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The Honourable Dr Gary Johns
Commissioner
Australian Charities and Not-for-profits Commission
GPO Box 5108
MELBOURNE VIC 3001

By email: consultations@acnc.gov.au

Dear Dr Johns

Indicators of Object 1(b) of the ACNC Act

Governance Institute is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members are all involved in governance, corporate administration and compliance with the Corporations Act 2001. Many of our members serve as officers of charities, or work for, or are involved with charities and are therefore involved in compliance with the requirements of the Australian Charities and Not-for-profits Commission (ACNC).

Governance Institute is itself a charity operating in the legal form of a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

Governance Institute consults regularly with the ACNC through our membership of the ACNC Sector User Group. ACNC engages frequently with our members and ACNC staff regularly make themselves available to provide regulatory updates to our members.

We welcome the opportunity to provide feedback on the workable metrics that could capture the objectives listed in object 1 (b) of the Australian Charities and Not-for-Profits Commission Act 2012 (ACNC Act) ie *'to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.'* We have also included in this submission our views on the various ways ACNC can continue to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.

General comments

The charitable and not-for-profit sector makes an invaluable contribution to Australia's economy and social capital. Charitable and not-for profit organisations deliver important community services including health, welfare, aged care, education, arts and culture, sport, environmental protection and in a myriad of other areas that together form an essential part of Australia's social and economic infrastructure. The sector is playing a significantly increased role in providing human services in accordance with government policy, making a robust, vibrant, independent and innovative charitable and not-for-profit sector even more important for the community.

Governance Institute has long advocated for the ACNC. Our support of the ACNC is based on its constructive presence as a regulator, its effectiveness in raising the accountability and governance standards of charities, and providing the sector with visibility. We acknowledge the significant work which the ACNC undertakes to help charities understand and meet their obligations through information, advice and guidance.

Governance Institute supports the proposed measures suggested by the ACNC at the Sector User Group meeting in March 2019 but is mindful of the challenges involved in requiring charities to provide additional information through the Annual Information Statement. We do support changes to the Annual Information Statement that require charities to demonstrate their governance practices as we consider that good governance is a key indicator of a vibrant, robust, independent and innovative not-for-profit sector.

Governance Institute considers that it is important that ACNC continues to support and sustain a robust, vibrant, independent and innovative not-for-profit sector. We consider that the ACNC can achieve this by undertaking (and in many instances continuing to undertake) the following activities:

- Providing advice and guidance to the sector
- Providing education on capability enhancement
- Encouraging rationalisations and mergers amongst organisations in the sector by making better use of the data on the charities register
- Supporting reform of fundraising laws
- Mining the data provided in the AIS to provide helpful information to the sector
- Collecting feedback from the sector about the challenges organisations are facing and issues not being adequately addressed by the ACNC.

Our more detailed comments are set out in the following pages.

If you have any questions concerning this submission or would like to discuss any aspect please don't hesitate to contact our General Manager, Policy and Advocacy, Catherine Maxwell.

Yours sincerely



Megan Motto
CEO

Detailed comments

Proposed measures – importance of governance standards

We have considered the report commissioned by the ACNC prepared by Tulipwood Economics dated 6 December 2018 which proposed a range of measures which could enable the ACNC to understand how the NFP sector performs against the objects of the ACNC Act. We have also considered the proposed measures that ACNC presented to the ACNC Sector User Group on 15 March 2019. We agree with the proposed measures contained in the Sector User Group document.

However, we recognise the challenges involved in collecting further information from charities through the Annual Information Statement. These challenges were recognised during the consultation on the 2017 Annual Information Statement in which Governance Institute was involved. **We recommend** that ACNC carefully consider the burden that would be imposed on charities when considering adding questions to the Annual Information Statement.

As part of the consultation with stakeholders undertaken by ACNC on the 2017 Annual Information Statement, Governance Institute recommended including questions concerning a charities' governance standards. We voiced our concerns at that time that some charities view the ACNC governance standards as 'nice to have' rather than 'must have' and that the standards went to issues of accountability, transparency, stewardship and ethical decision making which enhances trust and confidence in the sector by providing information to all those who interact with charities.

Governance Institute considers that high standards of governance are an indicator of a robust, vibrant, independent and innovative not-for-profit sector.

