

REVIEW OF NOR-FOR-PROFIT GOVERNANCE ARRANGEMENTS
Consultation Paper – December 2011
Consultation questions

6.1 RESPONSIBLE INDIVIDUALS' DUTIES

Consultation questions

1. Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?

Yes

2. Who 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?

Yes to all

3. What should the duties of responsible individuals be, and what core duties should be outlined in the acnc legislation?

Disclose and manage personal conflicts of interest

Duty of care and diligence

Not to improperly use information or position

Act in good faith and with integrity

4. 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?

The standard should be set by the relevant qualifications, education and/or experience of the person

5. 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)?

Qualifications and/or experience, and skills relevant to the needs of the governing body are considered essential

6. Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?

No

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7. Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the acnc?

No

8. Are there any other responsible individuals' obligations or considerations or other issues (for example, should there be requirements on volunteers?) That need to be covered which are specific to nfps?

Citizen advocates make voluntary commitments to people who are vulnerable as a result of intellectual disability, however they are not volunteers to the organisation. They are in freely given, independent relationships of support and are not bound by the organisation. Organizations therefore should be able to make whatever volunteer arrangements as are appropriate to the mission, vision and ethics of that entity.

9. Are there higher risk nfp cases where a higher standard of care should be applied or where higher minimum standards should be applied?

Yes, however this should be addressed under other existing legislation

10. Is there a preference for the core duties to be based on the corporations act, catsi act, the office holder requirements applying to incorporated associations, the requirements applying to trustees of charitable trusts, or another model?

Preference is for the corporations act

6.2 DISCLOSURE REQUIREMENTS AND MANAGING CONFLICTS OF INTEREST

Consultation questions

11. What information should registered entities be required to disclose to ensure good governance procedures are in place?

Ref pge 19 #105: annual reports, fundraising income and expenditure, related party transactions, remuneration of responsible individuals and communications such as media releases and information placed on websites.

Include entity's constitution and/or articles of the association

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12. Should the remuneration (if any) of responsible individuals be required to be disclosed?
Yes, salary package subject to certain criteria (eg if over a certain figure eg \$100,000/annum)
13. Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?
Yes
14. Are specific conflict of interest requirements required for entities where the beneficiaries and responsible individuals may be related (for example, a nfp entity set up by a native title group)?
No
15. Should acnc governance obligations stipulate the types of conflict of interest that responsible individuals in nfps should disclose and manage? Or should it be based on the corporations act understanding of 'material personal interest'?
No. Accept the corporations act understanding.

6.3 RISK MANAGEMENT

Consultation questions

16. Given that nfps control funds from the public, what additional risk management requirements should be required of nfps?
Page 23 #128 & #131: effective internal and external audits and abiding by requirements including having adequate processes for dealing with breaches of laws, rules regarding conflict of interest, dispute resolution, ensuring oh&s practices are met and adequate insurance (including specific insurances).
17. Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for nfps to ensure they have adequate procedures in place?
Yes
18. Is it appropriate to mandate minimum insurance requirements to cover nfp entities in the event of unforeseen circumstances?
Yes

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19. Should responsible individuals generally be required to have indemnity insurance?

Yes

6.3.1 Internal and external reviews

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20. What internal review procedures should be mandated?

Page 25, #140: accounts reviewed by a registered auditor or an independent reviewer or by conducting and documenting annual internal reviews.

6.4 MINIMUM REQUIREMENTS FOR AN ENTITY'S GOVERNING RULES

Consultation questions

21. What are the core minimum requirements that registered entities should be required to include in their governing rules?

Page 26, #153, #154, #156: rules about the entity's mission, wind-up procedures, information regarding deregistration, removal of members, altering governing rules and resignation of responsible individuals, arrangements for disputes and mediation, various meetings, rules about office holders and funds etc.

22. Should the acnc have a role in mandating requirements of the governing rules, to protect the mission of the entity and the interests of the public?

No

23. Who should be able to enforce the rules?

Members of the association and also subject to legislation

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24. Should the acnc have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?

No

25. Should model rules be used?

No

6.5 RELATIONSHIPS WITH MEMBERS

Consultation questions

26. What governance rules should be mandated relating to an entity's relationship with its members?

constitution defining membership, members' rights and responsibilities, free elction of board members and power to change the constitution by voting, annual general meeting and the power to call a general meeting. Minutes to be kept of all committee and general meetings (retention period to be specified).

27. Do any of the requirements for relationships with members need to apply to non-membership based entities?

No

28. Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the acna?

No

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7. SUMMARY

Consultation questions

29. Are there any types of nfps where specific governance arrangements or additional support would assist to achieve in better governance outcomes for nfps?

Additional support would be appreciated free of charge to the entity

30. How can we ensure that these standardised principles-based governance requirements being administered by the one-stop shop regulator will lead to a reduction in red tape for nfps?

We cannot predict the impact on red tape.

31. What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the acnc?

Ethics, what it means to be a board member and professional standards.

32. Are there any particular governance requirements which would be useful for indigenous nfp entities?

No

33. Do you have any recommendations for nfp governance reform that have not been covered through previous questions that you would like the government to consider?

Small government and big empowerment of organisations!!