



Anglican Church Diocese of Sydney

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Submission to Treasury regarding *Review of Not-for-Profit Governance Arrangements – Consultation Paper December 2011*

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

1 Introduction

1.1 Who we are

- (a) The name of our organisation is the Anglican Church Diocese of Sydney (**Diocese**).
- (b) This submission is made by the Standing Committee of the Synod of the Diocese. The Standing Committee is the executive of the Synod which is in turn the principal governing body of the Diocese constituted under the *Anglican Church of Australia Constitutions Act 1902* (NSW).
- (c) The Diocese is an unincorporated voluntary association comprising various bodies constituted or incorporated under the *Anglican Church of Australia Trust Property Act 1917* (NSW) and the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW). These bodies, together with the diocesan network of 269 parishes, are accountable to the members of the Church through the Synod of the Diocese¹.
- (d) The Synod, which is itself an unincorporated charitable institution, has about 800 members, the majority of which are appointed or elected representatives from our 269 parishes.
- (e) More broadly, the Diocese, through its various component bodies and through its congregational life is a provider of a wide range of programs including in social welfare, education, health and aged care, youth work and care for the homeless. In addition to the congregational life of the Diocese, the bodies which provide services to the community across the Diocese include large social welfare institutions such as

¹ In the last ABS Census 837,917 people in the Sydney region identified as being Anglican. The regular combined membership of our 269 parishes is about 80,000 people.

Anglicare² and Anglican Retirement Villages³, as well as other charitable institutions including Anglican Youthworks⁴, and 40 Anglican schools⁵.

(f) The Diocese also comprises in excess of 300 separate charitable trusts held by the Corporate Trustee of the Diocese, Anglican Church Property Trust Diocese of Sydney, being a body constituted under the *Anglican Church of Australia Trust Property Act 1917* (NSW). Similar corporate trustees are constituted for each of the other six Anglican dioceses in New South Wales.

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1.2 Approach taken in this submission

(a) We are grateful for the opportunity to comment on the governance arrangements for NFP entities and welcome the Government's initiative in assisting the sector to achieve effective governance arrangements suitable for the sector. This submission is complementary to another submission we are making regarding the *Exposure Draft of the Australian Charity and Not-for-profits Commission Bill 2012*.

(b) We commence our submission in part 2 with an overview of how the component bodies of Anglican dioceses in New South Wales are constituted and governed and, in particular, the nature of the relationship between such bodies and the diocesan synods which constitute them. We trust this information will assist the Government to understand not only the context in which the component bodies of Anglican dioceses in New South Wales operate but also the similar context in which many other religious charities operate across Australia. We believe that a clear understanding of these

² **Anglicare** relates to approximately 40,000 clients on an annual basis with counselling, children and youth services, emergency relief, family relationships and aged care.

³ **Anglican Retirement Villages** operates 37 residential facilities (both Independent Living and Residential Care) and 40 community based services throughout the greater Sydney region, caring for more than 6,000 residents and clients and regularly relating to a further 12,000 people (families, staff, volunteers) in the course of its service delivery.

⁴ **Anglican Youthworks** is the co-ordinator of work amongst children and young people and provides materials to 300,000 students, supports 4,000 volunteer and employed scripture teachers, and 8,000 youth leaders attending training events. 50,000 mostly young people and children attend outdoor programs and centres.

⁵ Attended by approximately 33,000 students.

matters will assist the Government in formulating appropriate high level, in-principle governance standards which are able to be effectively applied across the whole sector.

- (c) In part 3 we outline why we consider that the Government should not attempt to finalise the governance standards for the sector by 1 July 2012 but should defer finalisation until, say, 1 July 2013.
- (d) In part 4 we raise a particular concern about the broad scope of the definition of “responsible individual” in the NFP context. We also seek confirmation that the transfer of responsible individuals’ duties and other provisions from the *Corporations Act 2001* to the ACNC legislation will apply to all NFP corporations and will not be limited to companies limited by guarantee.
- (e) In parts 4 to 9 we provide specific responses to the questions posed by the *Review of not-for-profit governance arrangements* Consultation Paper December 2011 (***the Consultation Paper***).

