

Stocktake, Future Options & Recommendations Report

(Report 1)

LCA Aged Care & Community Services

Governance Dialogue

15 May 2017

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ACKNOWLEDGEMENTS

This report contains a compilation of ideas and draft recommendations for constructive change - collected through discussions and dialogue since December 2016. Many of the ideas are not new, many have been either shared over the years in various forums or just shared in the corridors.

This report would not have been possible without the commitment and good natured involvement of representatives from the governing bodies of twenty one Lutheran aged care and community services. To those dedicated volunteers who participated in this dialogue we say a heartfelt thank you. Thank you for your thoughts and thank you for the many years of faithful service you have given to this important area of ministry.

Likewise this report benefits from the knowledge and experience shared by Bishops, Assistant Bishops, District Administrators/Executive Officers and other representatives of the four Lutheran Districts involved in this project as well as from representatives of the national arm of the church. Ideas and feedback were also received from members of some of the abovementioned organisations, from Pastors and Chaplains involved in these ministries and from the South Australian/Northern Territory Lutheran Aged Care Council. The Reviewers also benefited from the wise counsel and assistance provided by the LCA Committee for Ministry with the Ageing, the project advisory committee known as the 'Dialogue Group', Peter Schirmer, Executive Officer of the Church and Bishop John Henderson. To all these people we also say a sincere thank you.

The hard working volunteer members of the Dialogue Group are Nancy Fox, Colleen Fitzpatrick, Matt Johns, Nathan Klinge, Clare Seligmann and Mel Zerner.

We look forward to dialoguing with you further about the future governance arrangements for these important ministries.

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Executive Summary

A vibrant part of the mission of the Lutheran Church is to minister to human need. This includes the compassionate work of 24 aged and community services associated with the Lutheran Church of Australia.

The intent of this dialogue based project is to strengthen and build on the rich history of service provided to the community by these Lutheran organisations.

In this, the first of three reports, options for the future and draft recommendations are proposed that will strengthen arrangements for governance of the aged and community service ministries within the Lutheran Church of Australia at national, district and agency levels – including the most appropriate governance and leadership standards and capabilities, legal structures and processes.

This ‘governance’ project is not a project peripheral to the Church. Good governance is recognised as an integral part of enabling the Lutheran Church in all of its expressions to ‘go and grow’ in accordance with its vision and mission. By engaging in this review Lutheran aged and community services organisations position themselves to address a strategic priority of the church. However equally as important they also aim to meet and exceed the community’s minimum legal governance standards; and thereby comply with the requirements for ongoing registration with the Australian Charities & Not-for-Profit Commission (ACNC) as charities, which are sometimes expressed through Public Benevolent Institutions (PBIs).

Significant dialogue and consultation occurred in the development of this Report. All twenty six identified aged and community services organisations were contacted, twenty one accepted our invitation to visit with them. Discussions were held with representatives of the four Lutheran Districts associated with these agencies, and discussions were held with District level gatherings (e.g. South Australian/Northern Territory Lutheran Aged Care Council and the South Australian Lutheran Aged Care Chaplains network). At the national level discussions were held with the National Bishop, the LCA Committee for Ministry with the Ageing and the LCA Dialogue Advisory Group. Ad hoc discussions were also undertaken and submissions received were taken into account.

In summary, in Queensland the Lutheran aged & community services sector consists of a large amalgamated organisation that provides both aged care and community services and some separate stand alone small to medium services; in the Districts of New South Wales, South Australia and Victoria there is a range of small, medium and medium large aged care services; and there are two significant community services only organisations operating out of Adelaide.

Some of these organisations are legally under the control of the four Lutheran Districts identified above while some of the organisations are legally independent of the church.

In terms of governance and leadership capability there is wide variance in the competency levels among the twenty one governing bodies visited. Some organisations are well governed, some have been assessed with a 'pass mark' while a few struggle to maintain even some of the mandatory minimum legal and governance standards. The good news, however, is that all governing bodies see themselves as overseeing an important ministry of the church.

Part A of this report sets the context for this review.

Part B outlines in some detail a number of governance matters seen through the 'legal lens'. This Part is somewhat lengthy because during our discussions we received several requests to have a number of key governance matters explained from the legal point of view. We are grateful for lawyer Matthew Turnour's contributions in this regard.

Part C outlines the results of this Dialogue project to date including a compilation of ideas suggested by interviewees for improving governance in Lutheran aged and community services.

Part D is a short section that outlines some structural options generally; some structural options for the future of Lutheran Community Care South Australia & Northern Territory and Lutheran Disability Services; and some options for enhancing support from the national level of the Lutheran Church.

General structural options for going forward canvassed in this report include:

1. Amalgamating all Lutheran aged and community services organisations into a single national Lutheran Aged & Community Services Organisation.
2. Amalgamating all of these Lutheran organisations into two national Lutheran organisations – one for ministering to older persons and the other ministering to disadvantaged communities, people experiencing disadvantage and people experiencing disability.
3. Amalgamating all of these Lutheran organisations into five District level Lutheran organisations (this would result in one organisation in the Districts of Queensland, NSW and Victoria and two organisations in the District of South Australia/Northern Territory – one being for aged care the other for community services).
4. Maintaining roughly the status quo structurally with the exception that several of the smaller organisations merge their governance function at District or sub-District levels and governance processes are enhanced throughout.

More detailed structural options are canvassed in relation to Lutheran Community Care South Australia & Northern Territory and Lutheran Disability Services.

Some options for future support of Lutheran aged and community services organisations by the national level of the Church are also canvassed as there has been a widespread call from people interviewed as part of this Dialogue for greater and better support of these Lutheran services from the Church at its national level.

This 'call' seems in part due to the disparate nature of this Lutheran sector, the perceived lack of historical systemic support from Districts and the fact that most policy and funding requirements on these services are now coming from Commonwealth Government agencies or other national bodies.

In this report the Reviewers canvass that as a minimum the Lutheran Church of Australia at its national level employ at least one (ideally two) professional officers to provide ongoing support to both the governing bodies and the chief executives of these services as well as co-ordinate professional development programs and external advocacy. For completeness however a number of other options are listed in this report for discussion.

Part E provides comment against the specific objects of the Dialogue and the 'considerations' that were to be given in this review. It also lists forty recommendations for change at organisational, district and national levels of the Church. Regardless of the structural future of these Lutheran organisations it is considered by the Reviewers that a number of governance and leadership changes are required to enhance their future governance capabilities.

Part F briefly outlines the 'next steps' in this Dialogue. In summary, the options and recommendations outlined in this report will be discussed at a national workshop (currently planned for the 15th July 2017) and subsequently refined over two days at a national discernment conference planned for the 13th and 14th October 2017. Following the first workshop a second report will be prepared and circulated for consultation. Following the discernment conference a final report will be prepared by the Reviewers for General Church Council.

Your prayerful consideration of this report is invited.

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PART A: THE CONTEXT OF THIS REVIEW

Background to this Governance Dialogue

At its Convention in April 2013 the LCA General Synod adopted the following resolution:

THAT the GCC, consistent with the Strategic Direction of the LCA - especially regarding improving our “Governance and Leadership capability” and being “good stewards of our available resources” - undertake a review of the current governance and administrative structures of the LCA including at the National level, District level, Boards, Commissions, Councils and Agencies during the next synodical term.

GCC engaged an external consultant, Dr Maureen Cleary to conduct the review. The consultant noted in Part J of her final report that due to time constraints no in-depth analysis of Aged Care was conducted. One of Dr Cleary’s recommendations was that “GCC initiates a governance review of LCA’s aged and community care organisations with a view to identifying the various models of service provision how they fulfill the Object of the Church to: ‘Minister to human need in the name of Jesus Christ our Lord in the spirit of Christian love and service, and to provide institutions and agencies for this purpose’.”

In November 2015 GCC partially adopted the Cleary recommendation in the following resolution: “that consideration be given by GCC to a national ‘system’ model for the governance oversight of aged care facilities within the LCA.”

It was considered the most appropriate way to consider the future of Aged Care Governance and Leadership capabilities is through a dialogue process designed in a manner that creates an open, transparent and trusting environment; all key stakeholders are given opportunity to have their point of view heard; and moves at a pace commensurate with the stakeholders’ ability to embrace change.

The intent of the dialogue is to strengthen and build on the rich history of service provided to the ageing in over 30 aged care facilities across Australia. In this regard, consideration of suitable Aged Care Ministry models will include:

1. The extent to which, national, district and individual facility level bodies understand their responsibilities with respect to financial and risk-related matters and that responses are clear and appropriate.
2. The degree of national consistency in the implementation of Church-wide aged care related policies.
3. The extent of national policies that satisfy both Church and State requirements.

4. The standards of governance, including competency of governing bodies to meet their obligations; and carry out effective decision-making, particularly in an increasingly challenging market environment.
5. The appropriateness of existing lines of authority and delegations of authority.
6. The level and appropriateness in reporting from and to accountable bodies.

This dialogue would also recognise the LCA's expectations and oversight of its aged care facilities as an important part of its mission and ministry.

The Terms of Reference for this Dialogue can be found in Appendix 1.

Understanding Governance in the Christian Context

The vision of the Lutheran Church of Australia is 'to see God's love in Christ coming to life in people everywhere through a Lutheran Church that joyfully receives, lives and shares the gospel'. Its mission is to grow in 'a faith that comes to life through effective witness and ministry'.¹ If a vision is to be realised it requires leadership that makes movement towards the goal possible (governance) and the management of resources that are put in the service of achieving the vision (management).

Lutheran aged and community services are an expression of the joy and commitment to service of the Lutheran Church of Australia.

"By working together more intentionally as the body of Christ, serving through ... aged care (and) local ministry ... we can more effectively bring the good news of God's love to a world that needs hope as much as it ever has. (p6 LCA Strategic Direction 2013 to 2018).

(Lutheran) service in the world and our care for creation are integral to our Lutheran identity (p7 LCA Strategic Direction 2013 to 2018).

One of the Objects of the Lutheran Church from its Constitution is to minister to human need in the name of Jesus Christ our Lord in the spirit of Christian love and service, and to provide institutions and agencies for this purpose (this object can also be found on p8 of the LCA Strategic Direction 2013 to 2018).

The Lutheran Church of Australia should be very proud of its history in ministering to human need in the areas of aged and community services over many decades.

Effective ministry results when people use their God given gifts and apply them faithfully and effectively. The gift of leadership is essential to the effective delivery of the church's witness and ministry. Within the Australian community there are expectations of how leadership should happen in community organisations. Meeting these standards and expectations is not an end in itself. However when applied to the church's aged and community services these standards and expectations provide a foundation for effective ministry.

There is no separation here between the interests of the church and the interests of the community. When the church takes on board and applies the insights

¹ Lutheran Church of Australia *Strategic Direction 2013 to 2018* p10.

about governance offered from the wider community it supports its vision to live a life of effective ministry.

When the church focuses on meeting external standards it is not about compliance. Good governance is recognised as an integral part of enabling the Lutheran Church in all of its expressions to 'go and grow' in accordance with vision and mission; and so governance and leadership is identified as a strategic priority.²

There are a range of organisations within our community that have insight into what good governance is about – refer Appendix 2 for a summary snapshot of some knowledgeable views about governance. Of particular importance to Lutheran aged and community services are the views and requirements of the Australian Charities and Not-for-Profit Commission.

² Lutheran Church of Australia *Strategic Direction 2013 to 2018* p16

The Legal Context for Mission & Ministry Services

Whilst the provision of aged and community services by Lutheran agencies is an expression of ministry by the church, such service occurs in the world and is subject to the laws of the land.

Lutheran aged and community services are often conducted through Public Benevolent Institutions (PBIs). As a matter of law PBIs exist to provide benevolent relief. The provision of aged care is one of the more important expressions of PBIs in Australia. PBIs are amongst the most regulated of charities and charities, once one of the least regulated sectors of Australia, are now one of the most regulated.

On 3 December 2012 the Australian Charities and Not-for-Profit Commission (ACNC) was established and is charged with the registration and supervision of charities for Commonwealth purposes which includes PBIs. From 1 July 2013 new minimum Governance Standards apply to all registered charities. There is uncertainty as to the impact of changes to tax law introduced in 2013 and the resultant tax ruling TR2015/1. The ACNC published its guidance on Public Benevolent Institutions on Boxing Day 2016 and PBI's must ensure that they comply with the law, as set out by the ACNC unless there is good reason to challenge it.

By engaging in this review Lutheran aged and community services position themselves to not only address a strategic priority of the Lutheran church, but also to meet and exceed the minimum Governance Standards and thereby comply with the requirements for ongoing registration with the ACNC as charity, sometimes expressed through PBIs.

A fuller explanation of some key governance matters from the legal point of view is outlined in Part B of this report.

The Dialogue Process Undertaken To Date

Principles Of Dialogue:

The Dialogue adopted the five principles of dialogue used in the LCA:

Communion: Because God has gathered us in communion with one another there is freedom to dialogue with one another on potentially contested matters.

Trust: Because God has made us brothers and sisters in Christ, we can trust God to use our communion to build us up in love and overcome any mistrust that may affect our capacity to dialogue openly with each other.

Listening: As we listen we will grow in understanding of ourselves, of other people and the opinions they hold, and of God's will.

Speaking: As we speak we will grow in understanding of ourselves, of other people and the opinions they hold, and of God's will.

Patience: We can be patient in listening and speaking with each other, trusting that God will deepen the unity he has already given us.

Summary of Project Methodology:

The project consists of five Phases.

Phase 1: **Planning & Preparations** in consultation with key groups and people (*this occurred in late November to early December 2016*).

Phase 2: **Stakeholder Engagement** to achieve a broad brush 'stocktake' and advice on future options and recommendations (*this took place from December 2016 through to April 2017*).

Phase 3: **Consensus-building on a 'Way Forward'** in order to fine tune the options and recommendations arising from Phase 2. This phase consists of the development of a *Stocktake, Future Options & Recommendations Paper* (this Report) that is being circulated to all identified key stakeholders for their consideration. A one day '*Options for Our Future*' Workshop is planned to be held on 15 July 2017 for representatives from the church and representatives from each agency's governance & leadership team along with other key stakeholders (*this phase is occurring between May to August 2017*).

Phase 4: **Discerning Our Future Governance Arrangements**
Key stakeholder groups including General Church Council, Bishops, District Church Councils, Governing bodies of aged &

community services, the LCA Committee for Ministry with the Ageing, relevant Congregations and aged care 'professional' and 'chaplain' networks then consider the results of the 15th July workshop and the updated recommendations. A final two day '*Discerning Our Future*' Conference is planned to be held over the 13th & 14th October in order to discern recommendations that can then be put to the various decision making bodies within the church and the aged and community services organisations (*planned for September through October 2017*).

Phase 5: **Final Report**

The Reviewers draft their final report for submission to General Church Council and other decision making bodies in the first Quarter of 2018 (*planned for November 2017 to February 2018*).

Progress To Date

Phase 1 of the Project was completed as planned: Twenty six identified Lutheran aged and community services throughout Australia were contacted in December 2016 and January 2017 to arrange a time for 'on-site' dialogue in early 2017. Twenty one services accepted the invitation to participate in this Dialogue. District office personnel in the four relevant Districts were engaged. Meetings were also held with the LCA Bishop, the Dialogue advisory Group and the LCA Committee for Ministry with the Ageing. An introductory letter and a Project Communiqué were also circulated to all participating organisations. A web page for this project was also developed.

Phase 2 Stakeholder Engagement: Visits were made to nineteen aged care organisations associated with LCA by the Dialogue facilitators. Lutheran Community Care SA & NT and Lutheran Disability Services in Adelaide were also visited. Discussions were also held with relevant District representatives, the South Australian & Northern Territory Aged Care Council and the South Australian Aged Care Chaplains network. Two project update communiqués were circulated.

Visits were generally well received. Feedback typical from organisations visited was similar to the following feedback from Lutheran Homes Incorporated:

"On the surface, a review of one's Governance can be confronting and create a level of anxiety, but the manner in which the dialogue was conducted ... allowed us the opportunity to confirm our strengths while at the same time learn about areas where there is obvious room for improvement. The rapidly changing world of Aged Care has highlighted the need for us to change, especially in relation to our Board's Governance.

*Geoff Thiel
Chief Operating Officer, LHI"*

The joy the Dialogue facilitators most felt from their meetings with services is the very strong commitment by governing bodies interviewed to ensuring their services are an effective mission & ministry of the Lutheran Church.

The Dialogue facilitators were also appreciative of the preparedness of Bishops, Assistant Bishops and Districts to engage with this Dialogue – in at least one case a District Administrator drove many hours to attend the dialogue conversation in a distant regional service. In another two Districts the relevant Bishop was actively involved in Dialogue discussions.

Confidential Governance Health Checks:

All but three participating organisation opted to participate in the two to three hour governance 'health check' session. The purpose of this free and confidential governance health check was to assess the quality of the current governance arrangements of the organisation in order to provide constructive and helpful advice to the governing body of the organisation. It was acknowledged that such assessment was only a 'snapshot in time'.

In summary 124 indicators of best practice in governance were discussed clustered into 12 governance focus areas – refer Appendix 3. These twelve 'disciplines' of good governance were based on both the Reviewers and LCA's understanding of governance. (The LCA's minimum standards of good governance can be found in its Governance Framework document (especially pp 8-12) and in its Strategic Directions document (especially pp 16, 17 & 22). The twelve disciplines of good governance roughly align with the sequencing of the principles identified in the LCA Governance Framework document.

The governance health check sessions were overwhelmingly appreciated. It is already clear that there is a wide variation between organisations in the quality of governance. Detailed 'governance health check' feedback has been provided in writing to all eighteen participating organisations and themes have been captured in this Report.

High level review of Registering Documents:

Most organisations provided copies of their registering instrument (eg Constitution) for specialist lawyer Matthew Turnour to review. His reviews indicate that most instruments would benefit from being updated. High level information in this regard was also provided in writing to participating organisations and recommendations from those reviews are also captured in this Report.

A new Discussion resource on Theological Identity in Aged & Community Care:

A draft 'discussion only' resource was auspiced by the LCA Committee for Ministry with the Ageing and written by Dr Tania Nelson. Its title is "Exploring a Lutheran theological identity for Aged and Community Services: a discussion paper". The resource was circulated to identified key stakeholders and it

generated good discussion during the visits to aged and community services organisations. Refer Appendix 4 for a copy.

New Australian Governance Resource specifically for Aged Care:

On the 21st February 2017 the Governance Institute of Australia released 'Governance in Aged Care'. This is essential reading for members of aged care governing bodies. This resource complemented the 124 criteria 'Governance Health Check' offered as part of this LCA Governance Dialogue Project. A link on this project's webpage is provided for interested parties.

Phase 3 Consensus-building on a 'Way Forward' is now underway with the release of this report.

PART B: GOVERNANCE THROUGH THE 'LEGAL LENS'

Overview and introduction

Overview

The high levels of compliance already evident across Lutheran aged and community services provide a strong basis for further improvements. The culture of care and quality mean that there is an environment where many if not most of the PBIs do naturally that which is now expected by the Commonwealth government as set out in the Governance Standards. There are, though, understandable differences in appreciation of the significance of the subtleties in the Governance Standards, the tax laws and the Commissioner's Interpretation Statement on PBIs and as a consequence most organisations who participated in the recent 'Governance Health Checks' as part of this Dialogue have been advised to make some changes.

Throughout this Part we make recommendations, but all of the recommendations are designed to lift to even greater heights the performance of charities that are PBIs that are often substantially compliant.

As part of this Dialogue review we touched upon a variety of issues including the following issues mentioned in this Part:

- leadership, Board composition, Director duties & conflict of interest³
- staff contracts, volunteer arrangements & Director remuneration⁴
- director recruitment⁵
- risk appetite, Board culture & ethics⁶
- activities align with purposes and public information requirements⁷
- Constitutions⁸
- retentions and accumulations⁹
- mergers and collaborations¹⁰
- accountability to members and compliance¹¹

³ Considered at pages 22 to 29.

⁴ Considered at pages 29 and 30.

⁵ Considered at pages 30 and 31.

⁶ Considered at pages 31 and 32.

⁷ Considered at pages 33 to 34 and 37 to 38.

⁸ Considered at pages 35 and 36.

⁹ Considered at page 37.

¹⁰ Considered at pages 39 and 40.

¹¹ Considered at pages 40 to 44.

The fact that these issues are raised does not mean that they are explored. They are raised in this chapter as part of a more comprehensive review, a review which is shaped by the primary objective of not just the Lutheran Church of Australia but all charities, which is to carry out their mission on the one hand, and the second, by the equally important requirement of compliance with the emerging regulatory landscape, on the other hand. A future, to use the words of the *Strategic Direction*, in which the LCA and its ministries ‘may have to change ... the way ... God’s people of the LCA , seek to implement [their] Objects’.¹²

The overview and introduction to the legal review process set out in this section first sets out an overview of the regulatory environment and then introduces the way that the legal review was undertaken using the author’s¹³ ‘good-cubed’ concept. The good cubed concept is a concept founded on the premise that a good charity requires good governors, good goals and good guidelines, irrespective of the regulatory environment. The issues considered are looked at through the lens of these three fundamental requirements.

Because the purpose is to help Lutheran aged and community services achieve a strategic priority, not just ensure compliance, this Part is not organised around the law. Rather it is structured around these three concepts that are fundamental to the ‘effective witness and ministry’ of Lutheran aged and community services. These three concepts: good governors, good goals and good guidelines, implicitly embedded in the Governance Standards, are made explicit in this chapter.

Introduction

In this section is an introduction to the new regime which is now regulating charities in Australia. The section focuses particularly on the minimum Governance Standards required of Lutheran aged and community services.

On 3 December 2012 a new regulatory regime for charities commenced operation in Australia. Known as the Australian Charities and Not-for-Profits Commission (ACNC), this regulator is responsible for the registration and supervision of charities in Australia.

On 1 July 2013, regulations setting out minimum standards of governance expected of charities came into effect. Breach of these Governance Standards can lead to a loss of registration with the ACNC. The Governance Standards were enacted as regulations to the *Australian Charities and Not-for-profits Commission Act (the ACNC Act)*. External Conduct Standards are also expected to be promulgated as regulations although, to date, they are not to hand.

¹² Lutheran Church of Australia *Strategic Direction 2013 to 2018* p6.

¹³ Matthew Turnour

Breach of the Governance Standards triggers the powers of the ACNC to intervene in the management of any Lutheran aged and community services or community service registered with the ACNC. This intervention can include the power to issue directions and even to take control of the organisation by replacing the Board with a person or persons of the Commissioner's choosing or deregister it.¹⁴

Loss of registration with the ACNC results in loss of tax concession and other benefits associated with being a registered charity. It is therefore important that Lutheran aged and community service organisations comply with the Governance Standards if they wish to maintain registered charity status and operate as a PBI. The ACNC has made it clear that it 'understands that charities will need time to learn about their obligations and how to comply with them'.¹⁵ It has also stated that it begins 'by assuming that people involved in charities are acting honestly', will 'give people a chance to address ... concerns', and will 'use the least intrusive powers that are sufficient to address those concerns'. There is not, then, reason for alarm. It must always be remembered, though, that the ACNC is a Regulator and understandably will 'act firmly and quickly in cases where gross negligence or serious misconduct' or 'where vulnerable people or significant charitable assets are at risk'. What this means in practice is that not only must charities comply with the general law, if they fail to do so there is a risk of also losing charity status. This brings us to the intent of the Governance Standards.

