

The Public Trustee

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Our Reference: **REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS**

Your Reference: Consultation Paper December 2011

Dear Sir

The Public Trustee of Queensland welcomes the Government's commitment to maintaining the integrity of the Not for Profit Sector through an increased level of governance, transparency and certainty. In response to the *Review of not-for-profit governance arrangements 2011 consultation paper* Public Trustee of Queensland would like to take the opportunity to provide feedback on the practical administrative questions raised in the consultation paper.

Background

The Public Trustee of Queensland is Trustee for several of Queensland's leading philanthropic charitable trusts. In the main these Trusts maintain their capital in perpetuity for future generations of Queenslanders. Some Trusts continue to grow their capital bases due to the generous support of philanthropic minded people who choose to leave a lasting legacy to Queensland. The continued support and growth of these Trusts very much relies on the perpetuity provided through the preservation of capital.

The philanthropic charitable trusts maintained by the Public Trustee have provided a direct source of funds for over 180 charitable organisations in the last 12 months. The ongoing resources provided by these trusts assist local and national charities to achieve lasting differences in areas of significant need.

The major funds managed include - The Queensland Community Foundation; Lady Bowen Trust; Forde Foundation; the Queensland Aboriginal and Torres Strait Islander Foundation and the Gladstone Foundation. These five major trusts maintain a combined capital base of approximately \$75.5m.

In addition to the Public Trustee of Queensland's active role in these trusts, the Public Trustee also maintains an important role in ongoing perpetual charitable funds established by the Wills of its clients.

General Comments

The Public Trustee of Queensland supports an approach that would strengthen the integrity of the NFP sector, while providing simpler and more certain guidelines for all NFPs.

In recognition of the vast differences in size, purpose and scope of existing NFP entities, the Public trustee of Queensland supports a tiered approach. This would allow smaller organisations to operate under appropriate governance principals without causing detriment to their operations, and at the same time, providing a consistent and robust framework for larger entities and institutions that better reflect the expectations placed upon them in their role as administrators of Public Funds.

LARGE NFPs & LARGE CHARITIES

ROBUST GOVERNANCE FRAMEWORK

- Key Principals underpinned by both quantitative requirements and minimum qualifications for responsible individuals
- Clear disclosure standards and financial/non-financial reporting standards
- Risk management policies incl. minimum insurance levels
- Full External Financial & Governance Audit required

MEDIUM NFPs & SMALL CHARITIES

CORE GOVERNANCE FRAMEWORK

- Key Principals underpinned by quantitative requirements of Responsible individuals
- Clear disclosure and reporting standards
- Risk management policy required
- Full External Financial Audit required

SMALL NFPs EXCL CHARITIES

PRINCIPLES BASED APPROACH

- Key Principles relating to responsible individuals
- Key guidelines on disclosure
- Limited external financial audit requirements
- Report once, use often

Specific Comments

1. Responsible Individuals

What should they consider?

NFPs are driven by their core mission and purpose. Therefore, by considering its mission and purpose and fulfilling a duty to the entity, then the interests of donors, beneficiaries and the Public will also be served. Donors, Beneficiaries and the Public should receive increased certainty that the stated purpose of an entity is paramount in the decision making of the responsible individuals.

On this basis, the Public Trustee of Queensland would endorse the clear requirement that the responsible individuals in an entity should consider the entity's core mission and purpose when

exercising their duties, and further that responsible individuals owe a duty to that mission and purpose. This basic requirement should be consistent for all persons serving as responsible individuals in NFP entities, regardless of employment status or education level.

What should the duties be?

While the size, structure and purpose of NFPs vary significantly in Australia, the core principles necessary to underpin the successful operation of a NFP entity remain consistent.

The Public Trustee of Queensland therefore supports the inclusion of a principles based core duties requirement in the legislation. Similar to the approach in England and Wales, the legislation should insist upon governance principles as fundamental to the duties of any responsible individual.

These duties could include:

- Ensuring delivery of organisational purpose
- Exercising effective control
- Behaving with integrity
- Providing transparency in decision making

Should there be minimum education levels?

The Public Trustee of Queensland supports a model of best practice for the governance of Not for Profit entities. Accordingly, a minimum level of education in respect of the management and control of NFPs in a proportion of the responsible individuals within an entity is recommended to be included in the proposed legislation.

While it is not necessary for the minimum qualification to be at the tertiary level, the qualification should have provided a basic foundation in the following areas:

- Fundraising guidelines
- Financial Management
- Ethics and Governance
- Charities (law and practice)

This education could be delivered in short form either externally or face-to-face and should be approved and regulated by the ACNC. In recognition of the concessions made available for NFPs eligible for DGR status, and the associated responsibility to the Taxpayers for those entities to maintain a high level of integrity, the Public Trustee of Queensland endorses a tiered system requiring a higher standard of care, and an appropriately higher level of education/training for these responsible individuals.

2. Disclosure requirements and managing conflicts of interest

What should be reported?

The Public Trustee of Queensland supports a balanced scorecard approach to reporting. This approach would require the organisation report on the key financial and non financial indicators that align to the strategic objectives defined by its mission and purpose. That being said, it is acknowledged that the size, nature and resources of NFP entities vary significantly. Therefore, a tiered approach to reporting is endorsed as an alternative to ensure that those NFPs including

Public Ancillary Funds and large charitable organisations with a greater level of responsibility to the wider community- show a greater level of transparency in reporting.

Conflicts of Interest

The Public Trustee of Queensland supports the aligning of conflict of interest disclosure requirements with the requirements in the Corporations Act. This would ensure consistency through the private and NFP sectors.

3. Risk Management, Internal & External Reviews

The Public Trustee of Queensland supports the mandating of consistent audit standards within a tiered approach. While it is reasonable that with small NFP entities it may be considered appropriate to provide only a minimal annual financial review or audit, it is appropriate that large NFP organisations give proportionately greater comfort to the community. This includes increased audit standards (both internal & external reviews), mandated risk strategies such as investment strategies, and minimum levels of insurances.

Summary

The Public Trustee of Queensland recognises the efforts of the Government to introduce governance arrangements that will provide Donors, Beneficiaries and the Public with confidence that the conduct of an entity and its responsible individuals will at all times consider its mission and purpose to be paramount. Thank you for the opportunity to provide comment on the practical administrative questions posed in the *Consultation Paper December 2011*.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Peter Carne', written over the 'Yours faithfully' text.

Peter Carne
Public Trustee