

Responses to Consultation Questions – Review of Not-for-profit Governance Arrangements

Question No.	Question and Answer
1.	<p data-bbox="368 488 1449 562">Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?</p> <p data-bbox="347 622 1425 725">We see no harm in further clarity being provided. It may be helpful for the clarity to be the subject of some guidance papers, as opposed to in the legislation itself, to avoid being too prescriptive.</p> <p data-bbox="347 763 1441 1061">Further, it may be impossible for every conceivable person – to whom duties will be owed – to be listed/identified. For example, with a church organisation, should the parishioners be listed as persons to whom a duty is owed? Another example is Diabetes Australia – Queensland (DAQ). DAQ is an organisation which was established in 1968 to support the diabetes community living in Queensland. DAQ has more than 50,000 members. However, there are obviously many people living in Queensland who suffer from diabetes, but who are not members of DAQ. Does DAQ owe a duty to these non-members, given its mission is to support the diabetes community generally?</p>
2.	<p data-bbox="368 1106 1449 1205">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?</p> <p data-bbox="347 1279 1393 1346">Who the responsible individuals of NFPs need to consider when exercising their duties will vary according to the:</p> <ul style="list-style-type: none"> <li data-bbox="395 1379 549 1413">(a) objects; <li data-bbox="395 1447 549 1480">(b) mission; <li data-bbox="395 1514 1265 1547">(c) legislation pursuant to which they have been incorporated; and <li data-bbox="395 1581 639 1615">(d) legal structure; <p data-bbox="347 1648 639 1682">of the NFP concerned.</p> <p data-bbox="347 1715 1393 1783">At a minimum, most NFPs would need to require their responsible individuals to consider the following when exercising their duties:</p> <ul style="list-style-type: none"> <li data-bbox="395 1816 603 1850">(a) the mission; <li data-bbox="395 1883 724 1917">(b) the members (if any); <li data-bbox="395 1951 868 1984">(c) the beneficiaries of the services;

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	<p>(d) the donors; and</p> <p>(e) any funding bodies;</p> <p>of the NFP.</p> <p>In addition to those listed above, it may be necessary for the responsible individuals of an NFP to also consider those who may be influenced or affected, directly or indirectly, by the activities of the NFP. An example is DAQ and people who are not members but who have diabetes. Another example is an NFP set up for the prevention of cruelty to animals – its responsible individuals will need to consider the well being of animals.</p> <p>The answer to this question will also depend upon the activities of the NFP and the nature of its funding, both of which are likely to change over time. For example, if an NFP is principally concerned with delivering services on behalf of Government and is largely funded by Government, the Government will need to be considered. However, this may change over time. If that same NFP subsequently substantially decreases its involvement with the Government, the Government may no longer need to be considered, or at least, not to the same degree.</p>
3.	<p>What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation?</p> <p>The duties imposed by the <i>Corporations Act 2001</i> appear to have been successful, to date, in improving the general governance exercised by public companies limited by guarantee. We therefore submit that the core duties of responsible individuals under this proposed new regime should reflect the duties of an ‘officer’ as outlined in the <i>Corporations Act 2001</i>. These duties includes a:</p> <ul style="list-style-type: none"> (a) duty of care and diligence; (b) duty to act in good faith in the best interests of the entity; (c) duty to not misuse the officer’s position; (d) duty to not misuse information; (e) duty to avoid insolvent trading; and (f) duty to disclose material personal interests. <p>NFPs which are companies limited by guarantee already operate to comply with these core duties, so the impact of the proposed change - at least as far as public companies limited by guarantee were concerned - would be minimised.</p>