2 Governance of the Anglican Church in New South Wales and in the Diocese of Sydney

2.1 Legislative framework

- (a) Representative members of the Anglican Church of Australia in New South Wales meet in synods to attend to governance needs arising from membership in the unincorporated association known as The Anglican Church of Australia. The New South Wales Parliament has provided a legislative framework for the seven New South Wales Anglican diocesan synods to carry out responsible and effective governance. The *Anglican Church of Australia Constitutions Act 1902* empowers each New South Wales Anglican synod to make ordinances for the order and good government of the Anglican Church of Australia within that diocese.
- (b) These powers are extended by the *Anglican Church Australia Trust Property Act 1917* which gives such synods the power –
 - (i) to vary the trusts on which church trust property is held,
 - (ii) to appoint and remove trustees of such property, and
 - (iii) to constitute councils and committees to govern and control the management and use of such property.

- (c) The *Anglican Church (Bodies Corporate) Act 1938* further extends the powers of these synods by giving each the capacity to constitute such councils and committees as bodies corporate for the management and governance of an organisation of the Anglican Church or for holding, managing or dealing with church trust property. In the Diocese of Sydney, for example, a significant number of diocesan organisations are incorporated under the *Anglican Church (Bodies Corporate) Act 1938*. One effect of incorporation is that the provisions of the *Corporations Act 2001* which deal with corporations generally, as distinct from companies in particular, apply to church corporations. The implications of this in terms of NFP governance are considered further at 4.1 below.
- (d) The powers given to diocesan synods under this legislative framework have enabled dioceses in the New South Wales to give effective expression to a broad range of charitable purposes through the component bodies of the dioceses. These powers also enable the synods to put in place appropriate governance arrangements for such purposes.

2.2 Governance in the Anglican Church Diocese of Sydney

- (a) There is little doubt that the members of the boards of diocesan organisations are aware of their duties and have taken steps to ensure proper and effective board governance. Nevertheless, the Synod as the “parliament of the diocese” has a responsibility to the wider community and ultimately the authority to determine and facilitate the implementation of appropriate governance standards for diocesan organisations, both incorporated and unincorporated, constituted by the Synod.
- (b) There are currently about 60 diocesan organisations constituted or otherwise regulated by the Synod. These organisations pursue various charitable purposes through a wide range of activities, including welfare, aged care, schooling, youth work, theological education, and administrative, secretarial and investment services.
- (c) Consistent with Synod’s responsibility to the wider community –
- diocesan organisations which manage church trust property are generally required, by ordinance of the Synod, to provide an annual report to the Synod including their financial statements and auditor’s report,
 - the constituting ordinance for each diocesan organisation usually provides for a majority of members of its governing council or board to be elected by the Synod, and

- from time to time the Synod amends the constituting ordinances of diocesan organisations.
- (d) On behalf of the Synod, the Standing Committee has been developing a policy to articulate two broad expectations for the governance of diocesan organisations.
- (e) The first expectation is that those responsible for governing diocesan organisations will seek the highest standards of corporate governance. This expectation is one that is shared with the shareholders of for-profit organisations.
- (f) The second expectation addresses the end to which the highest standards of corporate governance are to be put. Since diocesan organisations are not-for-profit, the end is not maximising the financial return to the organisation or the synod. Rather the end is maximising the extent to which a diocesan organisation meets the object for which it is constituted. The object of any diocesan organisation is to advance one charitable purpose or another of the Diocese.

2.3 Models of governance in the NFP context

- (a) In formulating its policy for appropriate governance standards for diocesan organisations, the Standing Committee has considered a number of models described in the literature on corporate governance theory to anchor sound principles of corporate governance on a justifiable philosophy of corporate life.⁶
- (b) In the NFP context, the Standing Committee has found useful Carver's Policy Governance Model which proposes that the NFP board exists to represent and to speak for the interests of the owners.⁷ This representative role is described in the following terms –

The Policy Governance model conceives of the governing board as being the on-site voice of that ownership. Just as the corporate board exists to speak for the shareholders, the non-profit board exists to represent and to speak for the interests of the owners.

A board that is committed to representing the interests of the owners will not allow itself to make decisions based on the best interests of those who are not the owners. Hence, boards with a sense of their legitimate ownership relationship can no longer act as if their job is to

⁶ For example: the "Managerialist theory" proposed by Berle and Means in their classic study of the 1930s, the "Contractual theory" which has dominated corporate law theory since the 1970s and the "Constitutional theory" more recently proposed by Bottomley.

⁷ <http://carvergovernance.com/pg-np.htm> This is a republication of an original article in 2001 by John Carver and Mirian Carver in *Gouvernance – revue internationale* Vol 2 No 1

represent staff, or other agencies, or even today's consumers (we will use that word to describe clients, students, patients, or any group to be impacted). It is possible that these groups are not part of the ownership at all, but if they are, it is very likely they constitute only a small percentage of the total ownership.

