To: submissions@xrb.govt.nz

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XRB Responses – Post-Implementation Review

Respondent Information

Perpetual Trust Limited (trading as Perpetual Guardian) is a registered statutory trustee company pursuant to the Trustee Companies Act 1967. Perpetual Guardian (and its predecessors, including The New Zealand Guardian Trust Company Limited) has been in the business of providing estate planning options, trustee services and philanthropic support for over 135 years.

The responses to the questions for respondents are on behalf of Perpetual Guardian.

Perpetual Guardian acts as trustee for approximately 600 independent registered charitable entities established either during the donor's lifetime or on their death.

The charities for which Perpetual Guardian is trustee typically do not solicit donations from the public. The charities are funded from initial settlements or bequests which are invested to provide a return to the charity to distribute for its charitable purpose(s).

Most of the trusts for which Perpetual Guardian acts as trustee are Tier 3 or Tier 4. However, Perpetual Guardian has 'elected up' to treat the Tier 4 charities as Tier 3 as accrual accounting provides a more accurate picture of the long term position of the Charity and allows for better management. It also enables a more streamlined preparation process to keep costs as low as possible. As such the comments below relate to the not-for-profit version of the standards for Tier 3 reporting entities.

Please consider this context when reviewing the comments below as we expect this background will be different from many of the charities making submissions.

We are happy to provide further information is useful, please contact us at philanthropy@pgtrust.co.nz.

Responses to Questions

1. **What is your overall view on how the standards are working?**

   Generally the standards appear to be working in the sense that there is a framework for reporting that provides various stakeholders with the ability to assess a charity's financial and non-financial performance from a charity's Performance Report.

   As highlighted above, Perpetual Guardian has elected to treat Tier 4 charities as Tier 3 on the basis that Performance Report prepared using accrual accounting provides better information. Such flexibility, along with the ability to apply specific accounting standards applicable to Tier 2 is useful.

2. **What parts of the standards, guidance or templates have been working well? Are there any that have been particularly useful?**

   The overall structure of the Tier 3 standard is helpful for the following reasons:

   - The guidance is structured by each separate statement/report which helps users access and navigate the requirements;
   - Clear direction is provided on what the minimum required information is with some additional optionality, which provides welcome flexibility for the preparation of financial statements.
   - The inclusion of examples is helpful to illustrate treatments for some of the more likely circumstances charities will encounter. The examples are however relatively generic and do not address some of the more nuanced differences that can arise, particularly involving charitable trusts.

3. **Are there any specific issues that you have encountered in applying the standards, guidance or templates?**

   Application of guidance to trusts

   The standards and guidance uses generic terms, presumably to apply too as wide a range of circumstances as possible.

   This does not always translate to trusts and creates uncertainty in how the standards should apply. For example, cash flows from investing and financing activities includes capital contributed from owners or members. The settlement of funds on trust would not usually be described as being contributed from an owner or member. Judgment has to be exercised which can result in different treatments being adopted by different charities in similar circumstances. This potentially reduces the comparability of financial statements.

   Distributions from trusts

   The treatment of distributions from a trust may be different to the treatment of distributions from other types of charities.

   For instance, if a charitable trust has fixed (named) beneficiaries with a direction to allocate a specific portion of the charity's income to each beneficiary, this could be viewed as 'distributions to owners' reported through Accumulated Funds.

   If treated this way, the distribution would not be a grant included as operating expenditure in the Statement of Financial Performance. As a result, the requirement for a review or audit may not be triggered.

   This could be the correct answer for some charitable trusts, particularly where the beneficiaries are specifically named and the trust does not accept donations from the public.

Review or Audit Requirement

We would suggest that the review or audit requirement be removed for situations where a charity does not solicit or receive donations from the public. While these charities have a degree of public accountability to ensure funds are applied in accordance with a charity's governing document and rules, the absence of public funding may suggest that the effort and cost required for a review or audit is unnecessary.

In addition, Charity Services would appear to be better placed to assess whether a distribution furthers a charitable purpose than auditors are.