The Intent of the Governance Standards

Turning now to the intent of the Governance Standards; they are stated to be to support registered entities in fulfilling their objectives. The simplified outline commences:

The governance standards support registered entities in fulfilling their objectives by providing a minimum level of assurance that they meet community expectations in relation to how a registered entity should be managed.¹⁶

The regulations setting out the standards list areas where there may be community expectations regarding governance. The list includes the following:

- how a registered entity goes about managing its affairs
- the use of public monies
- how volunteer time and donations provided to it are applied

¹⁴ S.85-1-10.

¹⁵ http://www.acnc.gov.au/ACNC/Regulatory/Reg_approach.aspx

¹⁶ S.45.1

- how the entity manages the risks that it faces
- how the entity promotes the effective and responsible use of its resources, and
- how the entity goes about demonstrating that it is operating transparently and for a proper purpose.¹⁷

The *ACNC Act* further develops the list of factors the Commission must take into account.¹⁸ The legislation is clearly intended to allow charities flexibility in how they go about carrying out their charitable purposes. They are also clear that the purposes must be discharged with these community expectations in mind.

Finally it is important to note that it is intended that the Governance Standards be understood as 'principles based'. That is, they are not intended to prescribe how a charity fulfils its obligations but rather charities are to consider the principles, in the light of their stated objects, and work out how best to apply them to their circumstances. This seems to be a helpful approach in four of the five standards but in relation to Governance Standard 3 - Compliance with Australian laws, arguably there is little if any flexibility for a principles-based approach as there is either a breach or there is not, in most cases.

This review process involves then, at the threshold level, considering the unique circumstances of Lutheran aged and community services on the one hand and these statutorily expressed community expectations on the other. In doing so the aim is to find how best to ensure that Lutheran aged and community services meet these expectations by governing themselves in a way that meets or exceeds the five minimum Governance Standards. As the focus of the chapter is the carrying forward of the mission of Lutheran aged and community services, rather than mere compliance, we have structured the review around the three concepts which we consider essential to a well-run charity: the good governors, good goals and good guidelines which we package within the concept of “good-cubed”.

“Good-cubed” – An Introduction

Integrating Governance Standards into Lutheran aged and community services' mission

Whilst compliance with the Governance Standards is important, Lutheran aged and community services exist not for compliance but the carrying out of mission. This compliance review process is a part of better equipping Lutheran aged and community services to more effectively undertake their mission. The review

¹⁷ S.45.1

¹⁸ s.15-10

process is designed primarily to better equip Lutheran aged and community services to more effectively carry out its mission by focusing on three key areas:

- leadership (governance)
- purposes (goals) and
- its compliance with the external regulatory environment and its internal rules (guidelines).

The first section: good governors; looks at leadership of the organisation. At the base level it is designed to ensure compliance with Governance Standards 4 and 5. In the second section we focus on the goals – the stated purposes of the organisation - the alignment of Lutheran aged and community services' stated purpose with their activities and their not-for-profit character. In so doing, compliance with Governance Standard 1 is considered. In the third section the focus is on the internal and external guidelines constraining Lutheran aged and community services. The external focus is on compliance with Australian laws. The internal focus is on Lutheran aged and community services' accountability to members. We begin with the issue of leadership which is the last subject area addressed in the Governance Standards.

Good Governors – Leadership

The suitability of leaders and their duties (Governance Standards 4 & 5)

Introduction

In this section we take up the first dimension of what makes a good charity: good governors. As part of that review we deal generally with what makes for a good board of directors and consider compliance with Governance Standards 4 & 5.

A good charity is led by leaders who together communicate the culture and character of the charity and together have the requisite skills so that the board as a whole has the capacity to discharge its functions, These expectations are translated into minimum standards as Governance Standard 4 the stated objective of which is 'to maintain, protect and enhance public trust and confidence in the governance and operation of [the charity]'. This is a very broadly stated objective but it is grounded in some quite specific expectations set out in the standard to which we will soon come.

The stated objective of Governance Standard 5 has two dimensions:

- to ensure that the [leaders] of [the charity] conduct themselves in the manner that would be necessary if:
- the relationship between them and the entity was a fiduciary relationship; and

they were obliged to satisfy minimum standards of behaviour consistent with that relationship; and

to give the public, including members, donors, employees, volunteers and benefit recipients of [the charity], confidence that [the charity];

- (i) is acting to prevent non-compliance with the duties imposed on [leaders]; and
- (ii) if non compliance with the duties imposed on [leaders] occurs—will act to identify and remedy non-compliance with the duties imposed on [the charity].

This standard is intended to make Lutheran aged and community services organisations responsible for the behaviour of its leadership and requires the charity to take action if persons who comprise the leadership fail to conduct themselves appropriately. Turning now to specific issues, we begin with Board composition.

Board composition and ongoing suitability of board members

A well run charity must have a good board. Put in the negative, it must not have unsuitable people as directors. The intention of Governance Standard 4 is to ensure that the leadership of Lutheran aged and community services is not undertaken by people who may pose a risk to its financial position or its pursuit of its charitable purposes.

As the Governance Standards are a minimum requirement, the threshold question, which must now be asked by Lutheran aged and community services when deciding whether or not a person should be appointed to the Board or another position of leadership within an organisation, is whether the person has been disqualified from managing a corporation under the *Corporations Act 2001* or has been disqualified by the ACNC from running a corporation. A note to Governance Standard 4 points out that other Australian laws may further place restraints upon who may lead a charity.

Given the potentially adverse consequences, such as loss of charity status for a breach of the Governance Standard, it is our recommendation that Lutheran aged and community services organisations adopt a rigorous approach to Board appointments as set out in Appendix 5 to this report. The recommendation is for the use of a new form to be used as a base for developing procedures for seeking information for the appointment of new directors. The form also authorises the undertaking of independent searches. As one of the notes to Governance Standard 4 states that reasonable steps to satisfy that Governance Standard 'may include ... obtaining declarations from responsible entities and searching public registers on appointment', as well as obliging leaders to advise the charity if their 'circumstances change'. We have provided for this in the form set out as Appendix 5.

The broader issue, though, is of course to ensure that at all times the people responsible for the governance of Lutheran aged and community services more than satisfy the minimum requirement and are the ideal people to lead it into the future.

It is not enough for Lutheran aged and community services to simply be satisfied as to the suitability of a director at the time of appointment. The charity has an ongoing obligation to remain satisfied. There is a positive duty on charities to take steps to remove people who are no longer considered suitable. In the first instance this may involve asking the person to resign and if they refuse to resign, to then follow the procedures set out in the governing documents for the removal of a director. The ACNC makes it clear that it is willing to be invited to consider what it will do if a charity finds itself in a position where it has a person who is a director who ought not to be fulfilling that role.¹⁹

The fact that a person might not satisfy the requirements for appointment is not, in and of itself fatal, because the ACNC reserves the power to permit people to be involved in the leadership of a charity even if they would otherwise be disqualified.²⁰ An obvious example is that a person convicted of an offence and jailed, following their release, should be permitted to be involved in the leadership of a charity that helps convicted criminals re-establish themselves after release from prison. The ACNC provide an example of a person refusing to sign a search permit form. The example states:

“After asking Pelegrin why, the board finds out that Pelegrin was convicted of one of the offences mentioned in the declaration, but that was about 15 years ago. [The charity] contacts the ACNC and is advised that this does not make Pelegrin unsuitable under the standard. This is because sufficient time has passed since the conviction for this offence which means he qualifies as a responsible person despite the conviction”.²¹

Behind these broader issues to do with the appointment of directors to Lutheran aged and community services organisations are other significant issues. These include succession planning and that topic leads into the issue of Lutheran aged and community services' membership arrangements. In this section we therefore commence the discussion of the interplay of membership with directorship. This topic flows over into accountability to members, which is Governance Standard 2.

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http://www.acnc.gov.au/ACNC/Manage/Ongoing_Obs/Governance/GovStds_4/ACNC/Edu/GovStandard_4.a.spx?hkey=453f6459-92ee-4c8f-b5fc-b0885519b3f3

²⁰ S.45.20(5)

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http://www.acnc.gov.au/ACNC/Manage/Ongoing_Obs/Governance/GovStds_4/ACNC/Edu/GovStandard_4.a.spx?hkey=453f6459-92ee-4c8f-b5fc-b0885519b3f3

It is not uncommon in the charity sector for charitable institutions, as distinct from charitable trusts, for the Board composition to be the same as the membership. It seems that this is the case in several of the Lutheran aged care services. This is lawful, and understandable in the context where the Synod is the ultimate supervisor. However it is not usually considered ideal from an accountability or transparency point of view. This is because one of the functions of membership is to appoint the Board and, where appropriate, to remove Board members. If the pool of members is so small that there is no one from the membership to be appointed, then it is also less than ideal from a succession planning point of view.

The issue is even more pressing in a situation where one or more directors ought to be removed. It is impossible in a situation where a majority ought to be removed and are acting in concert to maintain their appointment. This situation might arise where there is:

1. Misapplication or misappropriation of the charity's assets;
2. Inadequate competencies on the part of a director or insufficient breadth of skills across the board as a whole; or
3. Conflicts of interest.

The Dialogue process did not address itself to the specific matters of the suitability of the members of governance bodies. We therefore set out some general comments particularly applicable to charities in an endeavour to be as helpful as possible in flagging the kinds of issues that critical, external observers may seek to identify.

Questions about misapplication or misappropriation of charitable assets arise whenever directors, or even members, enjoy private benefits from assets set aside for charitable purposes. The general principle behind this is that a charity exists to provide benefit to the public, and in the case of a PBI that is the provision of benevolent relief to those who need it. If its purpose is to provide private benefits, then it should not enjoy favourable treatment under tax and other laws. Further, a charity cannot have dual purposes of some public and some private benefit; the purposes of a charity must be only charitable – that is the provision of benefit to the public.

The risk for church misappropriation of charitable funds also includes the use of surpluses for the benefit of the sponsoring congregation. Examples may be a disproportionate contribution by a service towards the maintenance of facilities that are shared between, say, Independent Living Units and the local congregation, through to grants towards the costs required to maintain the local congregation's ministry. Where the members of the local congregation are also the owners or members of the association to which a local Board is responsible, use of its funds for ends outside its charitable purposes might arise if the local Board regarded the service as existing to give priority to meeting the needs of the aged members of the local Lutheran congregation, rather than for the benefit of all persons in need in the community. This does not mean that the service

should not contribute to the salary of a pastor who works in the associated congregation as well as the PBI. It means that the contribution should be appropriate to the service provided. For example, if approximately 40% of the pastor's time is spent servicing the PBI then the service should be contributing about 40% of the remuneration and not significantly more.

This high standard does not mean that a director or member cannot benefit at all under any circumstances. What it means is that if there is to be private benefit, by a director or member of a Lutheran aged and community services organisation it must be because they would be entitled to benefit as members of the public, not because they are a director or members of Lutheran aged and community services. For example, if a Lutheran aged and community services director satisfied the criteria for receiving the benevolent relief assistance offered by a Lutheran aged and community services organisation they could do so but it would not be because they were a director but rather because they satisfy the criteria. Put as a different example if the organisation was a disaster relief charity and a director or member suffered loss through flooding or were bush fire victims, they would be able to be helped. The help would be given because they were members of the public suffering the consequence of a disaster and the charity would be helping them as a part of carrying out Lutheran aged and community services' purposes, not because they were a director or a member of the organisation. This is an important point that goes to the heart of understanding and running a Lutheran aged and community services organisation. How strict must a charity be about this? The answer is quite strict. Any private benefit can only be incidental or ancillary to the discharge of the Lutheran aged and community services organisation's charitable purpose. Members of governing bodies are not precluded from being residents of ILUs. They must though be able to satisfy the criteria for admission.

Turning to the question of board composition generally, we have observed that at least one Lutheran aged and community service appears to be relatively closely held by a group of family and friends. There is not any difficulty with this, in and of itself, and in fact, many charities lean this way because such people are often drawn together to pursue a charitable purpose. A problem arises though in two situations.

The first is where the board does not have the requisite skills to properly lead a Lutheran aged and community service. On information supplied to us, this does seem like it could be an issue in at least one situation and it is identified as an issue for careful consideration by the Lutheran Church of Australia.

The second situation is where the membership is so small and closely held that it is not possible to call the charity an 'institution'. Until recently we would not have expressed any concern in relation to Lutheran aged and community services being an institution. The question of what is an institution for charity law purposes is coming under increasing scrutiny. The Commissioner's Interpretation Statement on PBIs set out in some detail the requirements for being an 'institution'. Aside from ensuring that proper activities are being carried out it is

important that the PBI be properly separated from the church or other organisation with which it is involved so that it is itself an institution delivering public benevolent relief. If there is any doubt these guidelines can be reviewed.²² The church must be one institution and the PBI must be another. Evidence of the PBI being a separate institution includes, a separate constitution, Board and financial independence.

Issues regarding board composition and succession should be addressed with regard to the overall mission of the Lutheran aged and community services organisation in question. Succession and membership issues should be driven by the long-term aspirations of Lutheran aged and community services with concerns regarding the emerging law in relation to 'institution' in a charity context in the background.

A third issue, which can be a source of challenge in the context of charities, including PBIs, is dealing with conflicts of interest. The issues are particularly acute in the context of charities because directors and members are frequently generous contributors and therefore have significant dealings with the charities with which they are involved. To an outsider with a bent to cynicism, there can sometimes be a presumption that the directors or members would only be doing this philanthropy if they can personally benefit in some way. We address the issue of conflicts of interest in the next section where we explore director's duties and Governance Standard 5.

It follows from the above that we recommend some changes in relation to membership and the membership of the governing body in some organisations. As a general guide we recommend that all Lutheran aged and community services organisations have either a corporate membership or control by other means or, if a stand-alone body, that it increase its membership to at least double the size of the board +1. It is also prudent to encourage non-director members in particular, to attend company meetings. It is also prudent to ensure that in member recruitment that the members have the requisite skills and exemplify the character of the organisation as it is from this membership that it may be expected future board members will be drawn.

Directors' duties and Governance Standard 5

As some Lutheran aged and community services organisations are companies limited by guarantee, directors will be familiar with the obligations placed upon directors under the *Corporations Act* s180 to 184. Governance Standard 5 is an attempt to restate the obligations from the *Corporations Act* into a charity regulation context and apply them from 1 July 2013. On one construction of the law, directors of companies limited by guarantee in fact now have obligations

²² See Commissioner's Interpretation Statement Public Benevolent Institutions 15,16 <http://acnc.gov.au/CMDownload.aspx?ContentKey=cf1784ad-fb1b-4047-8021-7c09a1105011&ContentItemKey=3f686003-6da2-4516-8dc0-a9d7273b50e8>

under both the *Corporations Act* and these Governance Standards, as the provisions 'turning off' the duties under the Corporations Act are poorly drafted and may be ineffective.²³

In summary, Governance Standard 5 requires Lutheran aged and community services organisations to take reasonable steps to ensure that their leadership has in mind the following duties when they undertake their responsibilities. The duty:

- to act with reasonable care and diligence,
- to act honestly in the best interests of the charity and for its charitable purposes,
- not to misuse their position as a responsible person,
- not to misuse information they gain in their role as a responsible person,
- to disclose conflicts of interest,
- to ensure that the financial affairs of the charity are managed responsibly, and
- not to allow the charity to operate while it is insolvent.

We do not propose to discuss each of these duties in this chapter. We do recommend, though, to ensure compliance with this Governance Standard, that the duties be drawn to the attention of your directors and perhaps be the subject of discussion, which is appropriately minuted at a board meeting. The ACNC has provided an overview of what these Governance Standards mean in practice and that this might be a useful springboard for that discussion.²⁴

Conflict of Interest

As conflicts of interest are such a significant issue for charities we would offer some comment on this issue in particular.

A conflict of interest arises whenever the private interests of a person involved in leading a Lutheran aged and community services organisation conflicts with their duty to serve the public benefiting charitable mission of the Lutheran aged and community service. These conflicts inevitably arise. *Conflicts of interest are not wrong in themselves.* They can arise for the best of reasons. *They only become a problem when they are not appropriately managed.* Sometimes all that is required is to disclose the conflict. Sometimes it is necessary to withdraw from the decision making process. Sometimes it is necessary for the conflicted person to withdraw completely from the organisation – even resigning membership. The same basic facts can generate quite different outcomes when the particular circumstance of the charity is considered. Following are examples to illustrate this point.

²³ *Corporations Act* 2001 s.111L

²⁴ See: *What are the duties of responsible persons under the governance standards?*

http://www.acnc.gov.au/ACNC/Manage/Ongoing_Obs/Governance/ACNC/Edu/Duties_RespPersons_std5.aspx

Assume that a Lutheran aged and community services organisation needs a truck to transport equipment from one place to another. A director has a suitable truck and is willing to make it available on a cost only basis. The truck comes with the advertising of the director's business and being seen to support Lutheran aged and community services is great advertising. In most cases it would be enough to just note the conflict. If the value of the advertising was such that other companies might equally supply a truck at no cost then the board member should make the offer, then withdraw from the decision-making. The situation becomes more complex, though, if the only activity of Lutheran aged and community services was transportation of goods and the reason the director had joined and become a director was to advance his or her business. In that case they should resign. This is so even if they bring to the board important skills. This resignation may be required as the conflict, arguably, is simply too great and the reason for joining is personal benefit. The purpose of the director is inconsistent with the purpose of the organisation and would be likely to divert the organisation.

Our experience is that on conflict of interest questions, some people are far too sensitive and others are too robust. The New South Wales, Independent Commission against Corruption and Queensland's, Crime and Misconduct Commission guidelines, whilst written for public servants, are quite helpful.²⁵ For examples of different types of conflict of interest, refer Appendix 6.

Staff contracts

Staff contracts can become important in the context of the not-for-profit constraint and the asset locking provisions. Review of staff contracts is beyond the scope of this review but in this chapter some comments can be offered that may be helpful. Issues arise wherever and whenever the remuneration of an employee is not at market or a little below market rates. We therefore provide some general comment, which should assist in assessing whether any further advice is required in relation to staff contracts.

One of the major ways in which persons wishing to abuse the public nature of a charity and apply its assets to private purposes may attempt to do so, is by paying, by way of salary to employees, amounts that exceed market rates. The problem tends to arise with the CEO or, a family member of the CEO or a board member employed within the charity.

One of the ways a charity can ensure that this does not occur is by reviewing staff salaries against market rates from time to time with particular focus on contracts of relatives of board members or the CEO.

²⁵ See <http://www.icac.nsw.gov.au/preventing-corruption/knowning-your-risks/conflicts-of-interest/4897>

Volunteer arrangements

An issue can arise, in relation to persons who volunteer and are paid a very small salary or wage. The issue that arises is that it is unlawful to pay a person less than minimal wages for hours worked. This can be particularly difficult in a charity context. An imperfect way of addressing this is to clarify quite precisely the labour that is provided as work on a part-time basis and the labour that is provided as a volunteer. For example a person might be paid for working on Monday. They might then volunteer on some or all of Tuesday through to Friday. This review does not address this issue by way of advice. It is simply flagged as an issue for attention and suggesting a model upon which further advice might be taken if it were to be implemented in a particular context.

The risk of litigation by volunteers for unpaid wages is increasing. The situation arises whether a volunteer leaves disgruntled. It is therefore becoming more common for something akin to a contractual relationship to be put in place with volunteers making it clear that the arrangements are voluntary. There is a risk of volunteers moving outside of scope of their authority and beyond the scope of directions given. It has therefore also become more common for an agreement to be struck from the outset that volunteer must constrain themselves to operating within the parameters agreed.

Director Remuneration

There are two possibilities for remuneration of directors of companies limited by guarantee. The first is the situation where the company limited by guarantee is registered with ASIC as a charity company. A charity company is registered under the *Corporations Act* section 150. Such a company is usually most easily identified by being allowed to omit the words 'Limited' from its name. Such a company is not allowed to remunerate its directors. If the company is not a charity company it is permissible to remunerate its directors. The remuneration should be at or below market rates – ideally well below market rates. Market rates are best determined by a third party company director appointment agency. In some contexts it would be quite difficult to significantly remunerate directors because there are often persons of comparable skill willing to provide services to a charity company for no fee. About 5% of companies limited by guarantee remunerate their directors.

The ACNC Approach to Director Recruitment

The ACNC has set out a recommended process for choosing a new board member. It is not mandatory to follow the procedures set out but the recommendations seem to be sensible and practical.²⁶ All that is required,

²⁶ http://www.acnc.gov.au/ACNC/Edu/Tools/QT_002.aspx

though, is to comply with this Governance Standard. The guidelines do not have to be followed.

Historically it has not been uncommon for associations generally and religious institutions in particular to require board members to be members of the organisation. This is because it demonstrates a loyalty to the organisation. This is changing though as increasingly loyalty is seen as only one of the important factors required of a board member. Competence, capacity and character are increasingly weighted more highly and so nowadays it is expected that at least some of if not the whole of the board is to be appointed purely on a 'skills-based' basis. The loyalty requirements are often achieved by two other methods. First, by ensuring that the majority of the board are members of the organisation. The second is by ensuring that non-members who are directors subscribe generally to the ideals of the organisation. For example, if the organisation is a Protestant religious denomination it might place considerable weight on any non-member directors being both skills-based and active worshippers in another Protestant religious denomination.

Board role in setting strategy and limits on CEO

The Governance Standards do not set out any clear responsibility for setting strategy nor limiting the responsibility of the CEO. These seem to be two areas where some Lutheran aged and community services organisations are particularly strong. Some organisations, though, will need to review compliance with this Governance Standard in mind.

Board's role in defining the appetite for risk

As mentioned in the Introduction, one of the overarching objects of the Governance Standards as a whole is to ensure that charities are managing risk appropriately. The issue is not addressed squarely in any of the particular Governance Standards. From the material reviewed it seems to us that some Lutheran aged and community services organisations have good methodologies in place for assessing risk. Other organisations within Lutheran aged and community services may need to consider this issue of risk management more carefully.

Building projects can be an area of significant risk exposing not only the aged care organisation itself but the wider church to risk of loss. This is particularly the case where the denomination is either the borrower or a guarantor for the aged care centre. Some denominations have clearly defined parameters governing when loans will and will not be either made or guaranteed. It can be important to remember that the appetite for risk is not a static event determined at the time a loan is taken or guaranteed. Risk must be managed over time. In this context regular reports can become critical to risk management.

Workplace gender equality indicators

In 2012, the Commonwealth government passed the *Workplace Gender Equality Act*. The Act applies to all non-public sector employers, including charities, with 100 or more employees. The Minister for the Status of Women publishes by legislative instrument 'minimum standards in relation to specified gender equality indicators'. An employer to whom the Act applies must provide a report to the Workplace Gender Equality Agency between 1 April and 31 May each year on its compliance with the objectives of the Act for the preceding 12 months to 30 April. The report is to be published. If an employer fails to meet the minimum standards a naming and shaming process can begin. A consequence of non-compliance with the Act may ultimately result in the agency naming the entity on its website or even publishing details in a newspaper.²⁷

This Act has implications for board composition for any charity with more than 100 employees. Breach of the Act of course also has implications for Standard 3, which relates to compliance with Australian laws.

