



Technical Accounting Alert

Australian Charities and Not-for-Profits Commission (ACNC) Governance Standards for Charities

Introduction

The ACNC governance standards for Charities has been released and it is expected to be passed by Parliament and be operational from 1 July 2013.

<http://www.comlaw.gov.au/Details/F2013L00402/Download>

Grant Thornton has been advised by Treasury however that an 18 month transitional period will be announced by the ACNC which will mean the new governance standards will not be mandatory until 1 January 2015. Specific transitional provisions in the Regulations provide further relief until 1 July 2017 where a Charity's governing rules need to be amended provided that the Charity is "...attempting to comply with the governance standards as much as possible, without having the registered entity (Charity) breaching its governance rules."

The ACNC Act specifically exempts basic religious charities from the governance standards.

There have been only minimal changes to the draft governance standards that were released last December 2012 for public consultation (refer TA Alert 2012-15), with the major change being inclusion of the proposed governance standard on responsible management of financial affairs into the duties of responsible entities governance standard.

It is understood that the proposed ACNC Financial Reporting requirements will be released in April-May 2013.

ACNC's 5 Governance proposals

Background

The Ministerial Release that accompanied the governance standards states that the Governance Standards are not intended to reflect best practice governance, but rather a minimum standard of governance that would be expected by the Australian community.

<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/028.htm&pageID=003&min=djba&Year=&DocType=>

In addition it is stated that the governance standards must be interpreted in a manner that is consistent with the objectives of the Act and the requirements of section 15-10 of the Act (in particular, the principles of regulatory necessity, reflecting risk and proportionate regulation, as well as the unique nature and diversity of not-for-profit entities and the distinctive role that they play in Australia);

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Furthermore the Explanatory Statement to the governance standards makes it clear that it is up to registered entities (Charities) to choose how they meet the standards taking into account their specific situation. It is noted that smaller entities will have more limited resources to develop detailed and prescriptive governance policies, and the ACNC will release guidance material to assist entities in determining how to comply with the governance standards.

The specific Standards are:

Governance standard 1—Purposes and not-for-profit nature of a registered entity

This sets out the purpose of the charity by reference to the governing rules and interaction with the public which includes members, donors, employees, volunteers and benefit recipients of the registered entity. There is no prescribed document. Interestingly the Explanatory Statement makes reference to a number of examples that would demonstrate compliance being:

- a having an accounting system that ensures that any donations are directed to the purposes of the entity;
- b for a medium entity having a remuneration process that benchmarks against the relevant part of the Not-for-profit (NFP) sector; and
- c there is a requirement to make information about the entity known to the public; however it is noted that the ACNC Register could be used for this purpose.

Governance standard 2—Accountability to members (only applicable if the entity has members)

The objective of this governance standard is to ensure the accountability and transparency of a registered entity to its members, and it allows members to interact with the charity and provide information on the charity's activities to members. The Ministerial Release notes that clarification has been provided that annual general meetings are not mandatory, and there is no addition to the financial reporting requirements that already exist in the ACNC Act (or proposed financial reporting regulations due in April-May 2013).

The Explanatory Statement provides some further guidance being:

- a Reasonable steps to demonstrate accountable and transparent may include: quorum for meetings, setting the number of meetings, rules on notices of meetings, voting and asking questions. Deadlines for a medium sized entity 'may be: 45 days' notice of meetings, 20 days' notice for agenda items and circulation of the agenda 10 days before the meeting.
- b For entities currently complying with the Corporations Act, that compliance would be deemed compliance with the governance standard.

Governance standard 3—Compliance with Australian laws

Effectively this governance standard requires compliance with Australian laws which already applies to any individual or organisation, and the objective is to give confidence that the entity does comply with Australian requirements.

Governance standard 4—Suitability of responsible entities

The objective of this governance standard is to maintain, protect and enhance public trust and confidence in the governance and operation of a registered entity. Reasonable steps basically mean that no-one has been disqualified from being involved in the charity.

The Explanatory Statement states that there should be a process in place for appointments to the entity and a process to alert any changes, perhaps by way of on-going declarations. For appointments various

steps are mentioned including a search of the Australian Securities and Investments Commission's (ASIC) Register, however what is probably easier is a Google search.

Whilst not specifically mentioned in the ACNC material, having an appropriate skills set is critical for an entity to ensure public trust.

Governance standard 5—Duties of responsible entities

The objective of this governance standard is to ensure that the entity and its staff act honestly, carefully, and in the charity's best interests. It is designed to replicate the Corporations Act requirements of acting with reasonable care and diligence, etc.

The Explanatory Statement refers to a possible Code of Conduct that covers employment conditions, disclosure of conflicts of interest, and not misusing information. It also provides some examples, ensuring that there is a responsible management of financial affairs, however, stressing that there is no benchmarked or mandated approach. Appropriate internal controls and insurance are mentioned.

Action required

Consider the various requirements, however noting that the ACNC is expected to issue guidance material to asset entities in determining how to comply with the governance standards.

Further information

For further information on any of the information included in this TA alert, please contact our Grant Thornton Australia NFP Leaders: Adelaide – Justin Humphrey Justin.Humphrey@au.gt.com, Brisbane – Simon Hancox Simon.Hancox@au.gt.com, Eric Passaris Eric.Passaris@au.gt.com, Michael Hillgrove Michael.Hillgrove@au.gt.com, James Winter James.Winter@au.gt.com, or a member of the National Audit Support team at nationalaudit.support@au.gt.com.

Appendix

Illustrative Public Statement that demonstrates that the Charity has met the ACNC's Governance Standards (note requires detailed implementation of process and procedures)

Governance standard 1—Purposes and not-for-profit nature of a registered entity

The CLEARR Charity (ABN 123etc) was established by AA Trust in 2012 to provide financial support for those Australians that are unable to afford basic housing. The CLEARR Charity has deductible gift recipient status and accepts donations from Governments and the public. Further details of its activities are available from its website at www.etc or from the ACNC website Register for the www.acnc.gov.au. Its governing rules require a board of directors (responsible entities) that meet monthly, and it prepares an annual audited financial report.

Governance standard 2—Accountability to members (only applicable if the entity has members)

The CLEARR Charity's board of directors comprise 2 members nominated by the AA Trust and nominations are sought from the public for 3 independent members. The board is subject to a 3 year rolling election process where those that have made a donation to the CLEARR Trust are eligible to vote on a 1 vote per organisation or person basis. The CLEARR Charity publishes a quarterly electronic newsletter that outlines its current activities, and invites comments from the public through its website. It also produces an annual audited financial report, which is open for discussion at its annual general meeting which is open to members.

Governance standard 3—Compliance with Australian laws

The CLEARR Charity complies with all Australian laws.

Governance standard 4—Suitability of responsible entities

The CLEARR Charity has a process that requires those charged with corporate governance being principally the Board and its management and staff (responsible entities), meet community standards and hence no-one has been disqualified from working with a Charity or has a serious criminal conviction.

Governance standard 5—Duties of responsible entities

The CLEARR Charity requires those involved in its activities to act honestly, carefully and in the Charity's best interests.