

**FUNDRAISING INSTITUTE AUSTRALIA**  
**GOVERNANCE STANDARDS FOR THE NOT-FOR-PROFIT SECTOR**  
**Philanthropy and Exemptions Unit**  
**Indirect, Philanthropy and Resource Tax Division**  
**The Treasury**

FUNDRAISING INSTITUTE AUSTRALIA

SUBMISSION IN RESPONSE TO THE AUSTRALIAN TREASURY'S  
CONSULTATION PAPER:  
AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION –  
GOVERNANCE FOR THE NOT-FOR-PROFIT SECTOR  
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SUBMISSION COVER SHEET

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# **FIA Governance Standards for the Not-for-Profit Sector**

## **1. About Fundraising Institute Australia (FIA)**

Established in 1968, FIA's purpose is to make the world a better place by advancing professional fundraising through promotion of standards, professional development pathways and measurable credentials so that our members achieve best practice.

The FIA has developed the Principles & Standards of Fundraising Practice as the professional fundraiser's guide to ethical, accountable and transparent fundraising. The Principles & Standards are vital to how the fundraising profession is viewed by donors, government, the community and fundraisers.

In order to achieve its mission, FIA conducts the following activities:

- Promote and enhance education, training and professional development of fundraisers.
- Provide a resource of fundraising information.
- Advocate for fundraising practice to Government, industry and the community.
- Support and promote certification of fundraisers.
- Develop standards and codes of practice.
- Promote and enhance fundraising as a profession.
- Promote and encourage research into fundraising and philanthropic giving.

## **2. Executive Summary**

Generally, FIA supports the draft governance standards; in particular, the principles based approach. FIA has found from its own experience in introducing the Principles and Standards of Fundraising Practice that this approach facilitates compliance while enabling charities to tailor compliance for the needs of their own organisation.

FIA considers that the way in which the standards are drafted make them appear unduly complex. The definitions of "registered entity" and "responsible entity" are new terms found in no other legislation, and can be easily confused with each other.

## **FIA Governance Standards for the Not-for-Profit Sector**

In addition, while the governance standards draw heavily on the Corporations Act and other existing legislation which may be already familiar to charities and their officers, this is not immediately apparent, due to the introduction of new terms. As many responsible entities are volunteers who do not necessarily have ready access to expert advice, simplification of the language used in the standards would be of great assistance to those who must comply with them. If this is not possible, explanatory notes or a separate guide would help such volunteers understand the obligations on them.

### **3. Summary of FIA's recommendations**

FIA's recommendations are aimed at fine tuning the standards for clarity and to enable charities, their officers and employees to facilitate compliance with them.

#### **Q. 3.1.1 Draft Standard 1 – purposes and not-for-profit nature of a registered entity**

##### **Recommendation:**

- Terms used should be consistent with terms in relevant legislation eg the Corporations Act.

#### **Q. 3.2 Draft Standard 2 – accountability to members**

- FIA supports this standard, and notes that it is consistent with current practice for all registered not-for-profit entities.

#### **Q3.3 Draft Standard 3 – compliance with Australian laws**

##### **Recommendation:**

- ACNC should not take disciplinary action against a charity unless it has been convicted of an indictable offence or incurs a criminal penalty.

#### **Q3.4 Draft Standard 4 – responsible management of financial affairs**

##### **Recommendation:**

- Draft Standard 4 should be cross-referenced to the financial report regulations for the avoidance of doubt.

## **FIA Governance Standards for the Not-for-Profit Sector**

### **Q3.5 Draft Standard 5 – suitability of responsible entities**

#### **Recommendation:**

- Charities should be able to discharge their duty to take reasonable steps to ascertain suitability of responsible entities by conducting a search of the ACNC Register of Disqualified Responsible Entities.

### **Q3.6 Draft Standard 6 – duties of responsible entities**

#### **Recommendation**

- Disclosure requirements relate to the size of the NFP, so that smaller NFPs are not burdened by excessive administration.
- Draft Standard 6 should distinguish between directors and senior managers of NFPs and volunteers, as well as distinguishing between smaller and larger NFPs.

## **4. FIA's Detailed Comments**

FIA sets out the details of its comments below so that the reasons behind its recommendations are clear.

### **Q. 3.1.1 Draft Standard 1 – purposes and not-for-profit nature of a registered entity**

It is not clear from the consultation paper whether the proposed standards are aimed at replacing the legislative provisions set out in Appendix 2 of the consultation paper. If the standards are not meant to replace this legislation, then the same language should be used to describe the same things to avoid confusion and assist compliance. For example, Draft Standard 1 refers to “governing rules”, while the Corporations Act refers to “a company’s constitution”. PAF Guidelines 2009 refer to “governing rules” but FIA understands that the ACNC legislation will not apply to PAFs, and therefore this language is not appropriate. If the standards are intended to use different terms to other legislation, then this should be made clear in the standards, for example, by explanatory note.