We recommend that ACNC consider amending the Annual Information Statement to ask a charity whether it can demonstrate to the ACNC that it:

- is not-for-profit and works towards its charitable purpose
- has taken reasonable steps to be accountable to its members, if it has members, and provide them with adequate opportunity to raise concerns about how the charity is governed
- has internal processes in place to ensure compliance with the law
- has taken reasonable steps to:
 - be satisfied that its responsible persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the Corporations Act 2001 (Cth) or disqualified from being a responsible person of a registered charity by the ACNC Commissioner, and
 - remove any responsible person who does not meet these requirements
- has taken reasonable steps to make sure that responsible persons are subject to, understand and carry out the duties set out in the standard.

The response to each of these questions can be a Yes/No response.

Governance Institute is of the view that these questions provide the opportunity for a charity to reflect on whether it can demonstrate to the regulator that it complies with the governance standards. The questions are not asking the charity whether it meets the standards, but whether it *can demonstrate* that it does, which demands a deeper reflection on the part of the organisation and its governing body. Governance Institute is of the view that this can only assist the sector in furthering its understanding of the importance of the standards, as the charity must consider whether it could provide evidence to the regulator as to how it meets the governance standards.

We recognise that charities could be fearful of providing a 'not compliant' response.

Governance Institute recommends that the targeted questions be accompanied by guidance noting that:

- the ACNC will strike a balance between providing support and guidance and acting decisively where necessary to address non-compliance, but will generally take the view in the first instance that further support and guidance could be required if the charity cannot demonstrate that a governance standard has been met
- links have been provided to educational material and sources to assist the charity to improve its understanding of governance if so required.

Governance Institute also recommends that charities be encouraged to provide a governance statement, which could be included in a drop-down text box on the AIS, demonstrating how they meet the governance standards. The guidance from the ACNC could note that such a governance statement can:

- showcase the charity's good governance to donors, funders, volunteers and other stakeholders, and
- positively influence funding and donation decisions.

As making the provision of a governance statement a mandatory requirement may result in charities adopting a 'tick the box' approach, we **recommend** making the governance statement optional.

We recognise that some charities already include a governance statement in their financial report, and these charities should be encouraged to cross-refer to that statement rather than having to repeat it in the AIS. For those charities that have not included a governance statement in their financial report, it is an opportunity to embark on learning about the benefit that disclosing governance practice can bring, and/or the value that embarking on improving governance arrangements can bring.

We point to the success of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* in this regard. The *Principles and Recommendations* have played a vital role in improving corporate governance in Australian listed companies since the release of the first edition in 2003. Their history is one of practical statements on governance which have brought meaningful change to governance practice and behaviour. The disclosures have also been insightful in ascertaining how seriously the governing body views governance matters.

Ways in which ACNC can support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector

Providing advice and guidance to the sector

One of the most important ways in which the ACNC can support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector is to provide it with suitable advice and guidance. Governance Institute commends the work ACNC has undertaken to provide advice and guidance to the sector since its establishment. The material on the ACNC website is clearly written, easy to understand and comprehensive. We encourage the ACNC to continue providing this guidance and advice particularly given that, in the vast majority of cases, charities are time and resource poor. As reported in the ACNC's Australian Charities Report 2017, just under half of all charities (49%) are operated solely by volunteers. We particularly commend the ACNC for providing case studies throughout their materials - they are a helpful method of communicating information to the sector.

We are pleased to see that ACNC has included a link on its website to external resources provided by Governance Institute. We have a suite of good governance guides for the not-for-profit sector covering the following topics:

- Board structure
- Conflicts of interest in not-for-profit organisations
- Issues to consider when developing a communications policy
- Issues to consider for a chief executive officer who is also appointed as the company secretary
- Issues to consider when developing a policy for managing related party transactions in NFP organisations
- Risk management policy
- Separation of authority between board and management
- Stewardship
- Volunteer management

The link provided on the ACNC website has broken and the commentary states that the resources are available at a fee. The resources are in fact free of charge. The correct link to these free materials is here <https://www.governanceinstitute.com.au/resources/good-governance-guides-free-starter-packs/nfp-starter-pack/>. We would be grateful if the ACNC could update their webpage with the correct link to ensure that these free resources can be made available to members of the public.

Providing education on capability enhancement

In addition to providing guidance and advice, an important way in which the ACNC can support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector, is by continuing to provide education to the sector on capability enhancement. The recent webinar on charity tax concessions is an example of the work which ACNC has been conducting which assists those in the sector meet their compliance obligations and improve their operations.

