rather than what it should do eg. “not misuse its position, not misuse information, not allow it to operate whilst insolvent”. A more positive approach to the use of terminology would be beneficial to the intent of the Standard.

Draft Financial Reporting:

Prima Facie, CEWA is supportive of the producing of financial reports by community sector organisations. However it again should be noted, **that these financial reporting regulations will increase the compliance costs for many in the sector.** If organisations are deemed to be *Reporting entities*, they will in all likelihood, need to prepare general purpose financial reports. This will come at a cost to each organisation in terms of additional audit costs and administrative workload in preparing more detailed financials. It could be argued that members and other users will then be able to see more financial information about individual organisations, however it is doubtful that the benefit of this will outweigh the additional costs incurred and the resources required to implement the new regime.

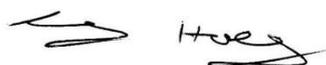
Conclusion:

CEWA is **opposed** to the increased compliance workload and costs these Standards will impose on an already stretched sector, and at the lack of tangible progress in reducing the red tape and workload in other compliance and reporting areas across the Commonwealth and State jurisdictions. **We believe that the ACNC and the Government need to clearly demonstrate tangible outcomes on the reduction of red tape and the administrative burden before such standards are introduced.**

The Standards, whilst simple in their design, create several grey areas that are open to interpretation and when coupled with the wide ranging powers of the ACNC, give rise to concern as to how those powers will be exercised. CEWA believes the Standards could benefit from greater clarity of key phrases and further training and education by the ACNC.

Finally, we would recommend that the ACNC continues to meet regularly with the sector across the country and at various levels within organisations where possible. If this is to be a true consultation and partnership approach, as this sector knows better than most, meaningful progress will only come through ongoing engagement and support.

Yours sincerely,



Chris Hall
Co-Chair



Tony Pietropiccolo AM
Co-Chair

Cc: Minister Julie Collins – Minister for Community Services

Cc: Shadow Minister Kevin Andrews – Shadow Minister for Families, Housing & Community Services