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	The sanctions for failing to comply with these core duties should also be spelt out.
4.	<p data-bbox="368 555 1449 667">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?</p> <p data-bbox="347 730 1434 864">The minimum standard of care could be structured to reflect a “reasonable person” test which is applied objectively. Responsible individuals should be required to exercise their duties in the manner and to the degree that a reasonable person would exercise if they:</p> <ul style="list-style-type: none"> <li data-bbox="397 898 1430 931">(a) were a responsible individual of the entity in the entity’s circumstances; and <li data-bbox="397 965 1406 1032">(b) occupied the position held by and had the same responsibilities within the entity as that responsible individual; <p data-bbox="397 1066 922 1099">(section 180(1) of the <i>Corporations Act</i>).</p> <p data-bbox="347 1133 1422 1267">Currently the DAQ board structure comprises volunteers. The <i>Corporations Act</i> does not provide for leniency due to a director of an NFP being a volunteer in that, for example, it is not a defence to non-compliance with the duty of care and diligence that the officer involved was not in receipt of any fees.</p> <p data-bbox="347 1301 1445 1469">We are of the opinion that the standard of care should be the same both for paid employees and volunteers, professionals and lay persons, for the reasons set out in our response to question 8 below. Any inequity created by this equal application of duties to all responsible individuals could be abated through the creation of the courses referred to in our response to question 5 immediately below.</p> <p data-bbox="347 1503 1445 1671">If different standards were applied based upon the remuneration or background of a responsible individual, we would be reverting to the previous interpretation of the <i>Corporations Act</i> where, traditionally, the standard expected under the equitable duty of care was of a low, subjective level. It used to be the case that officers were judged on the basis of:</p> <ul style="list-style-type: none"> <li data-bbox="496 1704 1385 1738">❑ what they knew, rather than what they ought to have known; and <li data-bbox="496 1805 1278 1839">❑ what they did, rather than what they ought to have done. <p data-bbox="347 1895 1390 1995">However, as with most areas of law, the expectations on officers have risen to a higher standard, and it is this higher standard which should be applied to duties imposed on responsible individuals.</p>

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5.	<p data-bbox="368 454 1453 562">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)?</p> <p data-bbox="347 629 1425 763">Mandating particular experience or skills may make it overly difficult for an NFP to find persons who are not only willing to volunteer their time to become responsible individuals of that NFP, especially at a board/committee level, but who also have the requisite experience/skills.</p> <p data-bbox="347 797 1409 898">It may be more appropriate to have ACNC provide training courses for those who wish to be 'responsible individuals' (hereinafter referred to as 'applicant'). These training courses:</p> <ul data-bbox="395 931 1433 1536" style="list-style-type: none"> <li data-bbox="395 931 815 965">(a) would be at a moderate fee; <li data-bbox="395 999 1382 1066">(b) could be undertaken by the applicant within, say, 6 months of taking the position with the NFP; <li data-bbox="395 1099 1393 1167">(c) could be 'tiered' so as to be suitable to the size and nature of the NFP at which the applicant wishes to serve or work; <li data-bbox="395 1200 1430 1267">(d) would provide the applicant with the appropriate knowledge and skills to be able to fulfil the duties attached to the position of the responsible individual; <li data-bbox="395 1301 1433 1402">(e) would have some form of assessment which the applicant would need to satisfactorily complete to be able to be assume the duties attached to being a responsible individual; and <li data-bbox="395 1435 1422 1536">(f) would provide the necessary qualifications to enable the applicant to serve or work at any NFP of the size/nature referred to in that particular training course. <p data-bbox="347 1570 1409 1704">If any person wished to become a 'responsible individual' within any NFP, satisfactorily completing the appropriate ACNC training course would ensure that the person had the requisite knowledge and skills to be able to fulfil the duties attached to that position of 'responsible individual'.</p>
6.	<p data-bbox="368 1742 1453 1809">Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?</p> <p data-bbox="347 1883 1401 1984">If the responsible individual concept is modelled on the 'officer' of a company as defined in section 9 of the <i>Corporations Act</i> 2001, then it would be inconsistent if minimum standards were not applied to all responsible individuals.</p>

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	Further, if the training courses are reasonably affordable and practically available to those who have other time commitments, there is no reason why the minimum standards cannot be applied to all responsible individuals of a registered entity.
7.	<p data-bbox="336 584 1461 689">Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC?</p> <p data-bbox="336 689 1461 891">An issue may be the costs which could be associated with implementing new governance frameworks to comply with the standardised duties for those NFPs that operate on an acquittal basis, ie they have no operating surplus to apply to these costs.</p> <p data-bbox="336 891 1461 1061">Different NFPs will, by their very nature, size and fundraising activities have different governance requirements. There may be some core duties which apply to all responsible individuals, but there will also be many other duties which will only be appropriate for certain NFPs.</p>
8.	<p data-bbox="336 1061 1461 1211">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?</p> <p data-bbox="336 1211 1461 1850">The answer to this question depends, to some extent, upon the nature of the position held by the volunteer:</p> <p data-bbox="336 1339 1461 1547">(a) On the one hand, as far as the public is concerned, there is no difference between a volunteer and a remunerated person. Both represent the NFP vis-à-vis the public and the public should not have to expect different standards of conduct from a volunteer as opposed to a remunerated person, especially given that the public will – in most instances – not be able to distinguish between the two.</p> <p data-bbox="336 1570 1461 1850">(b) Certain positions of responsibility within an NFP are sufficiently senior – in that those positions carry much power and decisions made by those persons can have significant ramifications for the NFP – to warrant no difference in duties being attached to volunteers versus remunerated persons. A good example of this is those persons who hold a position on the board or governing committee of an NFP.</p>
9.	<p data-bbox="336 1850 1461 1955">Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?</p> <p data-bbox="336 1955 1461 2018">NFP entities that:</p>