In order to comply with this legislation it is necessary for the employer to be aware of the standard that is published from time to time by the Minister. At this time the relevant minimum standards require an employer with more than 100 employees to have a formal policy or strategy in place that supports gender equality in relation to at least one of a number of specified criteria including the following: gender composition of the workforce, equal remuneration between men and women and terms and conditions supporting employees with family or caring responsibilities.

All Lutheran aged and community services organisations with 100 or more employees will need to keep this legislation in mind.

The board as an exemplar of culture, character, integrity and ethics

It is now well established that, culture, character, integrity and ethics of the board of directors sets the tone and expectations of the organisation as a whole. Further, it is clear both from the Governance Standards and the general law that directors of a charity can, in certain circumstances be personally liable for losses sustained by third parties due to breaches of the law by the charity. We have therefore, in the course of reviewing the material provided, sought to identify any apparent inconsistency between what is said on the one hand, as to expectations, and what is expected on the other. That is, we were looking for mixed messages regarding the board's expectations. What we did find in some cases was that whilst there was a culture of Christian integrity and ethics in the Lutheran aged and community services organisations there was an inability to

²⁷ Workplace Gender Equality Act 2012 (Cth) 19D

articulate these ethical expectations in a way that showed evidence that the directors were clear about legal obligations and legal structures.

Good goals – Purposes

Aligning purpose and activities (Governance Standard 1)

Introduction to good goals and the alignment of purpose and activities

In this section we take up the second dimension of what makes a good charity: good goals. In this part of the review we consider compliance with Governance Standard 1: purposes and the not-for-profit nature of Lutheran aged and community services organisations. We consider the activities undertaken by Lutheran aged and community services and ask the question whether the activities Lutheran aged and community services organisations are engaged in appear to be carried out in furtherance or Lutheran aged and community services' stated purposes or appear to be in furtherance of another purpose or purposes. If we appear to be unnecessarily critical or are misunderstanding of Lutheran aged and community services organisations and their purposes, this is because what may seem clear to insiders might not be to an outside observer.

The stated object of Governance Standard 1 is twofold. The first stated object is inward focussing. It is: to commit [the charity], its members and its [leaders] to [the charity's] purposes'. Put simply this standard expects the members and leadership to be committed to the stated purposes of the charity. The second dimension is to make this commitment transparent to third parties in regard to all the organisations that make up Lutheran aged and community services. This second aspect of this object is stated as being necessary: 'to give the public, including members, donors, employees, volunteers and benefit recipients of [the charity], confidence that [the charity] is acting to further its purposes'.²⁸

Therefore all persons involved in Lutheran aged and community services must be committed to its purposes and it should be clear to an external person who is not sympathetic to Lutheran aged and community services that the activities the Lutheran aged and community services organisation in question is engaged in, are in furtherance of its purposes. Turning now to the wording of the Standard itself, the two objectives flow into three requirements. Governance Standard 1 requires that Lutheran aged and community services organisation must:

be able to demonstrate, by reference to the governing rules of [the charity] or by other means, its purposes and its character as a not for profit entity; and

²⁸ S.54.5(1)

make information about its purposes available to the public, including members, donors, employees, volunteers and benefit recipients; and comply with its purposes and its character as a not for profit entity.

The standard finishes with a note to the effect that if a charity makes information available to the public on the Australian Charities and Not for profits Register, on the world wide web or it is otherwise made available on request then this Standard will be satisfied.

The Purpose and Character aspects of Standard 1

It is clear that Governance Standard 1(a) has a 'purposes' dimension and a 'not-for-profit' character dimension. Technically these should be identical or overlap but as the practice is emerging in Australia, there is a tendency to treat them as separate even though, as a matter of simple logic and common law, if the scope of the stated objects are confined to only charitable purposes, that should be enough. The assessment of the not-for-profit character tends to focus on ensuring that there is what is known as 'asset locking' or 'non-distribution' constraints in the constitutions of all organisations that make up Lutheran aged and community services. As the stated objects tend to be looked at separately from the not-for-profit nature, the approach taken in the review is to deal with them separately. Many, if not most charities, do not have simply stated, clear objects that are stated as *only* charitable purposes; and that if there are asset locking provisions they are less than that required by the Standard.

The legislators and the ACNC seem to realise that there are significant challenges in ensuring compliance with this Standard. So whilst the law requires that all charities that are not within the definition of a basic religious charity must meet the Governance Standards from 1 July 2013, it has provided two quite broad deeming exemptions.

The first is that if Lutheran aged and community services' governing documents prevent Lutheran aged and community services from complying, it will be taken to meet Governance Standard 5 until 1 July 2017. Needless to say if this is the situation this should be addressed as soon as practicable and in any event, before 1 July 2017 by making any necessary changes to governing documents. It is our view that some changes should be made to some constitutions. In this chapter and the appendices we provide comment. Amendments to the constitutions themselves are beyond the scope of this review.

There is a second basis for deemed compliance. If a Lutheran aged and community service is an incorporated association and the legislation under which it is incorporated sets out duties for its responsible persons; and if the Lutheran aged and community service and all of its leaders comply with their duties under the relevant legislation, it, too, is deemed to comply.

There is, then, a deeming of compliance taken to protect charities from non-compliance if Lutheran aged and community services organisations' governing

documents prevent it from meeting a part of the Standards or if it is already regulated and complies with all of its other regulations. We did not identify any Constitution that fell within the scope of this exemption.

Lutheran aged and community services organisation's current Constitutions measured against Governance Standard 1(a)

Having reviewed a number of the registering instruments of Lutheran aged and community services organisations we are in a position to make a number of recommendations.

Most of the constitutions represent drafting typical of their time. Following the establishment of the ACNC there is now a recognised typical charity Constitution. Lutheran aged and community services organisations could give serious consideration to re-drafting their governing documents to both restate and more precisely state the objects as only charitable and clearly PBI. Second this would provide an opportunity to update internal governance arrangements. We set out below our reasons.

It will be recalled from comments made earlier that a charity must be pursuing only charitable purposes. Some constitutions have a long list of stated objects. The difficulty is that where there are long lists of stated objects some of the stated purposes are simply not in themselves charitable and therefore an argument could be brought forward that since all of the purposes are not charitable the Lutheran aged and community services organisation in question is not in fact pursuing only charitable purposes, and therefore is not entitled to charity status. To take but one example – an object in one of the constitutions reviewed is 'to provide recreational facilities, social entertainment and daily accommodation for aged residents'. This could be an object for a commercial tour operator and is not charitable in and of itself.

The existence of such a clause is not fatal. The case law is clear that a holistic approach must be taken to assessing charitable purpose and the mere fact that there is a long list of objects some of which are not charitable, does not in and of itself, mean that the entity is not pursuing only charitable purposes.²⁹ Nevertheless, it is clearly preferable for the constituent documents of the charity to list only charitable purposes. This would avoid the risk of dispute with either the ACNC or the Australian Taxation Office, which if embarked upon could waste considerable time, funds and energy.

An area that is subject to continual review by the government is commercial activities by charities and there is keenness on the part of some within our community to see commercial activities by charities taxed. It is therefore also

²⁹ See *Federal Commissioner of Taxation v Word Investments Ltd* (2008) ATC 20-072 ("Word Investments") and *Thistlethwaites case* (1952) 87 CLR 375 at 442 and 450; [1952] HCA 48.

prudent to make it clear that any commercial activities are an expression of charitable purposes. For example if independent living units, which are not in and of themselves charitable nor used to provide benevolent relief, form part of the ministry they can be explained, quite often, as a resource for funding the charitable and PBI ministries. If that is so it should be clear from the documentation.

It follows from the above that quite frequently amendment to the Constitution is not necessary but there are advantages to adopting a redrafted modern Constitution that more precisely and succinctly states the organisation's objects and its not-for-profit character. Most importantly it should not list any purposes that are not charitable and, PBI if the organisation is a PBI.

The Governance standards require the capacity to remove directors in certain circumstances. Most constitutions reviewed are satisfactory in this regard and where they are not we have identified this. There is an argument that it may be necessary to further strengthen the capacity to remove directors in some cases but in our view, at this stage, the present arrangements are sufficient.

Non-distribution constraints, not-for-profit character and PBI requirements

In the constitutions reviewed, where there is not a non-distribution constraint we have identified this for the organisation concerned. In the situations where there is not a non-distribution constraint it is prudent to ensure that such a provision is included.

When would this Governance Standard in relation to non-for-profit character be breached? For example, if a Lutheran aged and community service were to buy a valuable piece of equipment, or a holiday home and a director took the equipment home, and it could not be used for the charity, or the holiday home was just for the use of governing body members. This suggests that in addition to the charitable purpose, the organisation has a secondary purpose - benefiting directors. That purpose would be for a personal benefit purpose and would violate the not-for-profit requirement. If there were a secondary non-charitable purpose this would also be a breach of the charitable purpose and would enliven the ACNC's powers.

The Australian Taxation Office also requires provisions in the constitutions of PBIs to ensure that all PBIs on winding up distribute only to another entity of similar tax status. We have reviewed the constitutions and have identified those entities that are in breach of this requirement.

Recommendations in relation to Governance Standard 1 (a)

An issue that must also be considered is the issue of retentions and accumulation generally. This is quite a contentious issue in an Australian taxation context with the Commissioner of Taxation continually pressing for greater application of funds to charitable purposes and less retentions. The High Court in the *Bargwanna case*³⁰ clearly set out some principles. The court stated that 'the Commissioner now accepts that a fund may be "applied" for charitable purposes without immediate expenditure of income as it is derived.' It then went on to quote an earlier decision that gave as an example, the following:

[I]f a fund were established to purchase radium for free curative purposes, and if it were found that (say) £20,000 were required as a minimum, but the fund could accumulate only at the rate of £5000 a year, and the Commissioner were satisfied that each year's income was deposited in a bank for the special purpose of getting together £20,000, and buying the radium, he could well say he was satisfied the fund was 'being applied' to the charitable purpose.³¹

The significance of these comments and this example is how little flexibility might be extended to the concept of applying funds to a charitable purpose on a narrow construction. One possibility is that funds can only be regarded as being applied to charitable purpose if there is a clear plan for accumulations and reserves. The recommendation is that Lutheran aged and community services organisations should have a clearly articulated strategic plan that includes a plan for both accumulations and reserves in writing. From the information supplied to us it seems to be the case that in many organisations such a strategic plan is in place. The point is to be able to make it clear to any external third-party not only that there is a policy of retentions, but why the particular amounts for retentions have been chosen with an explanation for accumulations. Organisations that simply accumulate large cash reserves with no reference to the charitable purpose run the risk of being called upon to show how they are applying their assets to their charitable purposes.

Do these Lutheran services make enough information public?

It will be recalled that Governance Standard 1(b) requires Lutheran aged and community services to:

make information about its purposes available to the public, including members, donors, employees, volunteers and benefit recipients'. It will also be recalled that the note seems to make it clear that this requirement will be satisfied if information regarding your purposes is available on the

³⁰ *FC of T v Bargwanna & Anor* 2012 ATC 20-312 [30]-[31]

³¹ *FC of T v Bargwanna & Anor* 2012 ATC 20-312 [31]

ACNC Register, is otherwise available publicly or even if it is just made available on request.

Greater scrutiny can be expected of PBIs than charities generally because they enjoy tax deductibility and can raise funds from the public. The provision of all necessary information to the ACNC probably discharges this responsibility in its entirety. This should not be problematic. It is important, though, that each board of each of Lutheran aged and community services organisation turns its mind to ensuring that this Governance Standard is satisfied.

Is there alignment of activities with purposes? Standard (1) (c)

Where the purposes of a charity and the activities of the charity are, in and of themselves, clearly charitable; for example where a welfare organisation provides food to hungry people, the alignment between the activities and the purposes is clearly evident. Where the activities are not, in and of themselves, patently charitable a question arises as to whether the activities are being pursued as part of the charitable purpose. This is an issue that has troubled courts both overseas and in Australia. Justice Lacobucci in his judgment for the majority in the Canadian case of *Vancouver Society of Immigrant and Visible Minority Women v MNR* held:

The difficulty is that the character of an activity is at best ambiguous; for example, writing a letter to solicit donations for a dance school might well be considered charitable, but the very same activity might lose its charitable character if the donations were to go to a group disseminating hate literature. In other words, it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature.³²

This means that in most Lutheran aged and community services the activity is patently charitable and clearly the work of a PBI such as the provision of accommodation to people that are vulnerable and in need of benevolent relief. In that case there will not be a problem. There will be activities though which are not clearly charitable of which the conduct of independent living arrangements is one of the more prevalent in the aged care sector. It can be very important that an organisation's documentation spells out how the activities fulfil the charitable purpose. It should not be left to the Court, or in Australia the ACNC, to work out how the activities undertaken by a Lutheran aged and community service relate to the discharge of its charitable purposes. The documentation should spell this out so that it is very clear, indeed unmistakable, if there is any possibility that doubt could arise.

³² [1999] 1 SCR 10 [152] and for similar views expressed in an Australian context see: *Commissioner of Taxation v Word Investments Limited* [2006] FCA 1414 (Sundberg J); affirmed [2007] FCAFC 171 (Unreported, Stone, Allsop and Jessup JJ, 14 November 2007) [81] and reaffirmed on appeal to the High Court of Australia: *Commissioner of Taxation v Word Investments Limited* (2008) 236 CLR 204.

Alternative structures

There are many reasons why organisations look to change structures but in the current environment one of the major drivers is merger or collaboration.

Research undertaken by the Australian Institute of Company Directors ('AICD') in 2016 found that:

Rates of mergers have not changed over the past year. As we found in 2015, just over a third of directors (35 per cent) reported that their organisation had discussed a merger in the last 12 months, eight per cent that their organisation is currently undertaking a merger and six per cent that it had completed a merger in the last year.³³

In setting out the reasons for merging or considering a merger and noting that they had not changed significantly from 2015 the AICD observed:

The most common reasons directors gave for their NFP merger activity were better meeting their mission, growing or maintaining market share and broadening the range of their services for users. Eight per cent said they are considering a merger because they are not financially sustainable. In their comments, many directors mention that the merger activity is occurring because another NFP, which is not financially sustainable on its own, approached them. Now it is, then, an ideal time to review the corporate structure and consider whether or not separate entities ought to be incorporated. We have been asked to comment on these matters.³⁴

The AICD also provided interesting information in relation to collaborations. On that topic the report found:

Seventy per cent of directors report that their NFP collaborates with others to advocate for the sector or beneficiaries. Forty-three per cent subcontract the provision of some services to other NFPs, 39 per cent have agreements or memoranda of understanding to refer or service clients, 26 per cent share resources and 15 per cent share back office functions. In addition, nearly all directors are expecting to increase the extent to which they collaborate in the next year. Three quarters are expecting to increase collaborations for advocacy, more than half will be signing formal agreements with other NFPs to deliver services, a third will increase resource sharing arrangements and subcontracting

³³ AICD (2016) *NFP Governance and Performance Study* 18 at <http://aicd.companydirectors.com.au/nfpstudy16>

³⁴ AICD (2016) *NFP Governance and Performance Study* 18 at <http://aicd.companydirectors.com.au/nfpstudy16>

for the provision of services, and a quarter expect to increase group purchasing arrangements.³⁵

It is beyond the scope of this review to explore the details for mergers and collaborations in a legal sense but the increasingly frequent need for a national response and market trends such as increased competition with for profits are driving mergers and increased collaboration.

The overarching goals of the organisation should be the primary factor determining the activities of a Lutheran aged and community service. Tax and structure is important but it must not become primary. Structuring should be determined having regard to the needs of beneficiaries, the objects of each of the organisations involved in Lutheran aged and community services and government and market pressures.

Good Guidelines – Compliance

Legal compliance and accountability (Governance Standards 2 & 3)

Introduction to good guidelines

Integral to the success of any charitable endeavour is not only that it has good governors leading the organisation in pursuit of good goals but also that it be bounded by good guidelines to which it is kept accountable. In Australia in the early 21st century the guidelines are from two sources: first the laws of the land and second the company's own internal, organic rules crafted to suit the relevant Lutheran aged and community services organisation. For holding Lutheran aged and community services accountable to those legal guidelines there is now the ACNC hovering in the background, but the first line of accountability is to members. In this section of the review we focus upon accountability to members and compliance with Australian laws. In the section on compliance with Australian laws we focus particularly on compliance with tax obligations.

Accountability to members (Governance Standard 2)

The stated purpose of Governance Standard 2 'is to ensure the accountability and transparency of [the charity] to its members'. It follows that any attempts to keep from them information to which members should be entitled is contrary to the Standard. This is because it would create an environment that would make it difficult for members to understand what the relevant Lutheran aged and community services organisation is doing and why. There is a deeper principle behind the Governance Standard, though, and that is to ensure that there is a

³⁵ AICD (2016) *NFP Governance and Performance Study 17* at <http://aicd.companydirectors.com.au/nfpstudy16>

group of people to whom those leading Lutheran aged and community services organisations are accountable. Membership is the first line of accountability for charitable institutions in Australia and the intent of this Governance Standard is to bring that accountability to the forefront of the leadership of Lutheran aged and community services organisations. Governance Standard 2 therefore requires that Lutheran aged and community services organisations, since they must be institutions and therefore almost certainly have members (as distinct from say a charitable trust which may not have members), must take reasonable steps to ensure that:

- the registered entity is accountable to its members; and
- the registered entity's members have an adequate opportunity to raise concerns about the governance of the registered entity.

The Governance Standards then set out across four notes, guidance for Lutheran aged and community services organisations in how to make sure that this Standard is met. It lists the following as three examples of ways in which Lutheran aged and community services organisations might ensure that they are accountable to members:

- holding annual general meetings; and
- providing members with an annual report (including financial information and achievements towards its purpose); and
- providing for elections for its responsible entities.

On the question of how Lutheran aged and community services organisations may take steps to ensure their members have an adequate opportunity to raise concerns, the Regulations provide the following two examples:

- holding an annual general meeting with a question and answer session; and
- providing an opportunity for members to propose resolutions and to vote upon those resolutions.

A tip provided in note 3 is to ensure that your governing rules include appropriate accountability mechanisms, and if they do, compliance with those rules would demonstrate compliance with Governance Standard 2. A further tip provided in note 4 is a reminder that part of compliance is preparing annual financial statements in accordance with subdivision 60 – C of the *ACNC Act*.

It is the function of the members to appoint the board. In a Lutheran context that is sometimes done by the members of the Council of Synod for the relevant District making the appointment. In doing so they should endeavour to ensure that overall, the board has the skills, experience, knowledge of the sector and diversity necessary to ensure that the charity is adequately, and ideally, best equipped to carry out its charitable purposes. This does not mean all directors must have all of these skills. It means the board as a whole should. If the membership of the board is the same as the membership of the charity, there is not the capacity for objective external assessment. Where a Lutheran aged and community services organisation operates as a stand-alone company, by

expanding the membership to double plus one as recommended earlier, there is the capacity for objective external assessment of the board.

For more information on the importance of members, refer Appendix 7.

Compliance with Australian laws (Governance Standard 3)

This Governance Standard which sets out a requirement that an entity comply with Australian laws is the standard that allows for least flexibility. The ACNC points out that a charity is under no greater obligation because of the Standard than it was beforehand and a note makes it clear that the Standard does not apply to require charities to comply with Australian law when operating in an overseas jurisdiction. The ACNC also sets out various examples on its web page to make it clear that it will only prosecute in the event of what appear to be quite serious breaches of the Standard³⁶.

While a breach of the law may lead to prosecution because it is seemingly so precise in its requirements, it most sharply raises the possibility of loss of charity status and all of the benefits which go with that status. This is because of the interplay of the Standards with the *ACNC Act* Section 25-5(3). That subsection of that Act sets out as a requirement for registration, compliance with the Governance Standards and External Conduct Standards. The wording is important. It requires that a Lutheran aged and community services organisation 'is in compliance with the governance standards ...'.

The concern is not with the ACNC prosecuting but rather with an offended member or even someone from the general public arguing that the ACNC is not entitled to register a Lutheran aged and community service because it is not in compliance³⁷. That is, if there has been a breach, it seems arguable that an entity is not entitled to registration and a complaint can be made to the ACNC seeking removal from the Register. An alternative argument, consistent with the ACNC's regulatory approach, though, is that if the breach is remedied then the Lutheran aged and community service is not in breach and is entitled to registration. This would seem to be the better construction but the point is that this underscores the need for charities to be particularly careful that they do at all times comply with Australian laws.

Compliance with Australian Tax Laws

Division 50 of the ITAA97 sets out the requirements for an entity to be entitled to income tax exemption. For income tax exemption purposes, the relevant Lutheran aged and community services organisations are all charitable

³⁶ ACNC Governance standard 3: Compliance with Australian laws
http://www.acnc.gov.au/ACNC/Manage/Ongoing_Obs/Governance/GovStds_3/ACNC/Edu/GovStandard_3.aspx?hkey=42d283a1-188d-4dc8-a2be-504a12c40b81

institutions in accordance with section 50-5 and therefore must comply with the special conditions set out in sections 50-50 and 50-52.

Pursuant to section 50-50, as the entity must have a physical presence in Australia and incur its expenditure and pursue its objects principally in Australia. This has been a requirement for many years. By amendments to this section in June 2013 further requirements were added by the addition of a new subsection (2). The new provisions require that in addition to this Lutheran aged and community services:

- must comply with the substantive requirements in its governing rules;
- and
- must use its income and assets solely for the purpose for which the entity is established.

This is not, in and of itself, problematic but what it does do is give the ATO the opportunity to review a Lutheran aged and community services organisation on these issues as well as the ACNC. So there are now, in effect two regulators of the sector.

For the sake of completeness, we note that section 50-52 provides that the entity must be endorsed by the Commissioner for Taxation in accordance with the provisions in subdivision 50-B. We do not propose to go through these requirements in this advice as Lutheran aged and community services is endorsed.

PBI requirements - 10 factors to take into account

In addition to being a charity many of the Lutheran aged and community services organisations reviewed are also PBIs. It is beyond the scope of this chapter to set out all of the requirements. Set out below, though, are the 10 factors which the ACNC will take into consideration when assessing whether or not an entity should be entitled to PBI endorsement. They are:

1. governing documents;
2. responsible persons (composition of board, committee of management or trustees);
3. policies and procedures;
4. operational, strategic or business plan;
5. annual report (if any);
6. financial statements (for an existing entity) or budget (for a new entity);
7. relationship with other organisations and agreements which evidence this;
8. mechanisms to address the risks of operating overseas, if relevant;
9. website and other communications; and
10. activities.³⁸

³⁸ Commissioner's Interpretation Statement: Public Benevolent Institutions CIS2016/3 [7.1]

PBI requirements – purpose and motive

The ACNC sets out that the main purpose of a PBI must be to provide relief to people in need.³⁹ This is very helpful but it must always be remembered that fundamentally the ultimate enquiry is whether or not the institution fits the description being ‘public benevolent’ and any other purpose enquiry is incidental to that. There will be organisations, and possibly Lutheran aged and community services organisations, where the religious purpose and the welfare purpose are deeply intertwined and significantly overlap. A religious purpose can be deeply embedded in a PBI. Many religious organisations provide benevolent relief as an expression of their religious purpose.