We are not saying that current consumers are unimportant, nor that staff are unimportant. They are critically important, just as suppliers, customers, and personnel are for a business. It is simply that those roles do not qualify them as owners. They are due their appropriate treatment. To help in their service to the ownership, Policy governance boards must learn to distinguish between owners and customers, for the interests of each are different. It is on behalf of owners that the board chooses what groups will be the customers of the future. The responsible board does not make that choice on behalf of staff, today's customers, or even its own special interest.

Who are the owners of a non-profit organisation? For a membership organisation, its members are the owners. For an advocacy organisation, persons of similar political, religious, or philosophical conviction are the owners.

- (c) The Policy Governance Model requires that the board's primary relationship be outside the organisation – that is, with the owner. On behalf of the owners the board has total authority over the organisation, including the Chief Executive Officer, and total accountability for the organisation.
- (d) In the context of the Diocese, we regard the "owners" of each diocesan organisation as the Anglican community in the Diocese, with the Synod being the representative body of that community.
- (e) Developments in corporate governance theory also recognise the legitimate interests of a range of stakeholders in the wellbeing of a corporation. In the context of organisations constituted by the Synod, due recognition will sometimes need to be given to the legitimate interests of groups beyond the Anglican community. Examples would be the residents of a retirement village and the pupils, parents, staff and alumni of a school, although clearly many within these groups are also members of the Anglican community.

3 Deferral of governance standards until after 1 July 2012

- (a) As indicated in our complementary submission regarding the *Exposure Draft for the Australian Charities and Not-for-profits Commission Bill 2012*, we recommend that the Government not attempt to finalise governance standards for the sector by 1 July 2012 but to defer finalisation until, say, 1 July 2013. We also recommend that the sector be given a suitable transition period after the standards have been finalised to implement any necessary changes.
- (b) It is imperative that the governance standards are able to be effectively applied across the whole of a very diverse and complex sector. The standards must strengthen the sector rather than burden it with unnecessary red-tape.
- (c) Many of the proposals in the Consultation Paper raise important governance matters for the sector that need to be addressed. However, governance standards which are unduly heavy-handed or not fit for the purposes of the NFP sector, represent one of the three main aspects of the proposed ACNC legislation which have the greatest capacity to “suffocate” the sector, rather than enhance it – the other two aspects being unduly onerous reporting and audit requirements and an unworkably broad definition of responsible individual.
- (d) We suspect that the underlying difficulty with some of the governance proposals, and indeed the proposed reporting/auditing requirements and definition of responsible individual, is that the models used have been largely lifted from the for-profit corporate world. While this is an understandable starting point, we believe that considerably more work needs to be done on developing an effective governance framework for the NFP sector in Australia than will be realistically possible by 1 July 2012.
- (e) Aside from the desirability of not rushing to finalise suitable NFP governance standards, a later date of finalisation and a suitable transition period after the standards have been finalised will also give the sector a greater capacity to implement these reforms on a staged basis, in view of the enormous changes already facing the sector in other areas.

4 Responsible individuals

4.1 Transfer of responsible individuals’ duties etc. from the Corporations Act to the ACNC legislation

- (a) The Consultation Paper refers to the Government’s intention to re-express the duties of directors and officers of companies limited by guarantee in the *Corporation Act 2001* as

duties of responsible individuals in the ACNC legislation with the effect that the current duties under the *Corporations Act 2001* will cease to apply to companies limited by guarantee.

- (b) However, companies limited by guarantee are not the only type of NFP corporation to which the duties in the *Corporations Act 2001* currently apply. For example, the bodies corporate constituted by the synods of Anglican dioceses in New South Wales are also corporations, the directors and officers of which can be subject to such duties.
- (c) Accordingly any re-expression of such duties and other provisions in the ACNC legislation must go beyond companies limited by guarantee to include all NFP corporations currently covered by the *Corporations Act 2001*.