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	<p>(a) represent; or</p> <p>(b) have objects that serve;</p> <p>those members of the community who may be in some way disadvantaged and unable to represent their own views etc, may require the imposition of higher standards. For example, DAQ often assists mentally impaired individuals who suffer from diabetes and who cannot look after themselves. An NFP in that instance may require a higher standard of care toward the beneficiaries or recipients of the NFP's services as those beneficiaries or recipients may not be in a position to enforce the duties against the NFP concerned.</p> <p>NFPs with large cash receipts may have a higher risk of financial fraud and may require a higher standard of care in its financial policies and management.</p> <p>Another example is where an NFP does not have any membership. With NFPs which do have a membership, the membership is legally entitled to enforce the provisions of the constitution against the NFP and/or its board/committee. If there is no membership, it is more difficult to hold the NFP or its board/committee accountable for any alleged breaches of the constitution/constituent document.</p>
10.	<p>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?</p> <p>It would be cost effective for DAQ if the core duties were to be based on the <i>Corporations Act 2001</i> as DAQ is a company limited by guarantee and already has a governance framework in place to ensure compliance with the <i>Corporations Act 2001</i>.</p> <p>We are not aware of any duties contained in the <i>Corporations Act 2001</i> which would not be suitable as principles underlying the core duties applicable to all NFPs.</p>
11.	<p>What information should registered entities be required to disclose to ensure good governance procedures are in place?</p> <p>We are of the opinion that the information contained in a directors' report of a public company limited by guarantee, as required by section 300B of the <i>Corporations Act</i>, is a useful list of matters to be disclosed by NFPs to ensure good governance procedures are in place. Those matters are as follows:</p> <p>(a) a description of the short and long term objectives of the NFP;</p>

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	<ul style="list-style-type: none"> (b) the NFP's strategy for achieving those objectives; (c) a statement on the NFP's principal activities during the year; (d) a statement on how those activities assisted in achieving the NFP's objectives; (e) a statement on how the NFP measures its performance, including any key performance indicators used by the NFP; (f) the name of each person who has been a director/committee member/trustee/responsible individual of the NFP at any time during or since the end of the year and the period for which the person was a director/committee member/trustee/responsible individual; (g) each director/committee member/trustee/responsible individual's qualifications, experience and special responsibilities; (h) the number of meetings of the board/committee held during the year and each director/committee member/trustee/responsible individual's attendance at those meetings; (i) if the NFP has members: <ul style="list-style-type: none"> (i) for each class of members – the amount which a member of that class is liable to contribute if the entity is wound up; and (ii) the total amount that members of the NFP are liable to contribute if the NFP is wound up. <p>The report could also record whether or not each responsible individual has undertaken the requisite training as referred to in our response to question 5 above.</p>
12.	<p>Should the remuneration (if any) of responsible individuals be required to be disclosed?</p> <p>We are of the opinion that there is very little risk in responsible individuals being inappropriately remunerated which would be addressed through the need to disclose their remuneration. There is very little evidence of abuse occurring in this regard. Nevertheless, if there is any such concern of abuse, the procedure and conditions set out in section 35 of the UK <i>Charities Act 2006</i> may be an appropriate manner in which to address such concerns. This procedure (or conditions) should only apply to responsible individuals who are remunerated above a prescribed threshold. This is to eliminate lower remuneration packages which do not warrant attracting the compliance costs of following the procedure outlined in the UK</p>