## **FIA Governance Standards for the Not-for-Profit Sector**

### **Recommendation:**

- Terms used should be consistent with terms in relevant legislation eg the Corporations Act.

### **Q. 3.2 Draft Standard 2 – accountability to members**

FIA supports this standard, and notes that it is consistent with current practice for all registered not-for-profit entities.

### **Q3.3 Draft Standard 3 – compliance with Australian laws**

FIA supports compliance with Australian laws, in particular the limitation in this draft standard that the ACNC cannot take regulatory action for minor breaches. FIA assumes that any such breaches may be dealt with by State/Territory regulatory bodies.

FIA expresses concern that, under Part 4-2 of the ACNC Act, the ACNC could take disciplinary action (eg by issuing a formal warning) in cases where the charity has not been convicted of an indictable offence or have a criminal penalty imposed on it. The circumstances in which criminal sanctions would be imposed on a charity, rather than an employee acting without the charity's authority, are rare. The application of Part 4-2 before the imposition of a conviction is contrary to the proportionality regulatory approach which is a guiding principle for the ACNC. To take formal action against a charity which has not been convicted would be extremely damaging to that charity's reputation and future ability to raise funds. It also contravenes the legal principle of presumption of innocence. ACNC would be acting as a de facto judge outside the formal legal system in these circumstances.

FIA notes that its Principles and Standards of Fundraising Practice requires all FIA members to comply with all relevant legislation. A similar provision would be of assistance to charities registered with the ACNC.

### **Recommendation:**

## **FIA Governance Standards for the Not-for-Profit Sector**

- ACNC should not take disciplinary action against a charity unless it has been convicted of an indictable offence or incurs a criminal penalty.

### **Q3.4 Draft Standard 4 – responsible management of financial affairs**

FIA supports this standard. It can be strengthened by cross referencing to the financial report guidelines.

#### **Recommendation:**

- Draft Standard 4 should be cross-referenced to the financial report regulations for the avoidance of doubt.

### **Q3.5 Draft Standard 5 – suitability of responsible entities**

FIA assumes the Register of Disqualified Responsible Entities will set out the list of directors disqualified by ASIC. FIA is not aware that appointment of disqualified company directors to charities has been a problem. No complaints have been made to FIA about any such persons, and FIA is of the view that such appointments would be rare, if they occur at all.

For this reason, it should be sufficient for charities to either obtain a declaration from a prospective responsible entity that he/she is qualified, or to search the ACNC register. Some charities already obtain police checks on employees; this should not be required unless the charity works with children, as police checks are expensive.

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### **Recommendation:**

- Charities should be able to discharge their duty to take reasonable steps to ascertain suitability of responsible entities by conducting a search of the ACNC Register of Disqualified Responsible Entities.

### **Q3.6 Draft Standard 6 – duties of responsible entities**

#### **Q3.6.3 Are there any additional protections which should only be provided to volunteer responsible entities? If so, what should they be?**

It is reasonable to expect that the officers and senior managers of a financially substantial NFP have a greater responsibility and accountability than those officers of a volunteer run or smaller NFP. Respondents to the AICD Directors Social Impact Study 2011 were directors of all sizes of NFPs. 45% were involved with NFPs which had turnovers in excess of \$5 million. However, 55% were involved with NFPs with much lower turnovers; 34% of directors were involved with NFPs with turnovers of \$1 million or less. As the majority of NFPs are small, this is not surprising.

As presently drafted, the draft standard does not distinguish between volunteer responsible entities and paid responsible entities, or between responsible entities in different tiers of registered entities. It is important to ensure that disclosure requirements are streamlined and assist the efficient operation of NFPs, as well as advising the public of information they may need to know. While the consultation paper acknowledges that the protections for responsible entities would apply to volunteer responsible entities, the protections do not distinguish between the levels of responsibility between volunteer and paid responsible entities, or between the tiers of registered entities.

Disclosure of remuneration does not reflect necessarily on the effectiveness of a NFP in meeting its mission and supporting its beneficiaries. It is unusual for Board members of NFPs to be remunerated; only 8% of Board members receive remuneration for their services (*Reforming not for profit regulation – Final Report, Centre for Corporate Law and Securities Regulation, University of Melbourne*). Board members also feel that current reporting obligations are excessive (*ibid*). The

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Report stated that “the key is the nature of the disclosure – what is required to be disclosed and by whom – rather than a blanket call for more information.” Accordingly, regulation of smaller organisations which handle modest sums of money, should be lighter than regulation of large organisations, which handle substantial sums of money and may also have a disproportionate impact on public confidence.

### **Recommendation**

- Disclosure requirements relate to the size of the NFP, so that smaller NFPs are not burdened by excessive administration.
- Draft Standard 6 should distinguish between directors and senior managers of NFPs and volunteers, as well as distinguishing between smaller and larger NFPs.