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Definition of Charity and NFP Governance

In October 2011 the Federal Government released a Consultation paper on a definition of 'charity'. The outcomes of the deliberations on this definition could have significant implications for Independent schools. The discussion on whether an organisation operates for a *public benefit* is central to the debate about the definition of charity (See the sections on P 9-14). Specific reference is made to Independent schools on Page 14 of the consultation paper. Charities receive a range of benefits from Commonwealth, State and local governments, including tax concessions.

The actions taken by the Australian Government after the consultation could also have implications for AISSA and its related entities.

The Australian Government has also released exposure draft legislation for the establishment of the Australian Charities and Not-for Profits Commission. The exposure draft and explanatory materials can be located at www.treasury.gov.au

The above draft legislation establishes the ACNC which will commence operations from 1st July 2012.

The ACNC will determine charitable status for all Commonwealth purposes, provide education and support to the NFP sector, (including on good governance and accountability) and administer a regulatory and reporting framework for the sector.

A separate Advisory Board will be established to advise the Commissioner of the ACNC.

The Commissioner will have the power to investigate NFP entities, issue enforceable directions, enter into enforceable undertakings

Registration with the ACNC will be voluntary; however entities wishing to access Federal tax concessions and other government support will have no choice but to register with the ACNC as a first step.

The qualifying entities that may seek registration include 11 subtypes, including for the advancement of education.

Registration will strictly be on an entity-by-entity basis. There will be no grouping of related entities for registration purposes

It is proposed that when the ACNC commences on 1 July 2012 existing entities that are already endorsed by the ATO will be deemed to be registered with the ACNC; i.e. they will not need to re-register. However, their registration will be reviewed by the ACNC in the lead up to the introduction of the proposed statutory definition of charity.

Reporting requirements will be proportional to the size of the entity based on annual revenue. (Small less than \$250,000, Medium less than \$1,000,000 and Large -not medium). There is no definition of revenue yet.

Registered entities will also have to meet specified governance requirements as yet to be drafted. A consultation paper on the

governance requirements proposes that the following standards be set:

- Duties and minimum standards of responsible individuals
- Disclosure requirements and managing conflict of interest
- Risk management procedures
- Coverage of minimum requirements of governing rules and
- Relationships with members.

The draft legislation defines a *responsible individual*. It is proposed that the responsible individual will need to exercise the same degree of care, diligence and skill that a prudent individual would exercise in managing the affairs of others.

Newsletters and facts sheets on the above matters can be found at www.treasury.gov.au