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	<i>Charities Act 2006.</i>
13.	<p data-bbox="352 524 1449 591">Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?</p> <p data-bbox="352 629 1449 792">The suggestion in paragraphs 122 and 126 of the Consultation Paper that personal interests do not necessarily have to be “material” to impact upon the rights of a responsible individual to participate in any decision making could introduce a level of confusion that may be dysfunctional and at odds with the delivery of the mission/objects of an NFP.</p> <p data-bbox="352 831 1449 1160">For example, DAQ may consider introducing the delivery of a web based education program for people with type 1 diabetes. This program would be available in rural Queensland. A director of DAQ (called Director A) is deemed to be a responsible individual under the new governance framework. As a consequence of removing the qualifier “material”, it could be argued that Director A cannot vote on the decisions as to whether or not to introduce this program, and may not even be able to participate in the board discussions on the issue. This is because Director A has a close family member who has type 1 diabetes and who lives in a remote part of Queensland and who would directly benefit from the introduction of the program (as there are no other such services available in remote Queensland).</p> <p data-bbox="352 1198 1449 1429">This is a common occurrence in NFPs. Many board/committee members/trustees are parents of children who suffer from the condition being addressed by that NFP. Being parents of children who receive the NFP’s services is how the parents initially “volunteered” to become board/committee members/trustees. It would be counterproductive to invite such parents onto a board/committee because of their interest in the cause, and then prohibit them from participating in any decisions which touch upon that cause.</p> <p data-bbox="352 1467 1449 1765">It may be more appropriate in these circumstances to be able to rely upon a definition of “personal interest” which does not exclude such responsible individuals from participating in these sorts of decisions/discussions. The “personal interest” may have to be one which is solely or predominantly available to the responsible individual and not to a wider section of the public. In the DAQ example set out above, since Director A’s family member will be one of many diabetes sufferers to potentially benefit from the introduction of the program (as opposed to being the sole beneficiary or one of very few beneficiaries), Director A will not be precluded from the discussions/voting on the matter.</p>
14.	<p data-bbox="352 1807 1449 1912">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)?</p> <p data-bbox="352 1980 1449 2011">Please see our response to question 13 above. It is potentially quite difficult, for the</p>

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	<p>reasons set out in our earlier response, to impose additional requirements upon responsible individuals who have relatives benefitting from the NFP's services.</p>
15.	<p>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'?</p> <p>Please see our response to question 13 above. As explained in that response, we are of the opinion that it would be useful for ACNC governance obligations to stipulate the types of conflict that responsible individuals in NFPs should disclose and manage. This is primarily due to the unusual natures of NFPs and their reliance on volunteers on numerous levels throughout the organisation.</p> <p>A basic outline of different types of conflict of interest could be as follows:</p> <ul style="list-style-type: none"> (a) direct financial interest – this is the most easily recognisable form of conflict. Examples include: <ul style="list-style-type: none"> (i) the payment of a salary or professional fees to a responsible individual by an NFP; (ii) the award of a contract to a company with which a responsible individual is involved; and (iii) the sale of a property at below-market value to a responsible individual or the family of the responsible individual; (b) indirect financial interest – this arises when a close relative of a responsible individual benefits from the NFP. Examples include: <ul style="list-style-type: none"> (i) the awarding of an employment contract to a responsible individual's spouse; and (ii) making a grant to a responsible individual's dependent child; (c) non-financial or personal conflicts – these occur where responsible individuals receive no financial benefit, but continue to be influenced by external factors, for example: <ul style="list-style-type: none"> (i) influencing board/committee/trustee decisions on service provision to their own advantage, perhaps because they use the NFP's services or care for someone who does; and (ii) awarding contracts to friends; (d) conflict of loyalties – responsible individuals may have competing loyalties between the NFP to which they owe a primary duty and some other person or entity. This is particularly common in relation to funder representatives on boards/committees, or boards/committees of federated bodies.

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	<p>Adopting the “if not, why not” approach applied under the ASX Corporate Governance Council’s <i>Corporate Governance Principles and Recommendations</i> may also be useful.</p> <p>Our comments in relation to this question 15, however, do not preclude basing conflicts of interest on the <i>Corporations Act 2001</i> understanding of ‘material personal interest’.</p>
16.	<p>Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?</p> <p>We are of the opinion that a governance framework built upon principles-based rules would mean that there would be no need to add additional risk management requirements in relation to public funds. If the principle-based rule in relation to risk management is similar to Principle 7 of the ASX Corporate Governance Council’s <i>Corporate Governance Principles and Recommendations</i>, then the management of each NFP would be required to design and implement an appropriate risk management and internal control system to manage that NFP’s business risks (which would include controlling funds from the public) and report to the board/committee on whether those risks are being managed effectively. If the risks are not being managed effectively, management would have to comply with the “if not, why not” practice.</p> <p>Further, imposing appropriate safeguards in financial reporting should address any risks associated with an NFP managing or controlling public funds.</p> <p>It is important, at all times, to identify the nature of the risk and then devote appropriate resources to addressing that risk. In other words, NFPs should not, in an attempt to minimise or eradicate risks surrounding public monies, divert funds which would otherwise be spent on mission, towards exorbitant compliance costs.</p>
17.	<p>Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?</p> <p>Guidelines prepared by the ACNC on appropriate investment strategies for reserves above a threshold amount may be beneficial.</p>
18.	<p>Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?</p> <p>Each NFP should be legally required to take out some basic insurance policies, such as:</p>