The ACNC navigates this in the Commissioner’s Interpretation Statement by drawing a subtle distinction between the *motive* that can be advancing religion and the main *purpose*, which cannot be religious. Whilst it is difficult to predict how organisations in the sector will respond, two possibilities can be anticipated. The path of least resistance is likely to be followed by many religious and other organisations with overlapping purposes. They will ensure that their constituent documents and other indicia of purpose make it clear that the main purpose is PBI and that the other ‘purpose’ is merely incidental or ancillary or rather just the underlying motive.

The second possibility is that it may be argued that there is an overlap of purposes. The High Court made it clear in the *Central Bayside* case that an entity could be pursuing both government and charitable purposes. In the *Central Bayside* case the Victorian Commissioner of State revenue argued that the Central Bayside General Practice Association Limited was not a charity. The argument was that Central Bayside was an organisation that received 93% of its funding from the Commonwealth government and was ‘implementing government policy, even if its purposes were “consonant with or coincide with government policy”’.⁴⁰ Rejecting this argument, the majority held there was ‘a confusion’ as the charity could be both discharging its purposes and also government purposes.⁴¹ If that is so then it seems arguable that a religious organisation can be pursuing religious purposes whilst being a Public Benevolent Institution.

³⁹ Commissioner’s Interpretation Statement: Public Benevolent Institutions CIS2016/3 [5.5.2]

⁴⁰ *Central Bayside General Practice Association Limited v Commissioner of State Revenue* [2006] HCA 43; (2006) 229 ALR 1; (2006) 80 ALJR 1509 (31 August 2006) [23], [39].

⁴¹ *Central Bayside General Practice Association Limited v Commissioner of State Revenue* [2006] HCA 43; (2006) 229 ALR 1; (2006) 80 ALJR 1509 (31 August 2006) [40] and [41]

Final Comments

Areas not addressed

The chapter is accurate in the areas of law that it explains but it must be borne in mind that there will be many other areas of law not touched upon that can affect the rights of charities that are PBIs operating within Lutheran aged and community services. For example this chapter has not specifically addressed occupational health and safety or any other areas of law that apply directly to the provision of aged and community services. These have not been touched upon because they apply generally to all organisations not just charities and because there is a need to contain the information provided. It will be evident from the discussion so far, though, that breach of any aspect of the law can put charity status and consequently entitlement to tax exemption and deductibility at risk.

Conclusion

From this review most Lutheran aged and community services organisations appear generally well-run charities. Having said that there are a number of ways in which Lutheran aged and community services organisations might improve. Whilst these improvements are not usually mandatory, they are recommendations which, given the possibility of careful scrutiny by the ATO, the ACNC and the public, it would be prudent to consider implementing to avoid any future difficulties. Recommendations that flow from this advice are included in Part E of this report.

PART C: THE RESULTS OF PHASE ONE

Interview Stocktake Results

Overview of Services Being Provided

In summary the Lutheran Aged & Community Services sector in Queensland consists of a large amalgamated organisation that provides both aged care and community services along with a few stand-alone small and medium services; in the Districts of New South Wales, South Australia and Victoria there are a range of small, medium and medium large aged care services; and two significant community services only organisations operating out of Adelaide.

Some of these organisations are legally under the control of the four Lutheran Districts identified above while some of the organisations are legally independent of the church.

Organisations Involved in this Dialogue

- Killarney Vale Retirement Village, Gunnedah NSW
- Lutheran Aged Care Albury Inc, Albury NSW

- Lutheran Community Care Qld, (multi sites in Qld)
- Peace Haven, Gatton Qld
- St Mark's Court Retirement Units, Dalby Qld

- Fullarton Lutheran Homes Inc, Fullarton SA
- Lutheran Homes Inc, Glynde SA
- Murray Bridge Lutheran Homes Inc, Murray Bridge SA
- Riverview Lutheran Rest Home, Loxton SA
- St Paul's Lutheran Homes Ltd, Hahndorf SA
- Tanunda Lutheran Home Inc, Tanunda SA
- Trinity Place Ltd, Pasadena SA
- Valley of Praise Retirement Village Inc, Lobethal SA
- Victor Harbor Lutheran Homes Inc, Victor Harbor SA
- Lutheran Community Care SA&NT, Sefton Park SA
- Lutheran Disability Services, Sefton Park SA

- Calvary Retirement Village, Greensborough Vic
- Eventide Lutheran Homes, Hamilton Vic
- Good Shepherd Retirement Village, Ringwood Vic
- Martin Luther Homes Boronia Inc, The Basin Vic
- Sunnyside Lutheran Retirement Village, Horsham Vic

Services Contacted but not involved in Dialogue

- St Matthew’s Lodge, Goombungee Qld
- Nazareth Residential Aged Care, Woolloongabba Qld
- Trinity Court Aged Care Southport, Ashmore Qld
- Trinity Haven Lutheran Units, Lowood Qld.
- Allambie Heights Village Ltd, Allambie Heights NSW

More information about most of the above organisations can be found in Appendix 8.

Quality of Current Governance (based on our interviews)

All services that participated in the Dialogue conversations were invited to participate in a separate Governance Health Check conversation. A detailed and confidential ‘governance health check’ report was provided to each participating organisation. Accordingly only the high level cumulative results of those governance health check interviews are shown in this report.

In terms of governance and leadership capability there is wide variance in the competency levels among the twenty one governing bodies interviewed. Some organisations are well governed, some have been assessed with a ‘pass mark’ while a few struggle to maintain even the mandatory legal and governance standards. All however see themselves as providing an important ministry of the church.

The following table (Table 1) indicates the high level results from the governance health check sessions. The table indicates the assessed current competence levels of governing bodies interviewed in relation to each of the twelve ‘disciplines’ of ‘best practice’ governance. Organisations were assessed using a ‘traffic light’ system of green, light green, amber & red.

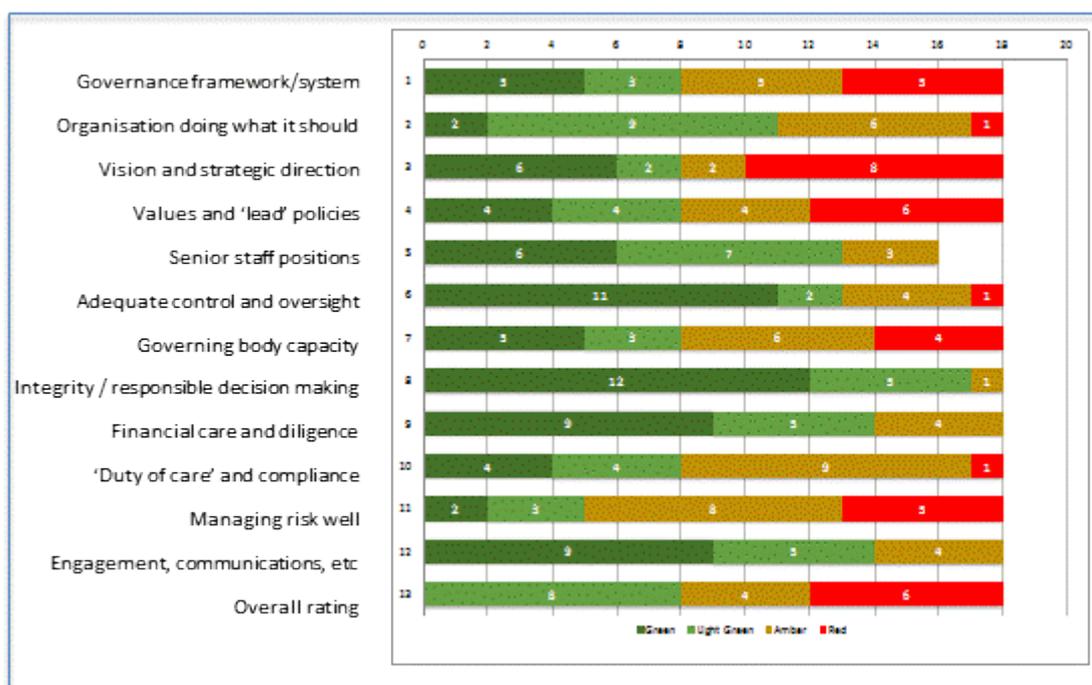
It is important to mention that this was a rigorous assessment and an assessment of ‘best practice’ in governance not just ‘good practice’. For an organisation to have scored an overall rating of ‘green’ it would have had to be a near perfect organisation. Accordingly an overall rating of ‘light green’ needs to be interpreted as a good result.

Table 1: Organisation performance against 13 governance focus areas

12 ‘Disciplines’ of governance	Green	Light Green	Amber	Red
An adequate governance framework/system is in place and in use	5	3	5	5
The governing body ensures that the organisation is doing what it is set up to do	2	9	6	1
There is an adequate vision and strategic direction for the organisation	6	2	2	8
The values and ‘lead’ policies of the organisation are clear and in writing	4	4	4	6

12 'Disciplines' of governance	Green	Light Green	Amber	Red
The governing body is clear about what senior staff positions it appoints, supports and supervises/manage - and how, and this is in writing	6	7	3	0
The governing body maintains adequate control and oversight of the work of the organisation (to protect it and the people to whom it owes a duty of care)	11	2	4	1
The governing body ensures it has the capacity to carry out its role and responsibilities and ensures it is performing them well	5	3	6	4
The governing body knows it is acting with integrity and making decisions responsibly.	12	5	1	0
The governing body knows it is acting with care and diligence in financial matters	9	5	4	0
The governing body knows the organisation is meeting its 'duty of care' and other compliance responsibilities (applicable to the type of entity it is, where it is located and the activities it is involved in).	4	4	9	1
The governing body knows that it and the organisation is managing risk well.	2	3	8	5
The governing body knows the organisation is meeting its engagement, communications, reporting and evaluation requirements.	9	5	4	0
Overall rating	0	8	4	6

Figure 1: Organisational performance against 13 governance focus areas



In summary, the above table and chart shows there is a wide variance in the skill levels of existing governing bodies in relation to these areas of governance. Particular areas of concern include:

- Ensuring an adequate governance framework/system is in place and in use
- Ensuring registering documents for the organisation are up to date with regulatory best practice
- Ensuring there is an adequate vision and strategic direction for the organisation
- Ensuring the values & 'lead' policies of the organisation are clear and in writing
- Ensuring the governing body has the capacity to carry out its role & responsibilities and that it is performing them well
- Ensuring the governing body knows the organisation is meeting its 'duty of care' and other compliance responsibilities (applicable to the type of entity it is, where it is located and the activities it is involved in)
- Ensuring the governing body and the organisation is managing risk well.

Quality of Current Registering Instruments (based on legal review)

All organisations that participated in the governance health check interviews were also invited to provide a copy of their registering instrument/s for a high level legal review. Nineteen sets of documentation were received.

This high level review was undertaken by Matthew Turnour from N&T Lawyers Queensland. Matthew was retained for this project because of his expertise and extensive experience in providing legal advice to churches throughout Australia.

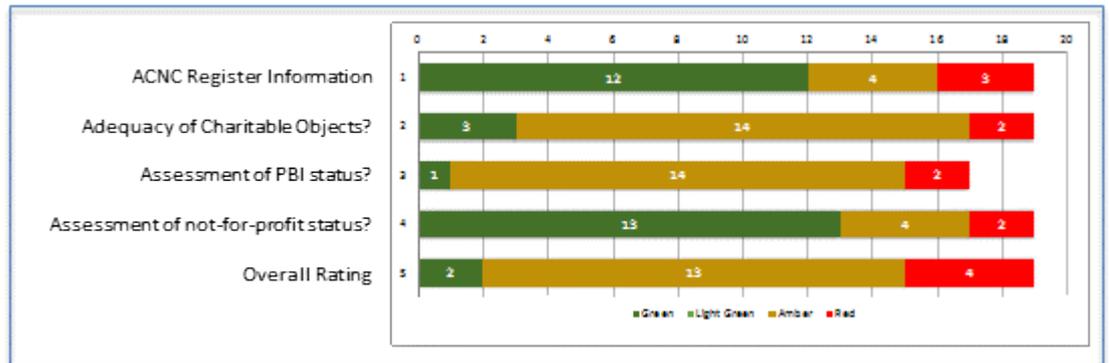
Matthew assessed the registering instruments and other documents supplied from the legal point of view. He also reviewed the material that the organisations had provided to the ACNC. Matthew has provided high level commentary and advice on each of the registering instruments that he reviewed back to each governing body.

The following Table and Figure indicates the results of Matthew's assessments using the green, amber and red 'traffic light' system.

Table 2: Quality of Registering & Charitable documentation reviewed

Areas subjected to high level review	Green	Amber	Red
ACNC Register Information?	12	4	3
Adequacy of Charitable Objects?	3	14	2
Assessment of PBI status?	1	14	2
Assessment of not-for-profit status?	13	4	2
Overall rating	2	13	4

Figure 2: Quality of Registering & Charitable documentation reviewed



In summary, the above table and figure shows that it may be prudent to update a number of the existing registering instruments and that some organisations could improve the quality of the information they supply to ACNC.

Governance Improvement Ideas Suggested by Participants

This section is mostly a compilation of the many ideas and suggestions provided to the Reviewers from the people we dialogued with.

General Observations by Reviewers

- It was observed that all governing bodies see the organisation they govern as a key mission & ministry of the Lutheran church
- Most governing bodies appear active in encouraging this focus within their organisation
- There appear to be sufficient committed Lutherans on the governing bodies, all seemingly well meaning, most having demonstrated their commitment to their organisation over many years with many being 'people people' who value respect, teamwork and Christian service
- A number of governing bodies indicated they feel somewhat isolated from other Lutheran services. Optional networking is the main link that is available to them. While independence is seen as normative by many groups, a sense of isolation is not welcomed by all services.
- A number of small congregation based services that are not subject to the external discipline of the Aged Care Act (e.g. services providing

accommodation units) typically regard themselves as a Management Committee. Because this is their orientation they do not have a focus on governance.

The following ideas to enhance the future of Lutheran aged and community services were suggested from people interviewed as part of this project. It is acknowledged that as the following are simply ideas suggested by different people, some of the ideas may be mutually exclusive.

General Ideas Suggested:

Principle of Subsidiarity

1. The Lutheran Church of Australia adopt for its Lutheran aged and community services the principle of 'subsidiarity' whereby authority to make governance decisions is placed whenever possible at the level closest to service provision that is competent to have that authority.

Governance Benchmark Document

2. The Lutheran Church of Australia and all Lutheran aged and community services adopt the 12 Disciplines of good governance and its 124 indicators of good governance as a governance health check document available to all Lutheran aged and community services.

Governance as a Journey

3. All persons involved in the governance of Lutheran aged and community services, whether on a church body or the governing body of one of these services should see governance as a continuing journey of learning – never ending. We all need to understand that the principles and requirements of good governance continue to evolve and our governance systems should be set up in such a way as to enable continuing development by all.

Organisational Level Ideas Suggested:

Up to date Constitutions

4. Lutheran organisations should keep their constitutions up to date with regulatory changes and the wider Lutheran church could assist in this regard.

Skills Based Governing Bodies

5. A 'skills based' approach should be taken much more seriously to the composition of governing bodies – each Board member should bring a significant governance skill to the Board.
6. Need more people on these governing bodies who have:
 - a. business acumen
 - b. people who are 'systems' type people, and

- c. people who are 'innovators'.

Rigorous recruitment to Governing Bodies

- 7. That more rigour be used in appointing persons to these governing bodies.

Understanding Governing Body Member Responsibilities

- 8. Much greater training needs to be provided to members of governing bodies on an ongoing basis especially in the areas of director duties, ACNC requirements, managing conflicts of interest; financial questioning; compliance; and risk.

Meeting Governance Responsibilities

- 9. Governing bodies could ensure they cover all their areas of responsibility over a one to two year time span by developing and working to a formal 'Governing Body Work Plan.'
- 10. Governing Bodies to ensure their governance and strategic ('lead') policies for the organisation are consistent with Lutheran policy, in writing, circulated, known and implemented.
- 11. Cutting edge and/or controversial policy areas should not be ignored or shied away from and either Governing body guidance or lead policies are in place for these areas (e.g. in aged care: non-discriminatory gender identity, palliative care, care of the dying, pets).
- 12. Governing Bodies should ensure that the organisation has a comprehensive risk management system in place; that is kept up to date; is regularly monitored by both executive level staff and the governing body; and routinely evaluated for ongoing appropriateness.
- 13. That all Lutheran aged and community services organisations should have a strategic plan.

Ensuring quality Lutheran Services

- 14. Actively encourage a culture of 'seeking help early' rather than waiting until a crisis is developing before seeking help from other Lutheran agencies.
- 15. All governing bodies of Lutheran aged and community services sign an agreement with an LCA national committee with expertise in the governance of aged and community services (refer idea 24 below), granting the national expert committee authority to take over and control the governing body of the local agency in extenuating circumstances. Such an agreement would specify the circumstances under which the LCA national expert governance committee could intervene and appoint a short term Administrator for the organisation.

Supporting new Chief Executives

16. Governing Bodies ensure a comprehensive induction program for every newly appointed chief executive including arranging a “buddy mentor” system with at least one other chief executive experienced in this sector.

Ensuring a Lutheran Ethos & Pastoral Support for Boards

17. Governing Bodies could each ensure that they have access to an appropriately skilled spiritual advisor from the Lutheran Church, preferably from a nearby congregation.

Connectedness to Congregations

18. Governing Bodies ensure to the best of their abilities that the organisation maximizes the opportunities to connect with and interact with local Lutheran congregations in order to maximize mission and ministry opportunities.

District Level Ideas (where Districts are the legal owners of these services):

Active Ownership

19. Districts should be ‘active owners’ and meet regularly with the governing bodies of these services – including making better use of technology such as video conferencing where applicable.

Better Governance Structures:

20. The Queensland District should reduce the complexity in the governance arrangements associated with LCC Qld.
21. The South Australian District should consider merging the governance function of Lutheran Community Care SA&NT and Lutheran Disability Services.

National Level Ideas:

Clarity of purpose & scope of these services

22. The Lutheran Church of Australia needs to make clearer to members of the Lutheran Church the purpose and ‘scope of service’ of its aged and community services sector (i.e. seeing these services as an active ministry of service to the targeted clientele of these services, not as services that exist to support congregations with funding etc).

New governance structures:

23. One new national governing body be set up to replace all existing governing bodies of Lutheran aged and community services organisations.

24. A 'thinktank' or committee, expert in governance in aged and community services, be set up reporting to GCC, with the responsibilities of:
- a. ensuring modern governance policies and practices are available to each of the governing bodies of Lutheran aged or community services (including ensuring national guidelines to support specialist aged care Pastors and Chaplains);
 - b. co-ordinating professional development activities and programs (e.g. national Lutheran aged care conferences and leadership development programs)
 - c. providing a 'support service' to those services struggling with either governance or operational matters;
 - d. taking over the governance responsibility of an agency when deemed necessary and acting as Administrator based on certain reserve powers delegated to it by both GCC and all aged & community services associated with the Lutheran Church of Australia. (this is based on the view that the Church needs 'teeth' to intervene when a Lutheran service is failing or is at real risk of failing).
25. The above committee employ and supervise at least 1 FTE National Governance Support Officer. The prime responsibilities of the National Governance Support Officer being:
- a. ensuring modern governance policies and practices are available to each of the governing bodies of Lutheran aged or community services
 - b. ensuring current operational policies and practices (e.g. government reform requirements) are available to each of the governing bodies and chief executives of Lutheran aged or community services
 - c. to alert the expert committee in those circumstances when a Lutheran aged or community service organisation is considered to be operating at an unsatisfactory level of performance
 - d. to co-ordinate agreed priority training opportunities for members of governing bodies of Lutheran aged and community services (e.g. a national governance development program)
 - e. to represent or liaise with those persons representing the Lutheran aged & community services at national meetings external to the Church.
26. The National Support Officer be responsible for maintaining a national electronic clearing-house of essential information for governing bodies and chief executives. Such a clearinghouse should include:
- a. A 'plain English' statement of Lutheran theological identity for Lutheran aged & community services
 - b. Model constitutions for Lutheran aged & community services
 - c. Relevant & up to date information from the federal government and its agencies concerning government requirements of funded services
 - d. Model policies & procedures for good governance of Lutheran aged & community services covering:
 - i. role & responsibilities of members of governing bodies, chief executives & chaplains

- ii. recruitment of members of governing bodies, chief executives & chaplains
- iii. induction of members of governing bodies, chief executives & chaplains
- iv. support options for new members of governing bodies, chief executives & chaplains
- v. ongoing professional development requirements
- vi. performance evaluation
- e. List of recommended professional development modules & courses for members of governing bodies, chief executives & chaplains
- f. Lutheran specific professional development modules (eg modules specific for aged care chaplains).

27. The LCA Committee for Ministry with the Ageing take on as part of its responsibilities:

- a. the 'national voice' function of representing the Lutheran aged and community services views to government and government agencies at the national level
- b. representing the Lutheran aged & community services at national meetings and forums such as the National Aged Care Alliance, as well as ensuring information gleaned from attending national meetings is passed through to the chief executives of each aged and community service organisation associated with the Lutheran Church of Australia.

If it is not considered appropriate that this function be a responsibility of the Committee for Ministry with the Ageing that this function be given to another group such as the group of persons proposed in idea 24 above.

28. The national aged & community services expert governance committee be given the reserve powers to take over, sack the existing Board and appoint an Administrator in any Lutheran aged or community services that in the opinion of the expert committee is in breach of the 'Contract of Governance' between it and a Lutheran aged or community service.

Better Branding:

29. There be greater branding consistency between all aged & community services associated with the Lutheran Church of Australia (e.g. the name "Lutheran" be included).

These ideas and suggestions from interviewees have been incorporated into the recommendations in Part E of this report.

PART D: OPTIONS FOR THE FUTURE WE ARE CALLED TO

General Structural Options Going Forward:

The following structural options are proposed for discussion at the *Options for our Future* Workshop planned for the 15th July 2017.

Following our dialogue discussions with key stakeholders the most likely four structural options for going forward appear to be:

Option 1: Amalgamating all Lutheran aged and community services organisations into a single national Lutheran Aged & Community Services Organisation. This has been done in other organisations.

- a. Advantages of this option: Economies of scale including the ability to recruit greater governance and management expertise and a simpler governance command & control structure which in theory will enhance governance effectiveness and efficiency.
- b. Disadvantages of this option: It does not resonate with the current structural culture of the LCA; there appears not to be widespread support for this option to date; there is fear in some places that national level decision making will not be good for local service delivery.

Option 2: Amalgamating all of these Lutheran organisations into two national Lutheran organisations – one for ministering to older persons and the other ministering to disadvantaged communities, people experiencing disadvantage and people experiencing disability.