4.2 Scope of proposed definition of responsible individuals

- (a) We have a significant concern about the scope of the definition currently proposed for “responsible individuals” in the Exposure Draft. In particular we consider that defining responsible individual in terms of the extended meanings given to directors and officers in the *Corporations Act 2001* is inappropriate in the NFP context for two main reasons.
- (b) First, there are a number of unincorporated bodies which have very large memberships who are responsible for making the decisions of the body in the absence of a board. For example, in the case of the Synod of the Anglican Church Diocese of Sydney, the definition of responsible individual as currently proposed would lead to the impossible situation of approximately 800 members of the synod being regarded as responsible individuals since each member is an individual who “makes, or participates in making, decisions that will affect the whole or a substantial part, of the registered entity’s activities”. Similar issues arise in relation to identifying the responsible individuals of the Anglican parish which, under the proposed definition, could extend to any person who is entitled to attend the annual general meeting of a parish (traditionally known as the annual vestry meeting). Again, given the very broad requirements that entitle a person to attend such a meeting, the identification and the number of individuals who might be regarded as responsible individuals under the proposed definition would be practically impossible to manage.
- (c) The second reason why it is not appropriate to use the *Corporations Act 2001* to define responsible individuals in the NFP context is that unlike many for-profit corporations, NFP entities often call on a broad range of individuals, often volunteers, to become involved in various decision-making processes of the entity. This is particularly the case with smaller, grass-roots NFP entities such as churches.

- (d) In view of these issues, we recommend that the Government consider reformulating the definition of “responsible individual” along the following lines –
- (i) Subject to (ii) and (iii) below, limit the definition of responsible individual to the concept of a director of the governing board or council of the entity (including receivers, managers administrators etc).
- (ii) Extend the definition of responsible individual to include the broader Corporations Act concept of “officer” only for large NFP corporations.
- (iii) For unincorporated NFP entities which have a large membership and no governing board or council, enable the entity to nominate a small representative group of, say, at least 5 individuals who exercise the most control of the entity by virtue of the office they hold (eg., President, Secretary, Treasurer etc) to act as the responsible individuals for the entity.

4.3 Exercise of responsible individuals’ duties

- (a) The Consultation Paper asks –
- Should it be clear in the legislation who [sic] responsible individuals must consider when exercising their duties, and to whom they owe duties to?
 - Who [sic] do the responsible individuals of NFPs need to consider when exercising their duties? Donors? Beneficiaries? The public? The entity, or mission and purpose of the entity?

We think it is important to distinguish between the question of whom or what the responsible individuals must consider when exercising their duties and the question of those to whom responsible individuals owe duties.

- (b) In response to the first question, we submit that responsible individuals must consider the mission and purpose of the entity (expressed through the objects in its constitution) as the overriding concern when exercising their duties. Although particular persons or groups of persons (e.g., donors, beneficiaries, the public) will often need to be considered in the interests of pursuing the mission and purpose of the entity, such persons or groups should not be prescribed in any legislative expression of governance standards. To do so would be inconsistent with the stated aim of the Government to introduce principle-based rules that apply to all registered entities across the sector.
- (c) In relation to the second question, we consider that it would be appropriate for the applicable duties of responsible individuals to be owed to –
- the members of membership-based entities, and

- for non-membership-based entities, the members of the body which has power to amend the constitution of the relevant entity.

Both of these bodies have a justifiable interest in the proper exercise of responsible individuals' duties and have the capacity to ensure those duties are met. In this regard, we note that bodies constituted by the synod of each Anglican diocese in New South Wales, are usually not membership-based entities insofar as there is usually no class of members separate from the members of the governing board or council. However, since the powers of the synod are directly analogous to those that would be exercised by the members in a membership-based body (in particular, the power to amend the constitution of such bodies), it is appropriate that they have the power to enforce the duties owed by the responsible individuals of such bodies.

4.4 Core duties to be authorised in the ACNC legislation

(a) The Consultation Paper asks –

- What should the duties of the responsible individuals be, and what core duties should be outlined in the ACNC legislation?

We consider that the duties listed in paragraph 93 of the Consultation Paper would be an appropriate expression of the core duties of responsible individuals in the ACNC legislation. These duties would be –

- to act in good faith and in the best interests of the entity and for a proper purpose,
- to act with reasonable care and skill,
- not to improperly use information or position, and
- to disclose and manage conflicts of interest.

4.5 Minimum standard of care

(a) The Consultation Paper asks –

- What should be the minimum standard of care required to comply with any duties? Should the standard of care be higher for paid employees than volunteers? For professionals than lay persons?

(b) We consider that the legislative expression of the duties and standards of care should be the same for all responsible individuals. That is not to say that the steps that should usually be taken by, for example, a responsible individual who is paid to discharge a

particular duty will necessarily be the same as those that should usually be taken by a volunteer. However, such differences should be the subject of guidance by the ACNC and should not be reflected in the standards and duties as expressed in legislation.