Reporting Capital & Income in charitable trusts

Following on from the comments above relating to distributions from trusts, the standard does not always accommodate the reporting of income and capital from a trustee's perspective. As you will be aware, trustees are required to follow trust law and the trust's governing document in the management and administration of the trust property.

This involves the classification of payments made and received as either income or capital. In some situations, expenses are paid from the trust's capital balance. If the standard is followed then these payments would be shown in the Performance Report's Statement of Financial Performance which would result in the net surplus being less than what it would be had the trustee's treatment being followed.

There would also be a difference with the trustee's record of the capital and income balance which could require the trustee to prepare a second set of financial statements that are prepared in accordance with trust law.

A potential solution to this additional cost would be to have flexibility to use the trustee's accounts with appropriate disclosures.

Revaluation of financial assets and liabilities

We consider that the ability to elect to revalue financial assets and liabilities to fair value should be retained. This is on the basis that charitable trusts can exist in perpetuity and not revaluing the financial instruments could result in a materially misleading view of the charity's financial position due to changes in investment values over time.

It would be useful to provide preparers of Performance Reports with guidance on the disclosures and presentation required. This would also hold true for other items that charities regularly elect to apply tier 1 or 2 treatments.

Going Concern

The models used to establish the ongoing viability of some types of charities, in particular funding charities, may not be appropriate for the following reasons:

a) Not-for-profits can generate income without the existence of any assets through donations and fundraising. The may also be funded on the occurrence of an event, such as a donor's death.
b) The future income of some not-for-profits cannot be estimated from past income with a sufficient level of certainty.
c) Not-for-profits do not necessarily incur expenditure for tasks in the same way as businesses do, as they have at least potential access to free labour, material donations for shell trusts or 'through and through' donation trusts and other 'free' goods and services.
d) Some not-for-profits may intend to provide funding over multiple years, in advance of the not-for-profit having the funds available.

Multi-year distributions

A charitable trustee may enter into a long term granting partnership with a recipient charity. In some situations the Trustees may not view this as creating a liability for the Trust and on the following basis:

a) Grants are re-evaluated and confirmed on an annual basis i.e., the Trustee may or may not continue with the proposed partnership.
b) The strategic direction for the grant recipient may change and the grant request may be withdrawn.
c) Grants are only payable on the basis of available funds i.e. the performance of the Trusts investments or fund raising activities.

Including some guidance on this, or expanding an example, would help clarify the required treatment.

4. Have you developed any custom guidance to help apply the standards?

Yes, the Client Accounting & Tax team at Perpetual Guardian created proprietary guidance for preparing financial statements, including Performance Reports. The guidance includes comments on areas specific to the nature of our business as a Statutory Trust company and our charitable trusts (as opposed to incorporated or unincorporated organisations).

5. Other comments?

In regards to usability and compliance with the standard, a significant portion of the charities seeking funding from trusts stewarded by Perpetual Guardian are very diverse and the smaller entities can lack accounting knowledge, or access to advice, that would enable them to use the XRB standards effectively.

One of the difficulties in reporting is the large variety of non-for profits. We query whether the nature of a non-profit is adequately captured in the reporting framework, i.e., there is a difference between a funding charity and an operational charity which should be reflected in different reporting and auditing requirements.

For example, the standards appear to have not-for-profits in mind that provide 'services' to the community and can be considered a fairly close equivalent to a service business. However, a very large number of not-for-profits simply exist as a means provide philanthropic funding, or outside of the realms of our Trusteeship, to manage membership funds i.e. clubs.

Fitting these entities into a Performance Report is difficult, and provides little, if any, useful information. The term 'service performance' in itself is a poor fit for many organisations. A perpetual testamentary charitable trust, for example, does not 'perform' and does not provide a 'service'. It is an administrative funding vehicle only.

Finally, we also wish to question how Charities Services and other stakeholders use the information contained in a performance report. If information is not used for monitoring or evaluation activities then the need for such information to be included in a performance report should be questioned.

For example, is the Statement of Cash Flows used as part of ongoing monitoring and compliance activities? If not, does a cash flow statement provide much utility to users of the financial statements?