- a. Advantages of this option: Economies of scale including the ability to recruit greater governance and management expertise and a simpler governance command & control structure which in theory will enhance governance effectiveness and efficiency. Possible greater opportunity to establish community services in the Districts of Victoria and NSW and possibly elsewhere.
- b. Disadvantages of this option: It does not resonate with the current structural culture of the LCA; there appears not to be widespread support for this option at this time; there is fear in some places that national level decision making will not be good for local service delivery; to an extent community services in Queensland are integrated with aged care services; there are possibly insufficient Lutheran community services to justify such significant change.

Option 3: Amalgamating all of these Lutheran organisations into five District level Lutheran organisations (this would result in one organisation in the each of the Districts of Queensland, NSW and Victoria and two organisations in the District of South Australia/Northern Territory – one being for aged care, the other for community services).

- a. Advantages of this option: Economies of scale and improved simplicity of governance command & control which in theory will enhance governance effectiveness and efficiency; it aligns with the current District nature of the Church; it has already been achieved in Queensland.
- b. Disadvantages of this option: There appears not to be widespread support for this option in the Districts of South Australia and Victoria; there is fear that District level decision making will not deliver greater expertise or efficiencies than that which already exists in the majority of services; significant duplication of governance will remain embedded in the Lutheran aged and community services sector (which is primarily policy driven and funded by national agencies).

Option 4: Maintaining roughly the status quo structurally with the exception that several of the smaller organisations are invited to merge their governance function at District or sub-District levels and both the district and national levels of the church strengthen their governance support and oversight of these services. This is a reasonable option to consider because:

- a. (like Option 3) it would still be consistent with the current District nature of the Church;
- b. It strengthens and better supports those services requiring strengthening in governance without changing local service delivery;
- c. It may enable some persons currently serving on these 'governing' bodies to make better use of their skills and interests on a local 'committee of service' (some members of current 'governing' bodies indicated their real interest was not in 'governance' but in assisting their local service improve service delivery directly such as by assisting with buildings maintenance, grounds development and equipment purchases etc);
- d. This option had the most support from people interviewed.

The disadvantages of this option include ongoing complexity and potential variability in governance quality including in the areas of governing body capability, governance systems, strategy, financial management, compliance, risk management and accountability. If this option were to be the preferred way to proceed the Reviewers consider it would only work if most of the recommendations contained in this report were adopted and implemented.

It needs to be noted that in relation to all of the above options that a number of these aged care organisations are currently independent legal entities, separate from the church and therefore ‘amalgamation’ or ‘merging’ should not be assumed as automatic or necessarily a welcomed option for them – especially in those organisations that are demonstrating quality governance in their own right.

Based on discussions to date it appears Option 4 is the preferred option going forward by the majority of stakeholders at this stage in this Dialogue.

Structural Options for Lutheran ‘Community Services’ in South Australia:

The following structural options are proposed for discussion between the LCA District of South Australia and the governing bodies of Lutheran Community Care South Australia & Northern Territory (LCC) and Lutheran Disability Services (LDS).

Future governance arrangements to consider at this time for these two organisations include:

Option 1: LDS and LCC continue as separate entities (the ‘no change’ option).

Option 2: LDS and LCC continue as separate entities but actively partner on certain support functions (e.g. HR, procurement, property management, marketing and development).

Option 3: LCC and LDS merge to create a single new entity (one board and one chief executive) that continues to provide the full range of current services - with potentially very little change at the service delivery level as the proposal is only to merge the governance and chief executive functions of these two organisations.

Option 4: At the District level in South Australia, should there in the future be one governing body for a number of aged care services, that the governing bodies of LCC and LDS merge with that new District level governing body to establish a single governing body covering a number of both aged and community services in the SA/NT District.

Option 5: Have a single national governing board of governance for aged care and community services.

Based on discussions with representatives of these three bodies it appears option 3, the option of combining LDS and LCC into a single entity (maybe Lutheran Community Services), was worthy of further discussion. The opinion of the Reviewers is also that option 3 above may be the most appropriate way forward to enhance the governance function of these two existing services

(depending of course on what changes are made to the governance structures and processes of Lutheran aged care services).

In considering any of the above options, evaluation criteria could probably include:

- How the option meets or enhances the aims of the church (i.e. the interests of the owner)
- Considering the impacts on each organisation's current mission
- The extent to which the interests of service recipients would be continued or enhanced
- Considering whether current & future funding would be jeopardized
- Assessing the extent of governance enhancement (e.g. efficiencies, board skill sets etc)
- Assessing the extent of management enhancement
- Assessing the extent of service delivery enhancement.

Future National Level Support Options – for Discernment:

Regardless of the governance structural option chosen as the future of Lutheran aged and community services, there has been a widespread call from people interviewed as part of this Dialogue for greater and better support of these Lutheran services from the Church at its national level.

This 'call' seems in part due to the disparate nature of this Lutheran sector, the perceived lack of historical systemic support from Districts and the fact that most policy and funding requirements on these services are now coming from Commonwealth Government or other national agencies.

Later in this report the Reviewers recommend that as a minimum the Lutheran Church of Australia at its national level employ at least 1 full time professional officer to provide ongoing support to both the governing bodies and the chief executives of these services (ie Option 4 below). The Reviewers however prefer Options 5 or 6 below.

To ensure a broader discussion, a number of other options are listed below for further consultation and discussion.

Option 1: No change – no additional people are employed at the national level within the Lutheran church to specifically support the Lutheran aged and community services sector. District level staff continue to devote some of their time to supporting these services within their District as best they can.

Option 2: Part of the duties of existing staff at both District and national levels be devoted to this task in an enhanced way (i.e. more hours each week are set aside for this function).

Option 3: A person is employed on a part time basis at the national level to specifically support the Lutheran aged and community services sector. This option would only provide for very limited enhanced support to the sector.

Option 4: A person is employed on a full time basis at the national level to specifically support the Lutheran aged and community services sector. (This is the minimum option recommended by the Reviewers later in this report and in reality would amount to approximately 1.5 FTE in terms of cost when required administration support is taken into account). This option may be sufficient to provide basic governance support to Boards but in reality would probably not be able to provide much support to chief executives in regard to national policy, funding and advocacy issues.

Option 5: Two people are employed on a full time basis at the national level to specifically support the Lutheran aged and community services sector. One person would possess governance expertise and specifically support the governing bodies within this sector. The second person would be an aged and community services expert and support the chief executives of these services with national policy, funding, advocacy and professional development matters. (In reality this option would probably amount to approximately 2.7 to 3 FTE in terms of cost when required administration support is taken into account). This outcome would better assist the LCA in ensuring good governance in its aged and community services including better meeting of governance standards as recommended by key bodies with governance expertise such as ACNC, the Governance Institute of Australia and the Institute of Company Directors etc.

Option 6: Two national professional officers are employed as per Option 5 above but instead of being based in the national office of the church in Adelaide, one is 'housed' (say) within Lutheran Community Care Qld and the other is 'housed' in a large service in South Australia.

It is acknowledged there may be other possible options but the above were the options put to the Reviewers as part of the Dialogue.

The duties of the officers proposed in Options 3 to 6 above are summarised later in this report in one of the recommendations for the national level of LCA (refer recommendations in Part E of this report).

PART E: DISCUSSION & RECOMMENDATIONS

Overview

As mentioned earlier in this report, the intent of the Dialogue is to strengthen and build on the rich history of service provided to the community by over 20 Lutheran aged and community service organisations across Australia. The Dialogue is to enhance mission, governance and leadership in aged and community services within the LCA.

In this section of this report we make comments against the specific Objects of the Dialogue and the 'considerations' that were to be given in this review.

Considerations Requested

Considerations on Objects of Dialogue:

Commensurate to a body of the nature and size of the LCA and its aged care and community services organisations the Dialogue will consider future Governance and Leadership capabilities for Lutheran aged and community services that:

1. Align with and support the LCA's Strategic Direction:

Comment: Whilst the majority of strategic plans in existence may align with the strategic directions of LCA this is mostly by accident as very few organisations consciously developed their strategic plans based on the LCA strategic directions. Indeed most governing bodies either were not aware of the LCA Strategic Directions or had not discussed them in relation to their own strategic directions.

2. Ensure the LCA's Aged Care organisations meet the LCA's requirements for governance and Aged Care leadership:

Comment: These expectations of LCA are primarily set out in two documents – the LCA Governance Framework Working Document and the LCA Strategic Directions 2013 to 2018. In the opinion of the reviewers these requirements of LCA are 'minimal standards' and the standards used in assessing the governance capabilities of participating organisations in this review was set at a higher level of 'best practice'. Whilst a majority of Lutheran aged and community services organisations could be deemed as complying or exceeding the expectations set out in the two above mentioned LCA documents, a minority of services appear not to be meeting even these minimal standards. Most persons spoken with as part of this Dialogue consider that the Lutheran Church has a right

to expect that Lutheran aged and community services meet appropriate quality standards in the area of leadership and governance.

3. Enable the LCA and its Aged Care organisations to meet its legal and compliance requirements in an effective and efficient way:

Comment: There is no current 'Lutheran system' that enables this objective to be achieved. Currently it is up to each individual service to manage. Needless to say that some services appear to be managing this governance function well while others are probably in breach of Australian law or contractual obligations.

4. Achieve effective accountability and risk management:

Comment: Ditto as per 3 above. Risk appears to be managed well at the governance level in a minority of Lutheran aged and community services.

5. Ensure all Lutheran aged and community services organisations deliver the highest possible standard of services and effective missional outcomes:

Comment: As this is a review of the governance of Lutheran aged and community services and not a review of their service level operations it is difficult to comment on this object at this time in the Dialogue. We can report that most of these organisations were not observed to be delivering the highest possible standard of governance. However the good news is that all governing bodies interviewed saw their organisation as being a key mission & ministry arm of the Lutheran church.

Specific Considerations:

In considering suitable Aged Care Ministry models/ arrangements for the future, the Dialogue was asked to consider the following issues:

- a. current Governance structures, practices and standards of governance;

Comment: Current governance structures vary between Districts and between organisations within Districts. The quality of current governance practices and standards of governance vary widely between organisations.

- b. current levels of interaction to/from the LCA: at the National, District and Congregational level;

Comment: Some aged and community services organisations have extensive and positive relationships with Lutheran congregations – others do not. Overwhelmingly governing bodies report that past levels of interactions at both District and national levels within LCA have been less than satisfactory from their point of view. Although improving in recent times, three of the four Districts were typically seen as 'owners missing in action' (Queensland excepted).

Except for the former Board of Lutheran Aged Care Australia (BLACA), the Lutheran Church at the national level was mostly seen by people we interviewed as distant, out of touch and not able to be helpful. BLACA received mixed reviews – some praising its preparedness to assist services during challenging periods, others saw it as a ‘toothless tiger’ with insufficient resources and poor communication protocols. Governing Bodies interviewed either did not know about the new LCA Committee for Ministry with the Ageing (CMA) or felt it was not providing the level of support that BLACA had.

(The reviewers are aware that in the past there was a national body Lutheran Community Care Australia (LCCA) which went into recess at the 2003 Synod (and remains in that suspended state), the same Synod at which BLACA was formerly endorsed/established. Lutheran Community Care Australia appears to have been placed into recess after South Australia and Queensland were the only Districts providing community services. The Reviewers understand it was LCCA that initially commissioned the “One Loving God...” work which was further developed by the LCA’s Commission on Theological and Inter-church Relations (CTICR).

- c. opportunities to maximise Mission and Ministry in the local congregation/aged care context;

Comment: There are opportunities to enhance mission and ministry in these contexts but greater clarification of the roles of Lutheran aged and community services is required if this is to occur (for example, some congregational representatives would like these organisations to assist more with funding church infrastructure (such as access ramps etc) or giving preferential advice & services to local congregational members despite most services not being able to do this because of either funding or contractual limitations). The Lutheran Church could also do more in developing national guidelines or standards in relation to a theological identity for these services as well as in relation to employing and supporting Pastors and Chaplains in these services.

- d. current processes for appointments of Senior Management;

Comment: The rigour of appointing senior staff varies considerably between organisations. Whilst this is understandable in some locations (eg remote rural) this is not an adequate situation overall given the importance of these key roles for both good governance and good management.

- e. allocating resources effectively to maximise equity of aged care service and support for people living in and/or care for by all Aged Care facilities;

Comment: This is a difficult issue to resolve given the current mix of governance structures within the Lutheran aged and community services sector. On the one hand an organisation may be legally bound to apply its resources in the best interest of its organisation and not another service. There is also the view that those organisations that have been effective stewards of

both governance and resources should not be asked to provide resources to 'prop up' services that either are inefficient or have been wanting in their stewardship responsibilities. However if different legal structures were adopted or if protocols were agreed in terms of sharing non financial resources (such as mentoring or buddying etc) then significant improvements may be able to occur in relation to this worthwhile vision.

- f. achieving nationally consistent standards in LCA Aged Care philosophy, theological identity, staff formation, and employment-related policies;

Comments: There are no existing nationally consistent standards in LCA Aged Care and Community Services philosophy, theological identity, staff formation, and employment-related policies although this object is quite a feasible object to achieve. There are several existing documents that can assist in this regard. Thanks to a recent paper developed under the auspices of the LCA Committee for Ministry with the Ageing titled 'A Lutheran Theological Identity for Aged and Community Services – A Discussion Paper' and a separate paper by the Queensland Bishop, this process has been reinvigorated. Depending on future structural arrangements for this sector, a suite of model policies and guidelines in relation to staff formation and employment related policies etc could be maintained by the LCA for use by all of these services.

- g. the degree of national consistency in the implementation of Church-wide aged care-related policies;

Comments: The main issue here is that there are only very few Church-wide aged and community services-related policies (four such policies are the LCA Governance Principles, LCA Policy Development Framework, the LCA Strategic Directions and perhaps the LCA Standards of Ethical Behaviour policy). More are needed. In relation to the four existing policies there is no national consistency in their implementation in this sector.

- h. the extent of national policies that satisfy both Church and State requirements;

Comments: refer (g) above.

- i. the risks of organisations and the wider Church, including financial and reputational;

Comments: Every Lutheran aged and community services organisation carries risk to the Lutheran church. Based on our enquiries only a minority have comprehensive risk management systems in place at the governance level. There appears to be significant over reliance on the chief executive in many organisations to ensure that risk is being managed appropriately. This is not an effective systemic approach to managing risk. Although seemingly well governed and well managed, Lutheran Community Care Queensland appears to be the largest risk to the Lutheran Church of Australia (LCA) simply because of its size and current complexity of its governance arrangements. The second highest risk to LCA are the small services managed by well meaning

Congregations (or former congregations) that struggle to find appropriately skilled people to both govern and manage their community service. The third highest risk to LCA in the opinion of the reviewers is some of the 'medium size' rural services which seem to consider they are doing a better job at governance than perhaps they are. This is an important issue for the Church as it is the guarantor of last resort and has in the past been subject to considerable financial stress because of poorly managed risk in this sector.

- j. the extent to which, national, district and individual facility level as to their responsibilities in respect to financial and risk-related matters are clear and appropriate;

Comments: Overwhelmingly this tripartite responsibility matrix is an area that is almost universally unclear between stakeholders interviewed. These responsibility areas should be clarified. Also, in the seemingly easy to understand area of financial responsibilities the reviewers did encounter a minority view amongst a few members of governing bodies of 'not to worry, the church will look after us if we run into problems'. In relation to risk, especially reputational risk procedures and protocols, in the opinion of the reviewers, there is no agreed effective system in place in any LCA District let alone nationally. In some Districts and in a number of services there are procedures in writing but either members of the host governing body are not aware of their own policies in this regard or, in the case of District policy, the members of the aged or community service governing body are not aware of the District protocol!

- k. the most effective Accountability and Risk Management arrangements at national, district and Aged Care Facility level and the most appropriate governance and legal structures to achieve that end;

Comments: Depending on future structural arrangements adopted for the Lutheran aged and community services (refer Part D of this report), the most appropriate governance and legal structures will vary. In terms of the advice received by the Reviewers the following improvements could be made:

- *Develop LCA policies on Accountability & Risk Management*
- *Ensure members of governing bodies & District Executive Officers receive ongoing training in these areas*
- *Have a legally binding agreement with all aged and community services associated with LCA in relation to their obligations in relation to accountability and risk management.*

- l. the competency of governing bodies to meet their obligations; and carry out effective decision-making, particularly in an increasingly challenging market environment;

Comments: Some governing bodies interviewed do meet this standard. From our observations and interviews others clearly do not. A key issue here for the church is how to work with those governing bodies who consider they would meet this standard but who in reality may not be. At the very least LCA should

adopt a policy of ensuring all governing bodies are skills based; members are appointed through a process that is transparently rigorous; and that ongoing training in governance is mandatory for all members of governing bodies of Lutheran aged and community services. Of concern is that some organisations are not being strategic as evidenced by an absence of a written strategic plan.

- m. the appropriateness of existing lines of authority and delegations of authority;

Comments: In the opinion of the Reviewers, with the exception of the LCA Queensland District, the legal 'owners' of these services do not appear to be exercising the due diligence they should in relation to the work and performance of the governing bodies under their control. In some cases this means that insufficient meetings with, or questioning of, governing boards is occurring. In those organisations where the 'ownership' is membership based there is often an insufficient number of members to exercise due control over the members appointed to the governing body. In the case of LCC Queensland, a simpler governance structure and more effective authorities and delegations appear to be required. In relation to authorities and delegations given to chief executives, in some organisations they appear insufficient and in others, excessive.

- n. the level and appropriateness in reporting from and to accountable bodies;

Comments: Except for more actively engaging with their legal owners, the reporting by most Lutheran aged and community services to accountable bodies appears to be generally appropriate. The risk is in those services that are either small or who have a newly appointed or inexperienced chief executive - as some of these services may not be compliant with all their mandatory compliance and reporting requirements.

- o. opportunities for learning, sharing and growing.

Comments: There are a number of opportunities to achieve this including:

- *Holding an Annual or Biennial conference*
- *LCA co-ordinating mandatory training opportunities*
- *LCA having an electronic clearinghouse of relevant educational courses and resources available for Lutheran services to access*
- *The Committee for Ministry with the Ageing (or another committee or agency associated with LCA) maintaining two internet based 'chat rooms' – one for governing bodies, the other for chief executives of these services.*

Recommendations to Organisations

Taking all the above information in this report into account the Reviewers consider it appropriate to put the following draft recommendations to the leadership of the Lutheran Church and its aged and community services sector for their consideration.

It goes without saying that the following recommendations seek to both enhance the quality of Lutheran aged and community services into the future as well as address the significant governance deficits that are apparent today.

Up to date Constitutions

1. That Lutheran aged and community services organisations clarify constitutional obligations and where appropriate adopt an updated, modern Constitution that more precisely and succinctly states the objects and the not-for-profit character of the organisation (e.g. stating the objects as only charitable and clearly PBI).

Working together with each other and the LCA these organisations could also develop up to three 'model' constitutions that together would cover all services within this Lutheran sector – church bodies, associations and companies limited by guarantee.

Sound Ownership arrangements

2. That all Lutheran aged and community services organisations ensure they actively meet their 'accountability to Members' obligations.
3. That those organisations where the governing body is not appointed by Synod or some other church body but rather are structurally independent, increase membership to at least double the size of the governing body +1; and that non-director members in particular be strongly encouraged to attend member meetings.
4. Members of the organisations to which governing bodies are accountable, whether church or member based associations, be offered clear guidance and / or training on their responsibilities in relation to the governing bodies that report to them.

Skills Based Governing Bodies

5. A 'skills based' approach be taken to the composition of Lutheran governing bodies and the suitability of each member of a Lutheran governing body – each member of a governing body should bring a significant governance skill to the Board such that together the governing body is competent to govern.

More people should be appointed to these governing bodies who:

- a. possess strategic intelligence skills
- b. have business acumen
- c. prefer a 'systems' approach to governance, and
- d. are innovative, flexible with a willingness to continue to learn and undertake ongoing professional development.

6. That the owners of these Lutheran organisations give consideration to how it would be possible to maintain the Christian and Lutheran ethos in its aged and community care services without the requirement that the majority of members of the governing body be members of the Lutheran Church.

Rigorous recruitment to Governing Bodies

7. That in governing body recruitment, the appointing body be careful to ensure the governing bodies have the requisite skills and its members exemplify the character and ethos of the organisation. That Lutheran aged and community services consider the ACNC recommendations for governing body recruitment. Much greater rigour should be introduced into appointing persons to these governing bodies; for example completion of a skills matrix gap analysis before recruiting, using a rigorous appointments process such as suggested by ACNC, and adopting the form and processes set out in Appendix 5.

Understanding Governing Body Member Responsibilities

8. That the governing bodies of Lutheran aged and community services organisations devote some time each year, as a governing body, to familiarising itself with the duties imposed upon directors of charities under the new regulatory regime and that these discussions be minuted.
9. That much greater training and professional development be provided to members of governing bodies on an ongoing basis especially in the areas of director duties, ACNC requirements, managing conflicts of interest; strategic planning, financial questioning; compliance; and risk.

Meeting Governance Responsibilities

10. That Governing bodies more actively ensure all ACNC Governance Standards are met by their organisation and be generally more active in the area of overseeing compliance.
11. That Governing bodies ensure they cover all their areas of responsibility over a one to two year time span such as by developing and working to a formal 'Governing Body Work Plan'.
12. That Governing bodies ensure their governance and strategic ('lead') policies for the organisation are sufficient and consistent with Lutheran policy and that they are in writing, circulated, known and implemented. Such policies should include policies covering the role and responsibilities of the governing

body; duties and accountabilities of members of governing bodies; director recruitment and development; conflict of interest; authorities & delegations; Lutheran ethos and culture; strategy development; financial oversight; retentions and accumulations; compliance; risk management; collaboration & mergers; stakeholder engagement and management; and Board performance & evaluation – to name just a few key policy areas.

13. That Governing Bodies ensure cutting edge and/or controversial policy areas are not ignored or shied away from and that either Governing body guidance or lead policies are in place for these areas (e.g. in aged care: non-discriminatory gender identity; palliative care; care of the dying; pets etc).
14. That Governing Bodies ensure the organisation has a comprehensive risk management system in place that is kept up to date; is regularly monitored by both executive level staff and the governing body, and is routinely evaluated for ongoing appropriateness.
15. That all Lutheran aged and community services organisations develop a strategic plan that among other things adequately addresses retention and asset accumulation which explicitly or implicitly includes an explanation of how funds retained is an application of the resource to a charitable purpose.

Ensuring quality Lutheran Services

16. Lutheran aged and community services are strongly encouraged to build their capacity for delivering quality services through increased collaboration across services with particular focus on the following outcomes: removal of duplication of effort in the production of core policies and procedures; improved standard of policies; learning from the experiences of other services; reduction in the cost of back office services such as payroll, procurement, other finance and administration; and access to higher quality information relevant to strategic planning and advocacy.
17. Lutheran aged and community services actively engage in a process of exploration about the most appropriate mechanisms through which to deliver higher quality outcomes; including but not limited to:
 - funding a central body (at District or National level) to provide expert advice and / or resources in the areas of legislative change, templates for key policies, and advice on best practice for governing bodies.
 - merging the governance of services at the District or sub-District level.
18. Lutheran aged and community services actively encourage a culture within their governing body of 'continual learning' and of 'seeking help early' rather than waiting until a crisis is developing before seeking help from other Lutheran agencies or the Lutheran Church.
19. All governing bodies of Lutheran aged and community services sign an agreement with the Lutheran Church of Australia (or its delegated entity such as a national committee expert in the governance of aged and community

services - refer recommendation 34) granting the Church the right to take over and control the local governing body in agreed extenuating circumstances. Such an agreement would specify the circumstances under which the LCA (or its delegated entity) could intervene, sack the existing governing body, appoint a short term Administrator and appoint a new governing body for the organisation.