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	<p>(a) public risk insurance;</p> <p>(b) workers compensation insurance;</p> <p>(c) loss of income insurance etc.</p> <p>It might be useful that other insurance policies, rather than being legally mandated, be the subject of some guidance papers, as opposed to in the legislation itself, to avoid being too prescriptive.</p>
19.	<p>Should responsible individuals generally be required to have indemnity insurance?</p> <p>There is some merit in allowing directors/committee members/trustees to require the NFP to take out indemnity insurance to protect those directors/committee members/trustees, especially if they are volunteering their services to the NFP. There is an inherent inequity in an NFP asking a person to join a board/committee on a voluntary basis, refusing to insure that responsible individual and yet placing the personal assets of that voluntary responsible individual at risk.</p>
20.	<p>What internal review procedures should be mandated?</p> <p>Any governance framework built upon principles-based rules should include internal review requirements and guidelines.</p> <p><i>(a) Financial Reporting</i></p> <p>Any requirements and guidelines relating to procedures for financial reporting could be modelled on Principle 4 of ASX Corporate Governance Council's <i>Corporate Governance Principles and Recommendations</i>. This would result in the management of each NFP being required to design and implement an appropriate internal review system to manage that NFP's business financial framework (which would include controlling funds from the public) and to report to the board/committee on whether those procedures are being managed effectively. If the internal review procedures are not being managed effectively, management would have to comply with the "if not, why not" practice.</p> <p><i>(b) Other non-financial matters</i></p> <p>It would be beneficial for NFPs to also be required to have in place at least some rudimentary internal review procedures which would bring to the fore any non-compliances with other matters beyond those of a financial nature, for example, obligations created by the constituent document, duties imposed upon responsible individuals, obligations created by the conflict of interest policy, the need to have certain insurance policies in place etc.</p>

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	<p>Checklists in this instance may be of some utility. A good example of this is the checklist published by the Australian Taxation Office titled <i>Self-governance checklist for non-profit organisations</i>. It is a 30 page document which is most helpful in assisting NFPs in identifying and managing their tax and superannuation compliance risks and other risks that may impact upon the NFP's reputation and work.</p>
21.	<p>What are the core minimum requirements that registered entities should be required to include in their governing rules?</p> <p>It would be useful to base the core minimum requirements on the replaceable rules (applicable to companies limited by guarantee) contained within the <i>Corporations Act 2001</i>. Another, more comprehensive, alternative is the matters listed in Schedule 1 of the <i>Associations Incorporation Act (NSW) 2009</i>.</p>
22.	<p>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?</p> <p>Yes, the ACNC should have such a role. However, this is more in the interests of protecting the members of the NFP rather than the interests of the public. Most matters or issues canvassed in the governing rules are of greater importance to the NFP's members and to its directors/trustees/committee members rather than the general public.</p>
23.	<p>Who should be able to enforce the rules?</p> <p>Currently it is the:</p> <ul style="list-style-type: none"> (a) members (if any) of the NFP; (b) directors/trustees/committee members; and (c) NFP entity itself; <p>who can enforce the rules. However, it would be beneficial to also give the ACNC some powers to enforce the provisions of the governing rules, especially where the NFP has no members. Further, with charitable trusts, it would be advantageous if the ACNC had jurisdiction over them, given the current cumbersome system where one has to apply to the State Attorney General for legal enforcement.</p> <p>We must also recognise the continuing role of the courts in enforcing the rules of NFPs.</p>