Governance Institute recommends that the ACNC continue its work in educating the sector. **We also recommend** that ACNC develop materials detailing mistakes commonly made by charities of which ACNC is aware as well as the most popular questions asked of the ACNC by charities or those trying to register a charity. We consider that this information would be helpful to those currently involved in operating a charity or looking to establish a charity.

Encouraging rationalisations and mergers amongst organisations in the sector by making better use of the data on the charities register

Governance Institute considers that improved effectiveness in the use of resources of not-for-profit entities is of benefit to the sector and is an important outcome of good governance. It is important that charities make the best use of monies provide to them, either by government or donors, to further their purpose of benefiting the community. Unlike companies in the private sector, charities are unable to raise capital. Costs arising from inefficiencies are often borne by government funding and the benefits made available via tax concessions. Governance Institute considers that the ACNC can play a valuable role in assisting charities improve efficiencies by improving the usability of data available on the ACNC register. Allowing a charity to undertake a location based search of other charities, would enable it to ascertain the other charitable organisations operating in their area providing services to similar beneficiaries. This could assist the charity determine whether the area in which they are operating or intend to operate is being serviced by other organisations and may encourage existing organisations to consider ways they can collaborate in the provision of services or to undertake a merger.

The information which ACNC has on its website on the 'Merge your charity' page is useful. We encourage the ACNC to continue to consider ways it can provide information and resources to charities on the issues charitable organisations face when undertaking a merger or consolidation of their operations.

We refer to the ASIC Innovation Hub as an excellent example of how a regulator can provide practical support and informal assistance to entities considering entering the sector.

Supporting reform of fundraising laws

Governance Institute considers that one of the biggest roadblocks to achieving a robust, vibrant, independent and innovative Australian not-for-profit sector is the issue surrounding charitable fundraising, including the costs of fundraising.

The current state and territory-based regulatory framework which governs charitable fundraising is fragmented, burdensome, rarely enforced and is fundamentally failing in its objective to protect donors and provide for transparency and public trust and confidence in fundraisers. As part of the #Fixfundraising coalition we have called on Government to reform the fundraising regulatory regime which can be achieved through three simple steps:

1. minor amendments to the Australian Consumer Law (ACL) to ensure application to fundraising activities is clear and broad
2. repeal of state-based fundraising laws, and
3. working with other regulators (for example, state-based regulators and self-regulatory bodies) to improve fundraiser conduct (for example, door-knocking, telemarketing, excessive spending of funds on third party services)

thereby effectively creating a nationally-consistent regulatory system.

Despite our public campaign which has received widespread community support, the Government has thus far failed to implement our suggested reforms. Charities and not-for-profits are forced to continue to waste significant amounts of time and money in meeting outdated fundraising laws that differ considerably across Australia.

We encourage ACNC to show its support for the #Fixfundraising campaign by raising the urgent need for reform of fundraising laws with Government.

Mining the data provided in the AIS to provide helpful information to the sector

Governance Institute suggests that mining the data contained in the AIS may provide the sector with additional insights and **recommends** that ACNC consider requesting additional funding from Government to enable it to undertake this extra step of analysis. The analysis would also provide insights into the operation of the sector. As stated earlier, the charitable sector is playing a significantly increased role in providing human services in accordance with government policy. The evidence provided to the Royal Commission into aged care quality and safety highlights how important it is that a regulator is aware of issues affecting its regulated population before problems arising from those issues become widespread. This importance will only increase as the public becomes aware of matters arising from evidence given at the Royal Commission into violence, abuse, neglect and exploitation of people with a disability.

Collecting feedback from the sector about the challenges organisations are facing and issues not being adequately addressed by the ACNC

Obtaining feedback from its regulated population is an extremely useful way that ACNC can ascertain the challenges being faced by charitable organisations and issues which it is not adequately addressing.

Conducting a sample survey is one method ACNC could consider in order to obtain information from the sector and we encourage ACNC to consider innovative ways to engage with the sector that are cost and time effective. An example of an innovative method to gather user feedback is the Google Cloud Platform Idea Forum which allows users to submit ideas on how to improve Google's services. The ideas which are submitted are rated by Google as 'under review', 'on our radar' or 'planned' which provides users with transparency on how the company is dealing with their issue. There are also 'help' forums on the site which enable users to exchange ideas. ACNC may wish to consider establishing a basic ideas forum on its website providing a means

by which charities, donors and beneficiaries can raise issues of concern that they are experiencing in the sector and to encourage sharing of ideas.