Supporting new Chief Executives

20. Governing Bodies ensure a comprehensive induction program for every newly appointed chief executive (or equivalent) including arranging a “buddy mentor” system with at least one other chief executive (or equivalent) experienced in the sector.

Ensuring a Lutheran Ethos & Pastoral Support for Boards

21. Governing Bodies should each evaluate how they can best ensure they have access to an appropriately skilled spiritual advisor from the Lutheran Church.

Connectedness to Congregations

22. Governing bodies ensure to the best of their ability that the organisation maximizes the opportunities to connect with, and interact with, local Lutheran congregations in order to maximize mission and ministry opportunities.

Recommendations to the Lutheran Church – District Level

Active Ownership

23. Districts should be ‘active owners’ and meet regularly with the governing bodies of these services including making greater use of technology such as video conferencing where appropriate.
24. Districts should endorse, and where it is within their capacity to require an outcome, adopt and implement recommendations 1 and 2 and 4 to 22 above in relation to their aged and community services.

Better Governance & Structures

25. The Victorian & South Australian Districts should actively engage with local governing bodies of aged care services in exploring the possibility of merging several governing bodies as a means by which to deliver higher quality

governance outcomes for these services and the Church. Several 'mergers' may be appropriate in both South Australia and Victoria.

26. The NSW District should continue to work to achieve a satisfactory and speedy outcome in relation to the service at Gunnedah.
27. If these Districts decide to support the merger of governing bodies they should instigate a time limited 'merger oversight committee' for each merger, consisting of representatives from the merging bodies and the District, in order to ensure a smooth & satisfactory merger of services – or arrange for some other form of effective change management oversight to ensure a smooth transition.
28. In relation to any services whose governance function is merged, Districts should consider establishing local 'committees of service' to act as advisory and assistance committee to the local service manager. (It became apparent during our site visits that some members of existing governing bodies would prefer to serve on a management support committee, such as a 'committee of service', rather than serve on a governing body that focuses on governance matters).
29. The Queensland District should reduce the complexity in the governance arrangements associated with Lutheran Community Care (LCC) Qld – ideally so as to have only one group of qualified persons (on behalf of the Queensland Synod) responsible for the governance of LCC Qld.
30. The South Australian District should actively consider merging the governance function of LCC SA&NT and Lutheran Disability Services.

Recommendations to the Lutheran Church – National Level

Principle of Subsidiarity

31. The Lutheran Church of Australia adopt for its Lutheran aged and community services the principle of 'subsidiarity' whereby authority to make governance decisions is placed whenever possible at the level of available governance competence closest to service provision. This approach may help manage a key three way tension within the LCA – that of local independence vs a church where most legal and governance matters are necessarily intertwined

and where most policy and funding requirements of aged and community services is increasingly emanating from national agencies.

Governance Benchmark Document

32. The Lutheran Church of Australia and all Lutheran aged and community services adopt the 12 Disciplines of good governance and its 124 indicators of good governance as used by the Reviewers in this project (or something similar) as the governance benchmark for Lutheran aged and community services and that it be an ongoing governance health check document available to all Lutheran aged and community services.

Purpose & scope of these services

33. The Lutheran Church of Australia make clearer to members of the Lutheran Church the purpose and 'scope of service' of its aged and community services sector (so that these services are understood to be an active charitable ministry of service by the church to the targeted clientele of these services, and not seen as services that exist primarily to support congregations with funding or preferential service etc).

New governance structures:

34. A committee, expert in governance in aged and community services, be set up reporting to General Church Council (GCC), with the responsibilities of:
 - a. ensuring modern governance policies and practices are available to each of the governing bodies of Lutheran aged and community services;
 - b. communicating (and sometimes co-ordinating) relevant governance professional development activities and programs (e.g. national Lutheran aged care conferences and any mandatory Lutheran governance/leadership development programs);
 - c. providing a 'support service' to those services struggling with either governance or operational leadership matters;
 - d. taking over the governance responsibility of an aged care or community service organisation when deemed necessary and acting as Administrator based on certain reserve powers delegated to it by both GCC and all aged & community services associated with the Lutheran Church of Australia. This power would include the authority to sack an existing governing body and appoint a new governing body. Such authority would go some way in providing assurance to successfully performing services in terms of potential reputational risk and also to LCA for the significant risk it carries in regard to these services as guarantor of last resort.
35. That the committee proposed in recommendation 34 above employ and supervise at least 1 FTE National Governance Support Officer and at least a .5FTE Administrative Support Officer. The prime responsibilities of the National Governance Support Officer being:

- a. ensuring modern governance policies and practices are available to each of the governing bodies of Lutheran aged or community services
- b. ensuring relevant national Lutheran policies and practices (e.g. government reform requirements; guidelines for Pastors & Chaplains working in aged and community services) are available to each of the governing bodies and chief executives of Lutheran aged or community services
- c. to alert the expert committee in those circumstances when a Lutheran aged or community service organisation is considered to be operating at an unsatisfactory level of performance
- d. to co-ordinate agreed priority training opportunities for members of governing bodies of Lutheran aged and community services
- e. to communicate to the Lutheran aged and community services sector other relevant training and professional development opportunities
- f. to represent or liaise with those persons representing the Lutheran aged & community services at national meetings external to the Church.

(The Reviewers consider better quality outcomes would be achieved if it were possible to employ two such professional officers – one expert in governance, the other expert in aged care and community services funding and policy).

36. The National Governance Support Officer/s be responsible for maintaining a national electronic clearing-house of essential information for governing bodies and chief executives. Such a clearinghouse should include:
- a. A 'plain English' statement of Lutheran theological identity for Lutheran aged & community services
 - b. Model constitutions for Lutheran aged & community services
 - c. Model policies for good governance of Lutheran aged or community services including:
 - i. role & responsibilities of members of governing bodies, chief executives & chaplains
 - ii. recruitment of members of governing bodies, chief executives & chaplains
 - iii. induction of members of governing bodies, chief executives & chaplains
 - iv. support options for new members of governing Bodies, chief executives & chaplains
 - v. ongoing professional development requirements
 - vi. performance evaluation
 - d. Relevant & up to date information from the federal government and its agencies concerning government requirements of funded services
 - e. List of recommended professional development modules & courses for members of governing bodies, chief executives & chaplains
 - f. Lutheran specific professional development modules (eg modules specific for aged care chaplains).

37. The LCA Committee for Ministry with the Ageing take on as an active part of its responsibilities:
- a. overseeing the 'national voice' function of representing Lutheran aged and community services views to government and other funding agencies at the national level
 - b. representing Lutheran aged & community services at national meetings and forums such as the National Aged Care Alliance, as well as ensuring information gleaned from attending national meetings is passed through to the chief executives of each aged and community service organisation associated with the Lutheran Church of Australia.

If it is considered not to be appropriate that this function be a responsibility of the Committee for Ministry with the Ageing, that this function be given to another group such as proposed in Recommendation 34 above.

38. The LCA national aged & community services expert governance committee be given the reserve powers to take over any Lutheran aged or community service, sack the existing governing body, appoint an Administrator and subsequently appoint a new governing body in any service that in the opinion of the expert committee is in breach of the 'Governance Agreement' between it and the LCA.

Lutheran Theology Benchmark Document

39. That the LCA refine the several documents it has in regard to a Lutheran theological identity for aged and community services into one document. Currently there may be at least four documents: 'One loving God – two hands sharing & caring; a paper by the Queensland Bishop; the recent paper sponsored by the LCA Committee for Ministry with the Ageing (refer Appendix 4); and a paper in South Australia.

Based on discussions undertaken to date the document should serve four purposes for the Lutheran aged and community services sector:

- a) A concise theological exposition for members of governing bodies, executive teams, chaplains and/or spiritual advisors
- b) A concise resource that chief executives can use in developing their culture, formation, employment and other HR policies
- c) A one page handout for staff
- d) A one page handout for volunteers.

Perhaps a combined concise document could consist of the following:

- Part A: Theological Exposition
- Part B: A resource for chief executives & human resource managers
- Appendix 1: Handout for staff
- Appendix 2: Handout for Volunteers.

Better Branding if all services are well governed:

40. If the above recommendations are adopted it is recommended there be greater branding consistency between all aged & community services associated with the Lutheran Church of Australia (e.g. the name "Lutheran" be included). However, if most of the above recommendations are not adopted and implemented by LCA and its aged and community services organisations this recommendation would not be appropriate as it would place the current well governed services at greater reputational risk by being publicly associated with less well governed services.

PART F: NEXT STEPS

The above listed 'options' and 'recommendations' will be discussed at the Options for Our Future Workshop planned for Saturday 15th July 2017 in Brisbane.

Leaders of the Lutheran Church and Lutheran aged and community services organisations are asked to consult with their peers, governing bodies and committees and arrange for their considered and prayerful deliberations to be shared at the workshop on the 15th July.

In terms of the outstanding work for this project, the following are the 'next steps' in this review:

Phase 3: Consensus Building on a 'Way Forward'

1. Participating Lutheran organisations and bodies discuss this report within their agency/congregation/church body.
2. These agencies/bodies nominate one or two representatives to be delegates at the one day '*Options for Our Future*' Workshop planned for 15 July.
3. If your agency/network has not received an invitation to attend the '*Options for Our Future*' Workshop contact Peter Schirmer, Executive Officer of the Church to clarify.
4. The one day '*Options for Our Future*' Workshop is conducted.
5. The *Stocktake, Future Options & Recommendations Paper* is updated based on the discussions at the '*Options for Our Future*' Workshop and is re-circulated to all participating stakeholders.
(May to August 2017).

Phase 4: Discerning Our Future Governance Arrangements

6. Participating Lutheran organisations and bodies discuss the results of the '*Options for Our Future*' Workshop and the updated recommendations.
7. These agencies/bodies nominate one or two representatives to be delegates to the two day '*Discerning Our Future*' Conference currently planned to be held over the 13th & 14th October in Adelaide.
8. If your agency/network has not received an invitation to attend the '*Discerning Our Future*' Conference contact Peter Schirmer, Executive Officer of the Church to clarify.
9. The two day '*Discerning Our Future*' Conference is conducted.
(August 2017 to October 2017).

Phase 5: Final Report

10. A final report will be prepared by the Reviewers for General Church Council.
(November 2017 to February 2018).

The Reviewers look forward to dialoguing with you at the 'Options for our Future' workshop.

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APPENDICES:

Appendix 1: Terms of Reference for Governance Dialogue

Terms of Dialogue: LCA Aged Care and Community Services Governance Dialogue

Name

Lutheran Aged and Community Services Governance Dialogue

Summary

A project of the Lutheran Church of Australia to enhance mission, governance & leadership in Lutheran aged & community services within LCA.

Background

At its Convention in April 2013 the LCA General Synod adopted the following resolution: *THAT the GCC, consistent with the Strategic Direction of the LCA - especially regarding improving our "Governance and Leadership capability" and being "good stewards of our available resources" - undertake a review of the current governance and administrative structures of the LCA including at the National level, District level, Boards, Commissions, Councils and Agencies during the next synodical term.*

GCC engaged an external consultant, Dr Maureen Cleary to conduct the review. The consultant noted in Part J of her final report that due to time constraints no in-depth analysis of Aged Care was conducted.

One of Dr Cleary's recommendations was that "GCC initiates a governance review of LCA's aged and community care organisations with a view to identifying the various models of service provision and how they fulfil the Object of the Church to: 'Minister to human need in the name of Jesus Christ our Lord in the spirit of Christian love and service, and to provide institutions and agencies for this purpose'."

In November 2015 GCC partially adopted the Cleary recommendation in the following resolution: "that consideration be given by GCC to a national 'system' model for the governance oversight of aged care facilities within the LCA."

It is considered the most appropriate way to consider the future of Aged Care Governance and Leadership capabilities is through a dialogue process designed in a manner that creates an open, transparent and trusting environment; all key stakeholders are given opportunity to have their point of view heard; and moves commensurate with the stakeholders' ability to embrace change.

The intent of the dialogue is to strengthen and build on the rich history of service provided to the community by over 20 aged and community service organisations across Australia.

Objects

Commensurate to a body of the nature and size of the LCA and its aged care* organisations, the dialogue will consider future Governance and Leadership capabilities

for Lutheran aged and community services (defined as including Residential Aged Care, Retirement Villages/ILUs, and Community Care/Home Support Programs) that:

- 1 Ensure all Lutheran aged and community services organisations deliver the highest possible standard of services and effective missional outcomes;
- 2 Align with and support the LCA's Strategic Direction;
- 3 Ensure the LCA's aged and community services organisations meet the LCA's requirements for governance and leadership;
- 4 Enable the LCA and its aged and community services organisations to meet its legal and compliance requirements in an effective and efficient way; and
- 5 Achieve effective accountability and risk management.

(Read 'Community Services' throughout for the community service organisations involved in this project)*

Scope of Work

The scope of work is the Lutheran aged care sector in Australia, including Retirement Villages/ILUs, Residential Care, Community Care/Home Support Programs as well as certain identified Lutheran Community Services organisations.

The Dialogue, in considering suitable aged care and community services ministry models/arrangements, will include consideration of the following issues:

- current Governance structures, practices and standards of governance;
- current levels of interaction to/from the LCA: at the National, District and Congregational level;
- opportunities to maximise Mission and Ministry in the local congregation/aged care context;
- current processes for appointments of Senior Management;
- allocating resources effectively to maximise equity of aged care service and support for people living in and/or care for by all Aged Care facilities;
- achieving nationally consistent standards in LCA Aged Care philosophy, theological identity, staff formation, and employment-related policies;
- the degree of national consistency in the implementation of Church-wide aged care-related policies;
- the extent of national policies that satisfy both Church and State requirements;
- the risks to organisations and the wider Church, including financial and reputational;
- the extent to which, national, district and individual facility level as to their responsibilities in respect to financial and risk-related matters are clear and appropriate;
- the most effective Accountability and Risk Management arrangements at national, district and Aged Care Facility level and the most appropriate governance and legal structures to achieve that end;
- the competency of governing bodies to meet their obligations; and carry out effective decision-making, particularly in an increasingly challenging market environment;
- the appropriateness of existing lines of authority and delegations of authority;
- the level and appropriateness in reporting from and to accountable bodies; and
- opportunities for learning, sharing and growing.

This dialogue will also recognise the LCA's expectations and oversight of its aged and community services as an important part of its mission and ministry.

Principles of Dialogue

The dialogue will adopt the five principles of dialogue in the LCA:

- Communion: Because God has gathered us in communion with one another, there is freedom to dialogue with one another on potentially contested matters
- Trust: Because God has made us brothers and sisters in Christ, we can trust God to use our communion to build us up in love and overcome any mistrust that may affect our capacity to dialogue openly with each other
- Listening: As we listen we will grow in understanding of ourselves, of other people and the opinions they hold, and of God's will
- Speaking: As we speak we will grow in understanding of ourselves, of other people and the opinions they hold, and of God's will
- Patience: We can be patient in listening and speaking with each other, trusting that God will deepen the unity he has already given us.

Dialogue Facilitation

An externally appointed facilitator will lead and facilitate each of the phases of the dialogue.

Project Advisory Committee

The project will benefit from advice and support from a small GCC auspiced advisory group known as the 'Dialogue Group'.

The consultant is accountable to the LCA Executive Officer of the Church for the delivery of the project, as outlined in this Terms of Dialogue.

Timeframe

A final report with recommendations will be submitted by the facilitator to GCC by no later than February 2018.

Agreed Methodology

Phase 1: Planning & Preparations

Aim: To finalise the planning & preparations for the Dialogue.

The lead facilitator will prepare for the dialogue in consultation with LCA Executive Officer, LCA Bishop, Dialogue Group & the LCA Committee for Ministry with the Ageing. Key stakeholders to engage will be identified. (*December 2016*).

Phase 2: Stakeholder Engagement

Aim: To achieve a broad brush 'stocktake' of current governance arrangements and obtain advice from key stakeholders on future options & recommendations. Steps proposed are:

1. Relationships with key stakeholders will be initially established through project updates, telephone contact & an 'info pack'.
2. Engagement with identified Lutheran aged & community services organisations will be achieved through small group interviews with representatives of governing bodies. These organisations will also be offered the opportunity to have their current governance arrangements assessed free of charge (including a high-level review of their registering

instrument eg Constitution) and receive a 'complementary & confidential Governance health check'.

3. Any feedback or ad hoc reports received from stakeholders will be incorporated into the dialogue process.

(December 2016 to March 2017).

Phase 3: **Consensus Building on a 'Way Forward'**

Aim: To identify probable areas of 'sector-wide' consensus. Steps proposed are:

11. A *Stocktake, Future Options & Recommendations Paper* will be developed based on the stakeholder feedback of Phase 1, in consultation with subject experts & 'benchmark' organisations. This paper will identify both 'future options' and possible areas of future consensus. It will be circulated to all identified key stakeholders within the Lutheran aged and community services sector for their consideration.
12. Key stakeholders then will have the opportunity to discuss the paper within their organisations/constituency groups.
13. A one day '*Options for Our Future*' Workshop will be conducted for representatives of each agency's governance & leadership team and other key stakeholders to attend and dialogue about the 'way forward', including identifying probable areas of 'sector-wide' consensus.
14. The *Stocktake, Future Options & Recommendations Paper* will be updated based on workshop discussions and then re-circulated to key stakeholders for further consideration within their organisation/constituency group.

(April to July 2017).

Phase 4: **Discerning Our Future Governance Arrangements**

Aim: To discern recommendations and a transition/implementation plan to improve governance arrangements throughout the Lutheran aged and community services sector. Steps proposed are:

15. The governing bodies of aged & community services & relevant other groups (eg Committee for Ministry with the Ageing, Districts, Congregations) will be invited to consider the results of the earlier workshop and the updated recommendations.
16. A two day '*Discerning Our Future*' Conference will then be held. The aim of Day One & part of Day Two will be to discern recommendations to GCC for improving current governance arrangements. In the afternoon of Day Two the aim will be to discern the beginnings of a Development & Transition/Implementation Plan.
17. A *The Way Forward & a Development & Transition/Implementation Plan* document will then be written by the facilitators.
18. This Plan will be circulated to identified stakeholders for feedback.
19. The Plan will then be updated by the facilitators and submitted to General Church Council.
20. This Dialogue project then concludes (unless decisions are made to the contrary).

(July 2017 to February 2018).

Appendix 2: Annotated Bibliography of key Australian Governance Resources

(by Terence Corkin, December 2016)

A number of peak bodies and entities involved in the oversight and support of business and community groups provide advice on what constitutes appropriate governance standards. These governance standards, sometimes called a governance framework, will generally be presented as a set of high-level principles, rather than as prescriptive rules.

Compliance with the standards is to be supported by the organisations through the development of particular practices and processes that will ensure that the governance principles are evident in the life of their organisation.

This Appendix provides a brief introduction to the Governance Frameworks that are offered by a variety of entities.

Australian Charities and Not for Profit Commission (ACNC)

The ACNC has five standards in its Governance Principles. They are:

1. Purposes and not-for-profit nature of a registered entity
2. Accountability to members
3. Compliance with Australian laws
4. Suitability of board members ('responsible persons')
5. Duties of board members ('responsible persons') Board members know and understand their legal duties and that they carry out some of the more significant of these duties.

A link to more information about the ACNC Governance Principles can be accessed at:
https://www.acnc.gov.au/acnc/manage/tools/acnc/edu/tools/GFG/GFG_Intro.aspx

The ACNC also released in July 2013 guidance on the Governance Standards. The last page of the guidance sets out a suggested letter of appointment for responsible persons, which might be preferred to the one we have provided in this report. It is available at:
http://www.acnc.gov.au/ACNC/Manage/Ongoing_Obs/Governance/RespPerson_Appt/ACNC/Edu/RespPerson_Appt.aspx

Governance Institute of Australia

The Governance Institute of Australia considers that governance encompasses the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance.

In relation to the aged and community services sector the Governance Institute of Australia argues that governance has five key components:

1. **Transparency:** being clear and unambiguous about the organisation's structure, operations and performance, both externally and internally, and maintaining a genuine dialogue with, and providing insight to, legitimate stakeholders.
2. **Accountability:** ensuring that there is clarity of decision-making within the organisation, with processes in place to ensure that the right people have the right authority for the organisation to make effective and efficient decisions, with appropriate consequences for failures to follow those processes.
3. **Stewardship:** developing and maintaining an enterprise-wide recognition that the organisation is managed for the benefit of its primary stakeholders (including owners/those to whom the services are being provided/families/government and the wider community) taking reasonable account of the interests of other legitimate stakeholders.
4. **Integrity:** developing and maintaining a culture committed to ethical behaviour and compliance with the law.
5. **Risk management:** taking appropriate risks and avoiding unnecessary risks where the benefit is insufficient.

The Governance Institute also utilises the terms Framework, Structure and Tools in its writings about governance.

On the 21st February 2017 the Governance Institute of Australia released 'Governance in Aged Care'. This is essential reading for all members of a governing body of an aged care service.

Australian Institute of Company Directors (AICD)

The AICD describes its Corporate Governance Framework as summing up the practices (skills, attributes and expertise) that comprise good Director practice.

a) Corporations Act Companies

This framework is presented as a circle with four quadrants which each relate to particular aspects of the work, character and relationships of Directors and

Boards. They are Individual, Board, Organisational and Stakeholder. Linked with each to these quadrants are specific attributes, skills and processes that reflect best practice for Directors and Boards.

These practices are framed by (the circumference of the circle) with principles that undergird these practices. There are ten principles, which they describe as values. They are: Integrity, Leadership, Competence, Enterprise, Fairness, Commitment, Confidence, Respect, Accountability and Transparency.

The Company Directors Corporate Governance Framework can be accessed at: <http://www.companydirectors.com.au/Director-Resource-Centre/Publications/Company-Director-magazine/A-framework-for-good-director-practice>

b) Not For Profit Governance framework

The AICD offers ten Principles that promote good governance in the not for profit sector. They are:

1. Roles and Responsibilities - the need for clarity.
2. Board Composition - the right group of people.
3. Purpose and Strategy - an appropriate vision, purpose and set of strategies
4. Risk - recognition and management of appropriate risk oversight
5. Organisational Performance - focus on effective use of resources
6. Board Effectiveness - appropriate board structures and processes
7. Integrity and Accountability - the right information at the right time
8. Organisation Building - build and maintain organisational capability to deliver on purpose
9. Culture and Ethics - a healthy culture in the boardroom and throughout the organisation
10. Engagement - effective stakeholder engagement.