4.6 Qualifications of responsible individuals

- (a) The Consultation Paper asks –
- Should responsible individuals be required to hold particular qualifications or have particular experience or skills (tiered depending on size of the NFP entity or amount of funding it administers)?
- (b) We answer this question “No”. This matter should be left to the entity itself and any body responsible for appointing/electing members to that entity.
- (c) Any attempt to prescribe qualifications, experience or skill for application across the whole sector, except in the most general terms of requiring consideration of these matters, is bound to run into difficulties.

5 Disclosure requirements and managing conflict of interest

5.1 Disclosure requirements

- (a) The Consultation Paper asks –
- What information should registered entities be required to disclose to ensure good governance procedures are in place?

We consider that this is a matter which is appropriately considered by the ACNC as part of its *Implementation Design Consultation* since it relates to the information that an entity should include in its Annual Information Statement.

- (b) The Consultation Paper asks –
- Should the remuneration (if any) of responsible individuals be required to be disclosed?
- (c) We consider that, consistent with the Accounting Standards, the remuneration of responsible individuals should be disclosed as a group but not as individuals.

5.2 Conflicts of interest

- (a) We consider the issue of conflicts of interest is poorly understood across the sector. Educating the sector about the proper management of conflicts of interest is therefore an important matter to be addressed.
- (b) In response to the questions about conflicts of interest, we consider that at the legislative level it is sufficient for responsible individuals to be under a general duty to disclose and manage conflicts of interest. To particularise how conflicts of interest should be managed at the legislative level would be inconsistent with Government's desire to establish principles-based governance rules that apply to all entities across the sector.
- (c) Further details about how conflicts of interest should be managed in a particular context should be issued by the ACNC as guidelines as part of its education function.

6 Risk Management

- (a) The Consultation Paper asks –
 - Given that the NFP control funds from the public, what additional risk management requirement should be required of NFPs?
- (b) We consider that risk management is important, however, it should only be mandated by legislation for large (tier 3) organisations. To mandate risk management requirements for small or even medium organisations (tiers 1 and 2) places an unnecessary compliance burden on such entities for little or no net benefit.
- (c) We suggest that large (tier 3) entities could be required to maintain a satisfactory system of risk management which includes –
 - procedures to identify and assess key risks to the organisation,
 - policies and procedures to manage the key risks,
 - procedures to report to the members of the organisation significant breaches of the law and the policies of the organisation, and
 - procedures for the annual review of the key risks.

Further guidance as to what constitutes a satisfactory system of risk management could be provided by the ACNC. Small or medium NFP entities would be at liberty to adopt this guidance on a voluntary basis.

7 Internal and external Reviews

- (a) The Consultation Paper asks –
- What internal review procedures should be mandated?
- (b) Similar to our comments made in relation to risk management requirements, we consider that internal review procedures are important, however, mandated requirements in legislation should be limited to large (tier 3) organisations.
- (c) In terms of the mandated requirement for internal review procedures, we suggest that there could be a requirement that large NFP entities maintain satisfactory systems of internal control which should include –
- policies for fulfilling its charter and complying with lawful requirements,
 - sound practices for efficient, effective and economical management,
 - procedures for the control of assets, liabilities, income and expenditure, and compliance with accepted accounting standards,
 - segregation of functional responsibilities, and
 - procedures to review the adequacy of and compliance with the system of Internal Control.

Again, further guidance as to what constitutes a satisfactory system of internal control could be provided by the ACNC. Small or medium NFP entities would be at liberty to adopt this guidance on a voluntary basis.

8 Minimum Requirements for entities governing rules

8.1 Core minimum requirements

- (a) The Consultation Paper asks –
- What are the core minimum requirements that registered entities should be required to include in their governing rules?
- (b) We consider that it would be helpful for core minimum requirements for inclusion in governing rules of NFP entities to be set out in the ACNC legislation. However, consistent with the Government's desire to provide principle-based rules that apply to all registered entities across the sector, the minimum requirements should be expressed in

terms of general areas of governance that need to be covered in the rules of each registered entity.