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24.	<p data-bbox="352 456 1449 524">Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?</p> <p data-bbox="352 595 1401 663">We see some benefit in the ACNC having a role in the enforcement of governing rules. This includes situations of winding up or deregistration.</p> <p data-bbox="352 696 1449 864">We are not aware of any situation where it would be warranted to provide the ACNC with the power to alter the governing rules of an NFP. The governing rules are a legal contract between the NFP entity, its board/committee and its members. A third party which is not legally privy to this contract, such as the ACNC, should not have the legal power to change the terms of this contract.</p>
25.	<p data-bbox="352 904 735 927">Should model rules be used?</p> <p data-bbox="352 1005 1422 1072">No. It would be impossible to impose model rules on every NFP, given the varying sizes, structures, operations and needs of each NFP.</p>
26.	<p data-bbox="352 1144 1449 1211">What governance rules should be mandated relating to an entity's relationship with its members?</p> <ul style="list-style-type: none"> <li data-bbox="400 1279 1257 1312">(a) Member's liability, if any, to contribute to the debts of the NFP. <li data-bbox="400 1346 1011 1379">(b) How members' meetings can be convened. <li data-bbox="400 1413 1107 1447">(c) Provisions concerning the disciplining of members. <li data-bbox="400 1480 839 1514">(d) Members' voting rights, if any. <li data-bbox="400 1547 1091 1581">(e) The rights attached to each class of membership. <li data-bbox="400 1615 1114 1648">(f) Provisions concerning proxies and representatives. <li data-bbox="400 1682 1182 1715">(g) Provisions relating to the running of members' meetings. <li data-bbox="400 1749 1382 1783">(h) An outline of what documents of the NFP, if any, a member can access. <li data-bbox="400 1816 1390 1917">(i) The rights, if any, members have to be elected onto the board/governing committee and the ancillary right, if any, to remove any elected directors/trustees/committee members.
	Do any of the requirements for relationships with members need to apply to

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27.	non-membership based entities?
	We do not believe so. We cannot envisage any such requirement being applicable to a non-member entity.
28.	Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?
	Yes, except possibly one member entities. Removal of this requirement may result in distancing the NFP from its accountability to its members.
29.	Are there any types of NFPs where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFPs?
	<p>It would be useful if the ACNC provided funding to assist NFPs in establishing/modifying their governance arrangements. This could be achieved via reductions in, or exemptions from, any administration fee payable to ACNC up to agreed levels. It is important not to divert NFP funds from delivering services/goods in accordance with an NFP's objects to increased compliance costs.</p> <p>It may be worthwhile to also have the ACNC recognise other governance frameworks and offer NFPs points/concessions in recognition of such other governance practices being adopted by those NFPs. An example is the Quality Management System Accreditation. DAQ is currently undertaking this accreditation as it is a requirement of many Commonwealth and State Government grants. This accreditation process is a lengthy and expensive one. It would therefore be advantageous to DAQ if the ACNC could recognise in some fashion the merit and value in DAQ undertaking this process.</p>
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?
	<p>A reduction in red tape can only occur if the ACNC and Government Departments (both State and Federal) reach agreement on the nature of reports to be provided by NFPs to both the ACNC and the relevant Government Departments.</p> <p>Government Departments do not generally require NFPs to provide them with reports on governance. Hence, if the ACNC is going to require NFPs to lodge annual governance reports, in addition to finance reports, there is going to be some inevitable increase in red tape for NFPs.</p>

Responses to Consultation Questions – Review of Not-for-profit Governance Arrangements

Question No.	Question and Answer
31.	What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?
	Throughout these responses we have been suggesting that the ASX Corporate Governance Council's <i>Corporate Governance Principles and Recommendations</i> (excluding those that are not applicable to NFPs) be used as a starting point for the principles-based governance requirements. Further, the duties created by the <i>Corporations Act</i> may also be a good foundation for any intended legislation or regulations.
32.	Are there any particular governance requirements which would be useful for Indigenous NFP entities?
	We have no in depth understanding of Indigenous NFP entities. However, our limited experience with Indigenous NFPs has shown us that any governance requirements imposed upon Indigenous NFPs will have to be mindful of those community and cultural factors which are associated with the Indigenous community.
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?
	<p>Some transitional issues are as follows:</p> <ul style="list-style-type: none"> (a) the need to give existing charities sufficient time to restructure/implement the governance arrangements in order to comply with any new legislation; and (b) a reassurance should be given that the intended outcome from the introduction of the governance arrangements does not come at the cost of reducing the charitable services currently being offered to the Australian community. <p>Another issue is the potential conflict between the role of the ACNC and the ATO in making decisions concerning the endorsement of charities and the concessions and exemptions flowing from those endorsements. NFPs need certainty about their tax status. We cannot have the situation where the ACNC and the ATO have the power to make differing decisions on the tax status of an NFP.</p>