The full document can be accessed at:

<http://www.companydirectors.com.au/director-resource-centre/not-for-profit/good-governance-principles-and-guidance-for-nfp-organisations/principle-10-engagement>

The Australian Institute of Company Directors has prepared a set of principles and guidance to help boards achieve better outcomes. The manual, titled, *Good Governance Principles and Guidance for Not-for-Profit Organisations* can be used as a part of a board development. It is available for free at

<http://www.companydirectors.com.au/Director-Resource-Centre/Not-for-profit/Good-Governance-Principles-and-Guidance-for-NFP-Organisations>

Australian National Audit Office (ANAO)

The ANAO in 2014 issued a document addressing a range of issues around governance for public sector entities.

Acknowledging that there are legislative requirements upon public sector entities it went on to affirm that there are several key elements that underpin the achievement of good public sector governance. These include:

1. developing strong leadership at all levels of the entity, with a focus on ethical behaviour and continuous improvement
2. maintaining governance systems and processes that are fit for purpose
3. optimising performance through planning, engaging with risk, innovation, and performance monitoring, evaluation and review
4. focusing on openness, transparency and integrity, engaging constructively with stakeholders and promoting accountability through clear reporting on performance and operations.

These principles are expanded upon in the chapters of the paper, which can be accessed at: https://www.anao.gov.au/sites/g/files/net616/f/2014_ANAO%20-%20BPG%20Public%20Sector%20Governance.pdf

Australian Stock Exchange (ASX)

The ASX Principles and related recommendations are structured around, and seek to promote, 8 central principles:

1. Lay solid foundations for management and oversight
2. Structure the board to add value
3. Act ethically and responsibly
4. Safeguard integrity in corporate reporting
5. Make timely and balanced disclosure
6. Respect the rights of security holders:
7. Recognise and manage risk
8. Remunerate fairly and responsibly.

There are 29 specific recommendations intended to give effect to these general principles, as well as explanatory commentary in relation to both the principles and the recommendations.

The full document can be accessed at: <http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>

Organisation for Economic Cooperation and Development (OECD)

In September 2015 the OECD issued an updated version of its Governance Principles that were last reviewed in 2004. They are particularly directed to business corporations.

Organised in six chapters there is a lead Principle followed by supporting sub principles. The chapters are

1. Ensuring the basis for an effective corporate governance framework
2. The rights and equitable treatment of shareholders and key ownership functions
3. Institutional investors, stock markets, and other intermediaries;
4. The role of stakeholders
5. Disclosure and transparency
6. The responsibilities of the board.

The full document can be accessed at: <http://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>

Our Community's Code of Governance for Australian Community Sector

This group offers a Governance Framework with 12 key principles or areas that require the attention of a Board. Under these principles there are sub points that provide more specifics on what constitutes good practice. These sub points number 50 across the key principles.

The key principles are:

1. Board Membership
2. Collective Commitment
3. Democratic Governance
4. Management of the Board
5. Risk Management
6. Accountability
7. Transparency
8. Community Responsibility
9. Environmental Responsibility
10. Diversity and Empowerment
11. Ethical Fundraising
12. Effectiveness.

The full document can be accessed at:
<http://www.ourcommunity.com.au/files/governancecode.pdf>

Appendix 3: 12 Governance Focus Areas Assessed⁴²:

1. Systematic and Clear Governance Framework (How we set ourselves up to govern)

The Question was: Can you tell me about the governance framework (or system) your organisation uses?

13 indicators of best practice in this area were then discussed.

- An agreed **governance framework is in writing** that guides the organisation and its practices
- The approach is **systematic & clearly defines** authority, accountability, compliance, risk, stewardship and leadership for the purposes of effective management and control to direct the organisation in the pursuit and long term sustainability of its Objects
- **Accountability to Owners/Members** is real (e.g. there are sufficient number of members to exercise due control over the governing body; all members are qualified in the sense of being suitable and committed to the objects of the organisation)
- **Roles and responsibilities** are clearly **articulated in writing, circulated, known and monitored** (including clearly distinguishing between the complementary but distinct roles and responsibilities of governance and mgt)
- **Inter-relationships clearly understood** between governance (directors/council members), management, members and all those for whom it owes a duty of care, or to whom it is accountable (employees, pastors, regulators, auditors, creditors, financiers, suppliers)
- **Roles, responsibilities and relationships between the governing body of the organisation and the Church clearly understood** in respect to all governance matters (including financial & risk related matters)
- A **structure/system** to ensure that the rights, responsibilities and accountabilities of governance are implemented/practiced (e.g. a system whereby the governing body has evidence to be satisfied that key policies are up to date, compliance is fully met, risk is being adequately managed etc)
- **Governance arrangements align with and support the strategic direction of the Lutheran Church of Australia** (e.g. reference LCA Strategic Directions section(1.3)culture of service developed; (2.2) Missional-orientated leadership encouraged; (2.3.1) innovation occurring); (3A1) capability & performance of leaders improved; (3A2&3) policies, processes & structures improved; (3B) communications, engagement & collaboration increased; (3C) use of assets & resources enhanced)
- **Authorities and delegations are appropriate, in writing & circulated** for the leadership team, to ensure the effective operation of the organisation
- **Authorities and delegations are known and monitored**
- The **operating procedures** of the governing body (e.g. circulation of papers, meeting preparations meeting processes, agendas etc) are **in writing, practiced, effective and efficient**
- **Accountability mechanisms**, including formal **reporting**, are **in writing, circulated, known and monitored**
- The **governance framework/system** of the organisation is **regularly reviewed**.

⁴² The instrument from which this Appendix is drawn is copyright of Facilitation Plus Australia Pty Ltd.

2. Fidelity to Purpose (Being true to why we exist)

Question: Can you tell me how the governing body ensures that the organisation is doing what it is set up to do?

12 indicators of best practice in this area were discussed.

- There is evidence of work to establish and maintain a core Lutheran **Christian ethos and/or faith opportunities** within the organisation
- **Objects are charitable** (and preferably only charitable to avoid risk of dispute with ACNC or ATO)
- **PBI requirements met** e.g. Board knows by review that organisational purpose and organisational activity meet ACNC requirements (i.e. 10 PBI factors etc)
- **Is an Institution** separate from the Church so it can be seen to truly be fulfilling its charitable (and PBI if relevant) purposes
- **Core Values** are documented
- Values **align** with core values of LCA
- **Codes of ethics/conduct** are in writing, communicated, understood and applied (e.g. no possibility of inappropriate 'benefits' to Members and/or Directors and staff)
- There is a common **vision for mission and ministry** – one that contributes to the LCA being a church which joyfully receives, lives & shares the gospel
- The organisation's purpose and objectives are carried out in a manner **consistent with its governing instrument** (e.g. constitution and by-laws, terms of reference) and applicable laws and regulations. (e.g. ACNC Standard 1; CEO reports, on an agreed schedule, reference how operations and decisions align with the purpose, strategic directions & values of the organisation)
- There is a **clear expression of charitable purpose** for any non-charitable or commercial activities conducted (e.g. ILUs)
- **A non-distribution constraint** re assets etc is included in registering instrument
- The issue of 'fidelity to purpose' and the governing instrument is **regularly reviewed**.

3. Strategic Direction (Where we are heading)

Question: Can you share with me the strategic direction for the organisation and how you arrived at that?

10 indicators of best practice in this area were discussed.

- An agreed strategic planning system for the organisation that is in writing & applied
- A documented vision statement (a summary of the direction the organisation is heading or the outcome it hopes to achieve)
- Strategic direction is:
 - **in writing**,
 - with **goals, objectives**
 - has a **way to measure progress**
 - is **circulated & communicated**
 - is **widely known & used**
 - the plan is regularly **monitored**

- Strategic direction is **driven by** agency's core **purpose** & is consistent with the values of the organisation
- The strategic directions **align with and support** (or is at least consistent with GFp13) the **strategic direction of the Lutheran Church of Australia** (including considering how to work with other LCA bodies and professional development)
- **Appropriate consultation and participation**, both internally and externally, occurred in the setting of strategic directions
- The strategic directions were developed and supported by **appropriate research** including needs, opportunity and risk analyses, long term financial & capital development plans
- The issue of **retentions & accumulations is addressed** in the Plan (e.g. ensuring there is sufficient and that they are for charitable purposes)
- The **structure & staffing** of the organisation was reviewed & supports achievement of the mission & strategic direction of the organisation
- The agreed strategic planning **system** for the organisation is **regularly reviewed**.

4. Organisational Values & 'Lead' Policies (How we aspire to interact and do things)

Question: What are the values & 'lead' policies of the organisation? (lead policies are those high level governance or strategic organisational-wide policies set by the governing body – as opposed to operational policies that are typically set by management).

8 indicators of best practice in this area were discussed.

- There is a consistent approach/framework for policy development throughout the organisation
- The approach meets LCA expectations re principles, development process, procedures and format (LCA Governance Framework pp13-15)
- The organisation's **governance and strategic level (lead) policies** (including code of conduct/ ethics) are:
 - in writing (ideally in a Policy Handbook/Register)
 - circulated
 - known (e.g. by training or review)
 - consistent with those of the Church
 - consistent with funder requirements
- There is a policy in place re the charitable use of **retentions and accumulations**
- There is a guidance policy in place for the governing body re **mergers and collaborations** with other organisations that is motivated by the Objects of the organisation and not for tax or other reasons
- **Difficult and/or controversial policy areas** are not ignored or shied away from and either Board guidance or lead policies are in place for these areas (e.g. in aged care: non-discriminatory gender identity, palliative care, care of the dying, pets)
- **Appropriate consultation and participation**, both internally and externally, occurred in the development of these values & lead policies
- Values and 'lead' policies are **monitored and periodically reviewed**.

5. Support & Supervision of Senior Staff

Question: What senior staff positions does the governing body appoint, support & supervise/manage? And how?

8 indicators of best practice in this area were discussed.

- There are **fair and transparent senior staff employment policies & processes** in writing, incorporating job descriptions, recruitment, induction, ongoing training & development and performance appraisal for staff supervised by the governing body (noting that in most agencies this typically applies only to the Chief Executive but can include Company Secretary, CFO, COO)
- **Job descriptions** of senior staff the governing body appoints are **up to date**
- The Governing body fully implements these policies (e.g. appoints and oversees the comprehensive **induction, support and supervision** of senior staff (e.g. chief executive))
- **Reports** from senior staff to the governing body address the information & key issues **determined by the governing body** – and not just by the senior officer (e.g. strategic achievements, operational performance, changing business environments)
- The Governing body **evaluates** the performance of senior staff:
 - using a **structured appraisal process** and
 - arranges appropriate **education and development opportunities**
- ►The **senior management succession strategy** is clear, agreed & known
- ►The senior staff policy for the organisation is **regularly reviewed**.

6. Control & Oversight of the Work of the Organisation

Question: How does the governing body maintain adequate control & oversight of the work of the organisation? (to protect it and the people to whom it owes a duty of care)

8 indicators of best practice in this area were discussed.

- The governing body ensures the **strategic plan is operationalised** by management in accordance with its policies
- The governing body **approves operational plans, budgets** and other activities involving significant expenditure (e.g. capital developments)
- The governing body has evidence to be satisfied that **key operational policies are kept up to date** by management (e.g. OH&S; Privacy; Complaints; Fraud)
- The governing body **knows** what **services** the organisation provides
- In a general sense, the governing body knows what the organisation is **currently doing** (e.g. the organisation's response to government and/or other reforms affecting the organisation; the current key issues for each of the service arms of the organisation)
- The governing body **actively reviews operational reporting** including reports on organisational performance, finances, viability, compliance & risk management (e.g. by asking pertinent questions)
- The governing body ensures there are **processes satisfactory** for both governance and management purposes
- The governing body ensures the organisation maximizes **opportunities to connect with or work in harmony with other parts of the LCA** (e.g. encourage a culture and practices of 'working together' in a complementary way through co-ordinated action).

7. Governing Body has Capacity Appropriate to their Responsibilities

Question: How does the governing body ensure it has the capacity to carry out its role & responsibilities – and that it is performing them well? (e.g. how do you know you have the right people on the governing body? – ref ACNC Standard 4)

18 indicators of best practice in this area were discussed.

- There is a **rigorous appointments process** to the governing body (e.g. using the ACNC form/recommended process or equivalent)
- **Role & responsibility of governing body** is:
 - outlined clearly in writing
 - is known and understood by all members of the governing body & senior staff
 - these policies & processes are being followed
- **Governing body procedures** are:
 - outlined clearly in writing
 - is known and understood by all members of the governing body & senior staff
 - these policies & processes are being followed
 - effective
- Governing body policies & procedures include:
 - **meeting procedures and agendas**
 - an **appropriate mix of skills and experience** necessary for the board to fulfill its duties, consistent with the broader policies of the Church and monitored
 - **duties & obligations of board members**
 - the **tenure** of board members
 - an **induction** checklist in writing and induction is provided for new members to ensure that they understand their duties and roles, are oriented to the work of the organisation; are familiar with its policies and procedures and its current issues & performance
 - a clear procedure for the **disciplining, suspension or removal of a governing body member**
 - a procedure for evaluating the **Governing body**
- Governing body members have ongoing:
 - **access to relevant information**
 - **access to advice and training**
- There are processes in place for **succession**
- **Board committees** (standing and/or ad hoc) with **Terms of Reference in writing** are established as may be required from time to time to support the governing body in carrying out its responsibilities?
- All the above Board policies & procedures are regularly reviewed
- Governing Body **balances its time** effectively so that all its roles & responsibilities are met – including governance, mission & strategy, policies, finances, operational oversight, duty of care & compliance oversight, stakeholder management oversight, risk management oversight, support & supervision of senior staff, and reporting & communications
- The **performance** of the governing body is **regularly evaluated** to ensure it is operating effectively including:
 - maintaining effective working relationships **between members of the governing body** and
 - maintaining effective **working relationships with the chief executive**
- **Training is provided**, either on an individual or collective basis, to address issues identified through these board assessments.

8. Ethical and legal integrity and responsible decision-making

Question: How does the governing body know it is acting with integrity and making decisions responsibly? (i.e. how do you know people on the governing body are doing things right? – ref ACNC Standard 5)

10 indicators of best practice in this area were discussed.

- **Code of Conduct/Guidelines for Behaviour** and/or a **values-based decision-making policy** for governing body members is in writing
- **Director Duties**, Integrity & decision making expectations are routinely **addressed by discussion or training and minuted**
- Governing body members serve in a **truthful, honest and open** manner (e.g. bringing independent thought to each issue)
- Governing body members pay **attention to problems raised in reports and ensure that appropriate action is taken** (e.g. questions are asked and followed up next meeting)
- Governing body members act responsibly with **care and diligence** meeting their **fiduciary and statutory** obligations regarding the proper utilisation, management of resources and other assets placed in their care (e.g. each member makes decisions in the best interest of the organisation)
- Governing body members take **responsibility for personal decision-making** (e.g. vote against something they think should be voted against)
- Governing body members **accept and support collective decisions**, unless there are reasonable grounds to dissent (e.g. evidence of illegality)
- Governing body members respect the **confidentiality** of matters under board consideration?
- Governing Body explores all opportunities to be innovative in mobilizing resources, and being efficient & effective in their use
- Governing Body ensures that decision-making is free from **undue influence and conflicts of interest** and that there are clear policies and procedures to address them as and when they arise (e.g. use standards such as ICACs set or equivalent).

9. Care & Diligence in Financial Matters

Question: How does the governing body know it is acting with care & diligence in financial matters?

12 indicators of best practice in this area were discussed.

There are policies and procedures that address the following criteria:

- **Accounting methods** are comprehensive (commensurate with the size and complexity of the organisation), relevant and comply with applicable accounting rules and policies
- Financial Operations Policy & Procedures are **in writing**
- Financial **delegations are clear, transparent and in writing?**
- **Financial reports** present a true and fair view of actual performance and are received on a regular basis
- There is a **regular process of financial reporting**, which may include monitoring by a committee of the board
- Accounts are **independently audited** by an external auditor
- The governing body **approves budgets & activities involving significant expenditure** (e.g. capital developments) in accordance with its policies
- All members of the governing body are aware of the organisation's **key funding sources**

- All members of the governing body are aware of the organisation's **current financial position** (i.e. solvency, liquidity, sustainability (profitability), financial efficiency, organisational financial trends, asset mgt, investments mgt, loans mgt, internal & external controls)
- The **current and future financial strategy** of the organisation is clear and understood by the members of the governing body
- The governing body has sufficient financial evidence to consider the organisation will be **viable in the near future - say 3 years'** time (e.g. from 3 year cashflow forecasts)
- Governing body **financial policies and procedures are regularly reviewed.**

10. Duty of care for people and compliance

Question: How does the governing body know the organisation is meeting its 'duty of care' and other compliance responsibilities? (applicable to the type of entity it is, where it is located and the activities it is involved in)

12 indicators of best practice in this area were discussed.

- Governing Body knows through evidence there are written **policies and procedures that provide a comprehensive response to the Church's commitment and responsibility to people involved in their area of ministry**, including staff, the people served, supporters, and providers of services to the organisation (e.g. Occupational Health, Safety and Welfare Policy; Child Protection Policy; Safe Place Policy; Personnel Policy; Privacy Policy; Volunteers)
- Governing Body knows there are adequate **volunteer agreements in place** to ensure remuneration laws are not breached and to specify the scope of work and authority of volunteers
- Governing Body knows through evidence there are adequate **compliance policies and processes in place** (e.g. tax laws; or for >100 employees ensuring gender equity requirements are met under the Workplace Gender Equality Act – noting any implications for governing body composition).
- Each member of the governing body has a reasonable **knowledge about key compliance requirements** including legislation and contractual requirements applicable to the organisation
- There is regular compliance **reporting to the Board**
- Governing Body knows there is **regular reporting** to relevant authorities
- The governing body **regularly enquires/reviews itself** as to agency adherence to & compliance with:
 - applicable laws;
 - church policies and procedures;
 - the organisation's governing instrument;
 - contracts into which the organisation has entered;
 - the policies and procedures of the organisation (especially in relation to people, staff, legal requirements and finances);
 - the quality standards/frameworks of the organisation.

11. Risk Management

Question: How does the governing body know the organisation is managing risk well? What is the governing body focusing it's time on? (An organisation must

manage the risks that affect its work in order to maximise the effectiveness of its mission, protect its reputation and provide a solid foundation for its ongoing mission and ministry).

5 multifactor indicators of best practice in this area were discussed.

- The **risk appetite** of the Board is **defined** in writing for senior staff
- Overall there is a **balanced approach** to assessing risk in a manner that will ensure the Objects of the organisation are achieved, while mitigating the potential for harm to its members and those it seeks to serve, or loss of or damage to its assets
- There is a planned, systematic and fully utilized **risk management framework/system** with policies and procedures in place that includes:
 - **identification and assessment of risks** (including the 'risk' of missing opportunities)
 - **strategies** for the management of identified risks
 - clear designation of **responsibility for implementation of risk management strategies** at individual service, organisational (and where relevant) district and national levels
 - **reporting** of compliance against the risk management framework to ensure effective monitoring and control of risk, as well as ongoing review
 - **communicating of relevant risks to key stakeholders** (e.g. to LCA for risks likely to affect the church directly)
 - ongoing **monitoring and review** of the risk management system within the organisation
- There is active reporting of compliance against the risk management framework to the governing body and the governing body effectively **monitors key risks as well as the risk management system** itself
- Members of the governing body understand and can **identify the key risks** the organisation is currently facing and their understanding is consistent with the key risks identified in the organisation's risk management plan/register.

12. Engagement, Reporting, Evaluating & Communications

Questions: How does the governing body know the organisation is meeting its engagement, reporting and communications requirements? How does the organisation evaluate its performance?

8 indicators of best practice in this area were discussed.

ENGAGEMENT:

- There is a **culture of openness, transparency and engagement**, both internally and externally to those to whom it is accountable and to whom it owes a duty of care (e.g. time for Member questions & resolutions).
- The governing body has been effective and the Owner/Members are **actively accountable** for Board composition
- As agreed with the chief executive, the governing body effectively **champions** the organisation at governance and strategic levels

REPORTING:

- The governing body has **ensured** the development of **processes** (including reporting templates) that meet mandatory reporting requirements to other bodies (e.g. regulatory bodies, Members)

- The **level of engagement with and reporting** from and to accountable bodies is appropriate (meeting ACNC Standard 2 by ensuring necessary info is being provided to ACNC)

GOVERNANCE COMMUNICATIONS:

- There is a **communications policy/plan in place for the governing body**
- The governing body **adequately communicates its work** in order to stimulate ongoing support for its work and confidence in the manner in which it is being carried out (especially to the owners/members/ key stakeholders of the organisation)

EVALUATION:

- There are policies and procedures in place (e.g. a Monitoring and Evaluation Framework) that **monitor and evaluate performance** to assess whether objectives are being achieved, standards and policies are being applied, and obligations are being met.

Appendix 4: A Lutheran Theological Identity for Aged & Community Services

Exploring a Lutheran theological identity for Aged and Community Services: a discussion paper

This paper has been produced to foster discussion regarding what is 'Lutheran' about Lutheran Aged and Community Services. The discussion paper is not intended to provide a definitive statement on a Lutheran theological identity. A statement may be a result after consultation and careful consideration. Rather, this paper is a means for local discussions to occur that feed into the Lutheran Church of Australia's (LCA) review of the governance of Aged and Community Services. Ultimately, it is the desire of the LCA Committee for Ministry with the Ageing to assist Aged and Community Services, through the provision of resources for inducting and training staff in theological identity, that is, in what it means to be a Lutheran Aged Care provider or a Lutheran Community service. This paper provides a beginning.

God created us

Lutheran Aged and Community Services, as part of the mission of the Lutheran Church of Australia, are communities that acknowledge God as creator and join in the ongoing creation and care of the world and all people. We believe that people are created, precious and loved children of God and that God desires that we love Him as He loves us. We are, however, broken and imperfect people. We call this condition 'sin'. We strive to make ourselves right, with God and with others, and we keep on failing.

Lutherans believe that we cannot restore our broken relationship with God, nor can we earn God's favour or love. Out of God's eternal love for all humanity, God restores us to full relationship with him by grace through the gift of faith.⁴³ Because of the life, death and resurrection of Jesus Christ for all, we receive the eternal gifts of forgiveness and eternal life. Christians call this the gospel, God's good news for our lives. As a response to this grace from God entering our lives, we worship God as Lord of our lives, we witness to the good news of Christ's death and resurrection, and we join the compassion of God for all through our love and care of all.

God is loving and compassionate

The God who is revealed in the Bible is a loving God who shows compassion. The Bible is a record of God's love for humanity and records many instances of care for the poor and homeless, for unprotected people like widows and orphans,

⁴³ The Augsburg Confession (1530). Lutherans often reduce this core theological understanding to the catch phrase 'We are saved *by grace, through faith, in Christ Jesus.*'

for victims of injustice and those who cannot defend themselves. God calls us to love and serve our family and friends and our neighbours and strangers. Jesus teaches his followers that to care for those in need is to reflect the very nature of God. Jesus not only teaches about love and service. He is active in healing the sick, showing hospitality to the outcasts and advocating for the marginalised. Jesus 'includes all who are in need and addresses all their needs: spiritual, material and physical. The standard cry of the needy in Jesus' presence is: "Lord, have mercy!" and he never fails to respond in compassion.'⁴⁴ This is a clear example that we too should show love and compassion.