- (c) For example, legislation could require that the governing rules must include provisions dealing with the following matters –
 - (i) Objects
 - (ii) Board size and composition
 - (iii) Appointment and term of office of board members
 - (iv) Board meetings
 - (v) Board responsibilities
 - (vi) Membership criteria (for membership-based entities)
 - (vii) Members' meetings (for membership-based entities)
 - (viii) Members' responsibilities (for membership-based entities)
 - (ix) Not-for-profit limitation (unless determined by operation of law or statute under which the entity is constituted)
 - (x) Winding-up (for DGR endorsed entities)
- (d) How each of these governance areas should be expressed in the governing rules is properly a matter for the members of the registered entity or, in the case of non-membership based entities, the body with the power to amend the governing rules. However, it would be appropriate for the ACNC to issue guidance concerning how the governing rules might be expressed in each of these areas.
- (e) Given the diversity and complexity of the sector it would also be desirable to –
 - (i) ensure that there is appropriate recognition of the fact that the governing rules for some NFP entities are found partly in constituting legislation and partly in the rules enacted under such legislation, and
 - (ii) give the ACNA a discretionary power to waive the requirement to cover particular core minimum requirements in the governing rules of a registered entity in exceptional cases. For example, for very large “parliament-like” bodies such as the Synod, there is no group of persons who could be said to operate as a board, as that term is usually understood.

8.2 Making minimum requirements, enforcement and alteration of governing rules

- (a) The Consultation Paper asks –
- Should the ACNC have a role in mandating the requirements of the governing rules, to protect the mission of the entity and the interest of the public?
 - Who should be able to enforce the rules?
 - Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?
- (b) We consider that the following bodies should be able to enforce the rules of a registered entity –
- (i) the ACNC,
 - (ii) the members in a membership-based entity, and
 - (iii) in non-membership-based entities, the body which has the capacity to amend the governing rules of the registered entity.
- (c) We would be concerned if the ACNC were given a role in directly mandating the requirements of the governing rules for any reason. However, if the ACNC became aware of a matter which necessitated the rules of a registered entity being amended, it would be appropriate for the ACNC to have the power to require the members of the registered entity or such other body with the capacity to amend the governing rules to meet to consider the matter and decide how to respond to any concerns raised by the ACNC.
- (d) Similarly, we do not think that the ACNC should have a direct role in altering the governing rules of a registered entity.

8.3 Use of Model Rules

- (a) The Consultation Paper asks –
- Should model rules be used?
- (b) Given the wide range of entity types that comprise the NFP sector, we consider that the use of model rules would not be appropriate or, indeed, practical. Rather, as suggested above, the ACNC should focus its efforts on providing guidance as to how specified areas of governance in the rules might be drafted.

9 Relationships with members

9.1 Mandated relationship between an entity and its members

- (a) The Consultation Paper asks –
- What governance rules should be mandated relating to an entity's relationship with its members?
 - Is it appropriate to have compulsory meeting requirements for all (membership-based) entities registered with the ACNC?
- (b) We consider that mandated requirements describing an entity's relationship with its members should be limited to –
- (i) the provision of an annual report and applicable financial statements to its members, and
 - (ii) a requirement that members are to meet regularly and a requirement to specify in the governing rules the frequency of meetings of its members (although the legislation itself should not specify the frequency of members' meetings), and
 - (iii) The capacity of a meeting of members to appoint and remove at least a majority of board members.

9.2 Membership requirements applying to non-membership based entities

- (a) The Consultation Paper asks –
- Do any of the requirements for relationships with members need to apply to non-membership based entities?
- (b) As indicated in part 3 of this submission, we consider that good corporate governance theory in the NFP sector requires the governing board (ie. responsible individuals) to be ultimately accountable to "owners" outside the entity itself. In the context of the Anglican Diocese of Sydney, we consider that the owner of each diocesan organisation constituted by the Synod is the community of Anglicans in the Dioceses as represented by the Synod.
- (c) As a matter of principle therefore we consider that for non-membership based entities, such as those which generally exist in each Anglican diocese in New South Wales, the minimum mandated requirements outlining the relationship between a registered entity and its members should, in the context of non-membership based entities, extend to the

relationship between an entity and the body who is capable of amending the governing rules of the entity.

- (d) In the context of the Diocese of Sydney, this would mean that, as a minimum, the constitutional arrangements for each diocesan organisation would require –
- (i) the annual report and financial statements for the entities be provided to the Synod either on a stand-alone basis or, in appropriate circumstances, on a consolidated basis (eg. multiple trusts effectively controlled as a functional whole), and
 - (ii) for the Synod to meet at a specified period of regularity to consider such reports and financial statements and, if appropriate, to consider making appropriate amendments to the governing rules of diocesan organisations, and
 - (iii) for the Synod to have the capacity to appoint and remove at least a majority of the board members of diocesan organizations.

25 January 2012