For discussion:

- Who are my neighbours?
- Who, in my community or agency, is unprotected, a victim of injustice, or one who cannot defend themselves?
- How could people in my community or agency experience God's love?
- In what ways do these people experience God's love and compassion through me? What more can I do? What more can my community or agency do?

We are called to love

Christians continually experience God's love and compassion (his mercy) in being forgiven and renewed for a life of service to others. The church exists to not only care for its members but also for the world. It exists to tell the good news of God's love through its witness as well as through acts of love and care. The church has a long tradition of serving the needy through acts of service and through establishing institutions whose purpose is to care. 'The church's ministry of mercy is a vital part of its existence. It cannot exist without worship in which God speaks and acts in mercy and God's people respond in praise. It exists for witness to the Gospel. But the genuineness of both worship and witness must be called into question where there is no ministry of mercy. Worship, witness and service belong together as functions of the church.'⁴⁵

We know that Christians are not the only ones who respond to people in need with care and compassion, and that people who are not Christians provide excellent services to those in need. For Christians, service is a way of responding to God's love and care and the provision of such service is one way of sharing Jesus' love in the world.

For discussion:

- In what ways have I seen the good news of Christ Jesus shared through acts of love and service?

We act justly and for the good of all

Lutherans describe God as speaking and acting in two different ways, and in doing that they refer to God as having two hands. 'He works with his left hand

⁴⁴ From [One Loving God: Two Hands - Saving and Caring](#)

⁴⁵ From [One Loving God: Two Hands - Saving and Caring](#)

using people as his servants to maintain peace, good order and justice in the world with people working in all kinds of situations and circumstances whether or not they realise that they are serving God's purposes. On the other hand, God works with his right hand when he works in mercy, forgiving sins and bringing people to faith in Jesus and working through them in his church.⁴⁶ Programs and agencies of Christian care and service grow out of the right hand work of God in the church, and they exist in the world – left hand work - in partnership with governments and charitable (not-for-profit) organisations. It is important to emphasise that Christians and non-Christians participate in God's ministry of mercy. The Lutheran teaching on vocation reminds us that people are God's agents⁴⁷ in the world as we function as parents, and children, citizens, workers and carers. In our vocation – in our roles - we are asked to act justly and for the good of all⁴⁸.

Every person has value by virtue of being made in and reflecting the image of God. The church's ministry to all people is to be a holistic one. We are called to love and serve people by catering for their physical, material, social, emotional and spiritual needs.

For discussion:

- What does it mean to regard each and every person as being made in the image of God?
- How does knowing that all people have been created in the image of God affect how I relate to my colleagues, my manager or the people that come to me for help?
- How can my community or agency minister holistically to people?

We bring God's love to life

By showing love and care to those in need, we are bringing God's love to life in our community. Such acts of service are offered graciously and unconditionally. Our care is offered because our 'neighbour' is in need of our service and support. Christ's ministry serves as a pattern for our life of service. We are called to use our God-given gifts to love and care for others.

For discussion:

- How can I use the gifts that God has given me to show love and care to others?
- How can I ensure that my community or agency is a place where love comes to life?⁴⁹

⁴⁶ Bartsch, Malcolm I, *A God who speaks and acts*. Available from <http://www.lutheran.edu.au/publications-and-policies/printed-publications/a-god-who-speaks-and-acts/>

⁴⁷ Luther uses the term *masks of God* to describe how God works through people to carry out his work in the world. See Veith's chapter on 'Vocation' in *The Spirituality of the Cross*.

⁴⁸ Lutheran Aged and Community Services are committed to the rights of residents and service recipients. See the following, as an example of a charter of which Lutheran Aged and Community Services gladly abide: [Residential Care - Charter of Care Recipients' Rights and Responsibilities](#)

⁴⁹ *Where love comes to life* is the tagline of the Lutheran Church of Australia (LCA). The LCA's vision is 'to see God's love in Christ coming to life in people everywhere through a Lutheran church that joyfully receives,

Our calling comes from God

As we go about our work in Aged and Community Services our caring comes as a response to the blessings that God has given us and we acknowledge that our calling to care comes from God. We are assured that God is working through us, in our vocation, to people in need and we use the gifts and talents that God has given us to serve others.

Understanding the ministry of care in this way, informs all aspects of our work. We ensure that our community is accepting and inclusive. Our view of the ministry of care informs the culture or ethos of the community/agency, the duty of care of all people in the community/agency, resourcing for those in need, and the engagement and formation of staff and volunteers to care to the best of their abilities.

For discussion:

- How would I describe the culture within the community/agency where I am located?
- What are the outward signs of the inner culture or ethos of the community/agency? How do people know that my community/agency is an accepting and inclusive community that is founded on Christian values?
- I have a legal 'duty of care'. How can I move beyond my legal duty to care deeply for my neighbour?
- Who are the vulnerable in my community/agency and how can this group be equitably cared for?
- What training and support do I need to care to the best of my abilities?

Lutheran Aged and Community Services – an expression of the caring witness of the church

What makes a Lutheran Aged and Community Service distinctively Lutheran?

To summarise:

Lutheran Aged and Community Services are communities that acknowledge God as creator and join in the ongoing creation and care of the world and all people.

Lutheran Aged and Community Services are communities that respond to people in need with care and compassion.

Lutheran Aged and Community Services are communities that act justly and for the good of all.

lives and share the gospel.' For further information, see <http://www.lca.org.au/lca-strategic-direction-2013-2018.html>

Lutheran Aged and Community Services are communities that love and serve people by catering for their physical, material, social, emotional and spiritual needs.

Lutheran Aged and Community Services are communities whose acts of service are offered graciously and unconditionally.

Lutheran Aged and Community Services are communities that acknowledge that the calling to care comes from God.

Lutheran Aged and Community Services are accepting and inclusive communities founded on Christian values.

Dr Tania Nelson
Executive Officer – Local Mission.

Appendix 5: Basic form for information from Directors seeking appointment

AGREEMENT TO ACT AS RESPONSIBLE ENTITY

To: The Board of Lutheran aged and community services Ltd

FULL NAME

FORMER NAME(S)

DATE AND PLACE OF BIRTH

RESIDENTIAL ADDRESS

I have read and understand [Documents describing duties of position, if any]. I declare that I am eligible to be [appointed/nominated/elected] to the position of [Position] of [Entity] according to the terms of the [Constitution/Trust Deed/etc] and the laws of Australia.

I declare that I am not disqualified by the Australian Securities and Investments Commission (ASIC) from acting as a director of a company, or by the Australian Charities and Not-for-profits Commission (ACNC) from acting as a responsible entity for a charity. I declare that I have no criminal convictions which would make me unsuitable for this role.

I agree to disclose to Lutheran aged and community services Ltd any changes in my suitability for the position as soon as practicable after I become aware of the change. I agree to undergo ongoing training to maintain and improve my ability to serve Lutheran aged and community services Ltd in this role, as required by Lutheran aged and community services Ltd from time to time.

I hereby consent to my appointment as [Position] of [Lutheran aged and community services Ltd] and agree to be bound by the terms of the governing documents of Lutheran aged and community services Ltd I agree to exercise the powers of the position and fulfill its responsibilities in accordance with the governing documents and the laws of Australia.

I know also that I have the following duties as a director:

- **to act with reasonable care and diligence.** I must use my powers and duties with the care and diligence that a reasonable person would if they were in my place.
- **To act in good faith in the best interests of the charity and for a proper purpose.** When acting as a board member I must make decisions

Appendix 6: Examples of conflict of interest

This Appendix addresses some aspects of conflicts of interest. A very good primary resource is the ACNC guide on conflicts of interest.⁵⁰

Conflicts of interest

Examples

As an example of an **actual conflict** of interest in an aged care centre take the situation where there are a limited number of places available and so someone will miss out. One of the applicants for the position is a current board member. The current board member cannot participate in the decision as to whether or not they are successful in their application. They must withdraw completely from the decision-making process. It is possible that that person is also a close friend of many of one or more other board members. They may need to also recuse themselves.

As an example of a **potential conflict** of interest in an aged care centre take the situation where one board member's spouse is a physiotherapist who at times supplies services to the centre's patients. A review is being undertaken of the supply of all allied health services to the centre which could but would not necessarily, affect the board member's spouse.

As an example of a **perceived conflict** of interest in an aged care centre take the situation where a child of a board member works for a building company which is one of the tenderers for some construction work at the centre. Whilst the board member might consider that irrelevant, others might be concerned that there was a conflict of interest if the company the child worked for won the contract.

⁵⁰ <http://www.acnc.gov.au/ACNC/Publications/COIguide/COIGuide1.aspx>

Appendix 7: Understanding the importance of 'Members'

Behind the broader issues to do with the appointment of directors to Lutheran aged and community services organisations are other significant issues. These include succession planning, and that topic leads into the issue of Lutheran aged and community services' membership arrangements. In this Appendix we commence the discussion of the interplay of membership with directorship. This topic flows over into accountability to members which is Governance Standard 2. This Appendix addresses the first two sections and therefore deals with closely held 'institutions' and how to address emerging concerns. Appendix 6 provides examples of different types of conflicts of interest. The topics overlap to some extent.

Membership

It is not uncommon in the charity sector for charitable institutions, as distinct from charitable trusts, for the board composition to be the same as the membership. This is lawful, and understandable in the context where the Synod is the ultimate supervisor but is not usually considered ideal from an accountability or transparency point of view. This is because one of the functions of membership is to appoint the board and, where appropriate, to remove board members. If the pool of members is so small that there is no one from the membership to be appointed, then it is also less than ideal from a succession planning point of view.

The issue is even more pressing in a situation where one or more directors ought to be removed. It is impossible in a situation where a majority ought to be removed, and are acting in concert to maintain their appointment. This situation might arise where there is:

- Misapplication or misappropriation of the charity's assets,
- Inadequate competencies on the part of a director or insufficient breadth of skills across the board as a whole; or
- Conflicts of interest.

We therefore set out some general comments particularly applicable to charities, in an endeavour to be as helpful as possible in flagging the kinds of issues that critical, external observers may seek to identify. We close this section with an example of a case handed down in 2013 by the Administrative Appeals Tribunal where a closely held organisation lost both charity and PBI status because it was too closely held.

Questions about misapplication or misappropriation of charitable assets arise whenever directors, or even members, enjoy private benefits from assets set aside for charitable purposes. The general principle behind this is that a charity exists to provide benefit to the public, and in the case of a PBI, that is the provision of

benevolent relief to those who need it. If its purpose is to provide private benefits, then it should not enjoy favourable treatment under tax and other laws. Further, a charity cannot have dual purposes of some public and some private benefit; the purposes of a charity must be only charitable – that is the provision of benefit to the public.

This high standard does not mean that a director or member cannot benefit at all under any circumstances. What it means is that if there is to be private benefit, by a director or member of a Lutheran aged and community services organisation, it must be because they would be entitled to benefit as members of the public, not because they are a director or member of Lutheran aged and community services. For example, if a Lutheran aged and community services director satisfied the criteria for receiving the benevolent relief assistance offered by a Lutheran aged and community services organisation, they could do so, but it would not be because they were a director but rather because they satisfy the criteria. Put as a different example, if the organisation was a disaster relief charity and a director or member suffered loss through flooding or were bush fire victims, they would be able to be helped. The help would be given because they were members of the public suffering the consequence of a disaster, and the charity would be helping them as a part of carrying out Lutheran aged and community services' purposes, not because they were a director or a member of the organisation. This is an important point that goes to the heart of understanding and governing a Lutheran aged and community services organisation. How strict must a charity be about this? The answer is, quite strict. Any private benefit can only be incidental or ancillary to the discharge of the Lutheran aged and community services organisation's charitable purpose.

This issue is becoming quite problematic in some parts of rural Australia where churches are in decline and the capacity to find replacements for board members can be particularly difficult. Further, the capacity to find good staff can be challenging. What this can mean is that for the best of all possible reasons, the board of a charity and the staff of a charity, can be the same or overlapping people. Those people themselves can also comprise the membership of the organisation. To an outsider, this can easily appear as though the charity does not exist for public benefit but rather for the benefit of those closely holding it. The situation becomes even more difficult when the people concerned are employees. There are a number of strategies that can be implemented in an endeavour to reduce the appearance of the organisation existing for private not public benefit, and consequently in maintaining rather than losing charity status, and possibly PBI status.

Turning to the question of board composition generally, we have identified that some Lutheran aged and community services organisations appear to be relatively closely held by a group of family and friends. There is not any difficulty with this, in and of itself, and in fact, many charities lean this way because such people are often drawn together to pursue a charitable purpose. A problem arises though in two situations.

The first is where the board does not have the requisite skills to properly lead Lutheran aged and community services. On information supplied to us, this does

seem like it could be an issue in some contexts and it is identified as an issue for careful consideration in each case.

The institution question

The second situation is where the membership is so small and closely held, that it is not possible to call the charity an 'institution'. Until recently, we would not have expressed any concern in relation to aged care facilities being an institution. This question of what is an 'institution' for charity law purposes is coming under increasing scrutiny. The Commissioner's Interpretation Statement on PBIs set out in some detail the requirements for being an 'institution'. Aside from ensuring that activities are being carried out, it is important that the PBI be properly separated from the church or other organisation with which it is involved, so that it is itself an institution delivering public benevolent relief. If there is any doubt, these guidelines can be reviewed.⁵¹

The case of *Home Health Proprietor Limited V Commissioner of Taxation* handed down by the Administrative Appeals Tribunal in 2013 illustrates the precarious position in which closely controlled charities can find themselves.⁵² In that case the company was running a multimillion dollar government funded business with 12 employees. Nevertheless, the Tribunal, Senior Member C R Walsh, decided that the organisation, which otherwise satisfied the requirements for being a charity and a PBI, was not, because as Senior Member C R Walsh explained, it was not an 'institution'. Explaining the concept of 'institution', Senior Member C R Walsh held:

It is by no means easy to give a definition of the word "institution" that will cover every use of it. Its meaning must always depend upon the context in which it is found.

Senior Member C R Walsh then discussed a number of cases on the meaning of the word including both *Christian Enterprises Ltd v Commissioner of Land Tax*⁵³ and *Pamas Case*.⁵⁴ In *Christian Enterprises* it was held by a majority of the New South Wales Court of Appeal that a closely held company with only seven members was not a 'charitable institution' but rather a 'religious society'. In the case of *Pamas*, a medical practitioner and his wife, their four adult children and two other people had established a foundation which was incorporated under the provisions of the *Associations Incorporation Act 1895* (WA). That Foundation was also found not to be an institution as it was too closely held.

Relying on these and other cases, Senior Member C R Walsh concluded in the *Home Health* case that:

The [purported charity] has a small & exclusive membership – Mr Achard and his wife. It is a smaller and more exclusive membership than the 7 members in *Christian*

⁵¹ See Commissioner's Interpretation Statement Public Benevolent Institutions 15,16
<http://acnc.gov.au/CMDownload.aspx?ContentKey=cf1784ad-fb1b-4047-8021-7c09a1105011&ContentItemKey=3f686003-6da2-4516-8dc0-a9d7273b50e8>

⁵² *Home Health Pty Ltd and Commissioner of Taxation* [2013] AATA 458 (1 July 2013) [83], [84]

⁵³ (1968) 72 SR (NSW) 72

⁵⁴ *Pamas Foundation Inc v Commissioner of Taxation* [1992] FCA 154; (1992) 35 FCR 117

Enterprises Ltd and the 8 members in *Pamas Foundation Inc*. The membership has no public character.

Accordingly, the applicant is not even an entity controlled and operated by family members and friends. It is something more removed from being an institution than the body corporate in *Pamas Foundation Inc*. The applicant is a structure controlled and operated by a single man, Mr Achard. It is no more than his *alter ego*.⁵⁵

The lesson generally from this case is that if an organisation that purports to be a charitable institution or a public benevolent institution is relatively closely held, it should carefully consider its charitable/tax status. If it wishes to be secure in its charitable and PBI status, it must ensure that it is not merely a 'society' but satisfies the requirements of the law to be an 'institution'.

In many ways these distil to questions of board composition. Who is appointed to the board should be determined by what the organisation is, and is trying to achieve.

Appendix 8: Summary of Lutheran Aged & Community Services Organisations

Lutheran aged and community services organisations identified for invitation to participate in LCA Governance Dialogue Project are shown below along with summary information provided to the reviewers:

State	Services/Facilities	Location	Legal Owner (Structure)	Services Summary
1. Lutheran Aged Care Albury Inc				
NSW	Lutheran aged and community services Dellacourt	Albury, NSW	LCA NSW District (Incorporated Association and a Company Ltd by Guarantee)	Approx: 212 Aged Care beds 52 ILUs 165 Community Care packages
NSW	Lutheran aged and community services Yallaroo	Albury, NSW		
NSW	Lutheran aged and community services Retirement Village	Albury, NSW		
NSW	Lutheran aged and community services Emily Gardens	The Rock, NSW		
2. Killarney Vale Retirement Village				
NSW	Killarney Vale Retirement Village	Gunnedah, NSW	Mgt Committee reassessing its future	0 aged care beds 4 ILUs 0 Community Care packages
3. Lutheran Community Care Queensland				
Qld	St Andrew's Tallebudgera	Tallebudgera, Qld	LCA Qld District (Department of District)	Approx: 914 aged care beds 313 Regulated ILUs
Qld	Wahroonga Retirement Village	Biloela, Qld		

State	Services/Facilities	Location	Legal Owner (Structure)	Services Summary
Qld	Teviot Villas	Boonah, Qld		5 Serviced Apartments 13 Aged & Disability Units 4 EPCIT Units 79 Funded Community Care packages & 17 FFS Packages
Qld	Immanuel Gardens Retirement Village	Buderim, Qld		
Qld	St Paul's Caboolture	Caboolture, Qld		
Qld	Zion Retirement Village	Gympie, Qld		
Qld	Orana Lutheran Complex	Kingaroy, Qld		
Qld	Tabeel Lutheran Home	Laidley, Qld		
Qld	Zion Lutheran Home	Nundah, Qld		
Qld	Salem Lutheran Rest Home & Northbridge Salem	Toowoomba, Qld		
Qld	Trinder Park	Logan, Qld		
4. St Mark's Court Retirement Units				
Qld	St Mark's Court Retirement Units	Dalby, Qld	St Mark's Lutheran Church Dalby	0 Aged Care beds 9 ILUs 0 Community Care packages
5. Peace Haven				
Qld	Peace Haven	Gatton, Qld	Peace Lutheran Church Gatton	0 Aged Care beds 22 ILUs 0 Community Care packages
6. Fullarton Lutheran Homes Inc				
SA	Fullarton Lutheran Homes	Fullarton, SA	Members (Incorporated Association)	184 Aged Care bed (licensed) 11 unlicensed 59 ILUs 11 serviced apartments 0 packages
SA	Para Vista Lutheran Homes (referred to as FLH – Good Shepherd)	Para Vista, SA		

State	Services/Facilities	Location	Legal Owner (Structure)	Services Summary
7. Lutheran Homes Inc				
SA	Glynde - LHI Retirement Services	Glynde, SA	Members (Incorporated Association)	Approx: 224 Aged Care beds 525 ILUs 48 Community Care packages plus Day Therapy
SA	Hope Valley - LHI Retirement Services	Hope Valley, SA		
8. Murray Bridge Lutheran Homes Inc				
SA	Murray Bridge Lutheran Homes	Owl Village Murray Bridge, SA	Members (Incorporated Association)	0 Aged Care beds 73 ILUs 0 Community Care packages
SA	Murray Heights Lutheran Homes	Murray Heights Village Murray Bridge, SA		
9. Riverview Lutheran Rest Home Inc				
SA	Riverview Lutheran Rest Home	Loxton, SA	LCA SA District (Incorporated)	Approx: 60 Aged Care beds 13 ILUs 0 Community Care packages
10. St Paul's Lutheran Homes Ltd				
SA	St Paul's Lutheran Homes	Hahndorf, SA	Members (Company Limited by Guarantee)	Approx: 80 Aged Care beds 68 ILUs 0 Community Care packages
11. Tanunda Lutheran Home Inc				
SA	Tanunda Lutheran Home	Tanunda, SA	Members (Incorporated Association)	117 Aged Care beds 98 ILUs 0 Community Care packages

State	Services/Facilities	Location	Legal Owner (Structure)	Services Summary
12. Trinity Place Ltd				
SA	Trinity Place	Pasadena, SA	Members (Company Limited by Guarantee)	Approx: 81 ILUs & 32 serviced apartments 0 Aged Care beds 0 Community Care packages
13. Valley of Praise Retirement Village Inc				
SA	Valley of Praise Retirement Village	Lobethal, SA	Members (Incorporated Association)	0 Aged Care beds 63 ILUs 0 Community Care packages
14. Victor Harbor Lutheran Homes Inc				
SA	Victor Harbor Lutheran Homes	Victor Harbor, SA	Members (Incorporated Association)	0 Aged Care beds 68 ILUs 0 Community Care packages
15. Lutheran Community Care SA&NT				
SA	Lutheran Community Care SA&NT	Sefton Park, SA	LCA SA District (entity of District)	A wide range of services provided (50 programs plus 4 Op Shops)
16. Lutheran Disability Services Inc				
SA	Lutheran Disability Services	Sefton Park, SA	LCA SA District (entity of District)	Supported accommodation & in-home support services provided
17. Calvary Retirement Village				
Vic	Calvary Retirement Village	Greensborough, VIC	Greensborough Lutheran Church	0 Aged Care beds 20 ILUs 0 Community Care packages

State	Services/Facilities	Location	Legal Owner (Structure)	Services Summary
18. Sunnyside Lutheran Retirement Village				
Vic	Sunnyside Lutheran Retirement Village	Horsham, Vic	LCA Vic/Tas District (entity of District)	Approx: 75 Aged Care beds 66 ILUs 0 Community Care packages
19. Eventide Lutheran Homes				
Vic	Eventide Lutheran Homes	Hamilton, Vic	LCA Vic/Tas District (entity of District)	Approx: 59 Aged Care beds 92 ILUs 0 Community Care packages
20. Good Shepherd Retirement Village				
Vic	Good Shepherd Retirement Village	Ringwood, Vic	LCA Vic/Tas District (entity of District)	23 ILUs
21. Martin Luther Homes Boronia Inc				
Vic	Martin Luther Homes Boronia	The Basin, Vic	Local Congregation linked to German Lutheran Church	88 Aged Care beds 42 ILUs ¹ 8 Apartments 4 Serviced Apartments 0 Community Package

In Scope & NOT Participating:

State	Services/Facilities	Location	Legal Owner (Structure)	Services Summary
22. Trinity Haven Lutheran Units				
Qld	Trinity Haven Lutheran Units	Lowood, Qld	Trinity Lutheran Church, Lowood	
23. Nazareth Lutheran Senior Citizens Home				
Qld	Nazareth Residential Aged Care	Woolloongabba, Qld	Lutheran Church South Brisbane	
24. Trinity Court Aged Care Southport				
Qld	Trinity Court Aged Care Southport	Ashmore, Qld	Trinity Lutheran Church, Southport	
25. St Matthew's Lodge				
Qld	St Matthew's Lodge	Goombungee, Qld	St Matthew's Lutheran Church	

