

**FUNDRAISING INSTITUTE AUSTRALIA
SUBMISSION**

REVIEW OF NOT FOR PROFIT GOVERNANCE ARRANGEMENTS

JANUARY 2012

COVER SHEET

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Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury

About Fundraising Institute Australia (FIA)

Established in 1968, FIA's purpose is to make the world a better place by advancing professional fundraising through promotion of standards, professional development pathways and measurable credentials so that our members achieve best practice.

The FIA has developed the Principles & Standards of Fundraising Practice as the professional fundraiser's guide to ethical, accountable and transparent fundraising. As part of the Australian Senate inquiry into disclosure regimes for charities and non-profit organisations in 2008, the Senate Economics Committee recognised the role of FIA's Principles and Standards in addressing issues of transparency to maintain Australian charities' high reputation with the public.

FIA's Principles & Standards of Fundraising Practice are vital to how the fundraising profession is viewed by donors, government, the community and fundraisers. The Principles & Standards have an educative role, and exist to guide fundraising professionals on best practice. A national ethics curriculum is being developed to facilitate training on fundraising ethics and best practice. The Principles are the overarching ethical codes that apply to all fundraisers and the Standards focus on specific disciplines of fundraising practice.

<http://www.fia.org.au/pages/principles-standards-of-fundraising-practice.html>

In order to achieve its mission, FIA conducts the following activities:

- Promote and enhance education, training and professional development of fundraisers.
- Provide a resource of fundraising information.
- Advocate for fundraising practice to Government, industry and the community.
- Support and promote certification of fundraisers.
- Develop standards and codes of practice.
- Promote and enhance fundraising as a profession.
- Promote and encourage research into fundraising and philanthropic giving.

Executive Summary

FIA's Responses to Consultation Questions

The consultation questions are answered in summary form in the attached appendix. As some themes have emerged from the consultation questions, FIA will address those themes as they apply to the proposed Australian Charities and Not-for-profits Commission Bill 2012 ('the Bill') ie

- Responsible individuals' duties
- Disclosure requirements and managing conflicts of interest
- Risk management

- Internal and external reviews
- Minimum requirements for an entity's governing rules
- Relationships with members

FIA's Recommendations:

FIA has made recommendations in each section discussed, for convenience, these are set out below.

1. FIA submits that the Bill should distinguish between directors and senior managers of NFPs and volunteers, as well as distinguishing between smaller and larger NFPs.
2. FIA recommends that:
 - Disclosure requirements relate to the size of the NFP, so that smaller NFPs are not burdened by excessive administration.
 - The Australian Charities and Not for Profit Commission adopts the Standard Chart of Accounts as agreed by COAG.
3. FIA supports:
 - the inclusion of risk management guidance in the ACNC information portal; and
 - the application of Standard of Risk Management AU NZ ISO 31000:2009 to NFPs.
4. FIA recommends that the new ACNC legislation reflect the provisions in the Corporations Act for financial disclosure by companies limited by guarantee, in preference to requirements set by individual States and Territories.
5. FIA supports the introduction of model rules for all NFPs except PAFs by the ACNC.
6. FIA supports the provisions of the NSW and/or Victorian model rules as a template for the ACNC provisions for relationship of NFPs with members.

Responsible individuals' duties (Section 6.1 of consultation paper)

The definition of 'responsible individual' should be limited to officers or senior managers of NFPs. At present, all States and Territories (except Northern Territory) have legislation setting out what officers must be appointed in incorporated associations. Companies limited by guarantee are covered by the Corporations Act 2001, which also has highly specific requirements as to the role and duties of officers required. These requirements are well established. The definition proposed in the Bill is too wide, as it could apply to any employee or volunteer of an organisation. Most employees follow the directions of senior managers of their organisation, as they are required to do, and therefore have limited responsibility for the operation of the organisation. As volunteers (whether at grass roots or board level) give their time to the organisation without financial remuneration and generally no other form of compensation or personal benefit, they should not be held to the same standard as officers and employees who derive a financial benefit. The vast majority of directors of NFPs provide their services on a voluntary basis, spending an average of 34.5 hours per month (*AICD: Directors' Social Impact Study 2011*). There is a significant risk that they may decline to do so if their risk is increased by putting them on a par with paid officers. As pointed out in paragraph 102 of the consultation paper, the standard of care expected of a responsible individual depends on the size of the NFP, the amount of public money received, the position

held and the risk of the NFP's activities. This is not recognised or allowed for in the draft definition, which applies a "one size fits all" mode.

It is reasonable to expect that the officers and senior managers of a financially substantial NFP have a greater responsibility and accountability than those officers of a volunteer run or smaller NFP. Respondents to the AICD Directors Social Impact Study 2011 were directors of all sizes of NFPs. 45% were involved with NFPs which had turnovers in excess of \$5 million. However, 55% were involved with NFPs with much lower turnovers; 34% of directors were involved with NFPs with turnovers of \$1 million or less. As the majority of NFPs are small, this is not surprising.

Recommendation:

1. FIA submits that the Bill should distinguish between directors and senior managers of NFPs and volunteers, as well as distinguishing between smaller and larger NFPs.

Disclosure requirements and managing conflicts of interest (Section 6.2 of consultation paper)

It is important to ensure that disclosure requirements are streamlined and assist the efficient operation of NFPs, as well as advising the public of information they may need to know.

Financial information is not the only information that needs to be disclosed. Identifying information, including the organisation's name, street address, contact details, registration number and ABN should be published. FIA's Principal of Ethics and Professional Conduct requires such identifying information to be made available by the organisation.

Disclosure of remuneration does not reflect necessarily on the effectiveness of a NFP in meeting its mission and supporting its beneficiaries. It is unusual for Board members of NFPs to be remunerated; only 8% of Board members receive remuneration for their services (*Reforming not for profit regulation – Final Report, Centre for Corporate Law and Securities Regulation, University of Melbourne*). Board members also feel that current reporting obligations are excessive (*ibid*). The Report stated that "the key is the nature of the disclosure – what is required to be disclosed and by whom – rather than a blanket call for more information." Accordingly, regulation of smaller organisations, handling modest sums of money, should be lighter than regulation of large organisations, which handle substantial sums of money and may also have a disproportionate impact on public confidence.

The Australian Accounting Standards set by the Australian Accounting Standards Board (ASAB) do not provide a standard for accounting for NFPs, as indicated by a perusal of its Table of Standards. It cannot be assumed that non-NFP accounting standards can be applied successfully to NFPs, simply because of the fundamental difference between NFPs and organisations which operate for profit. QUT's Standard Chart of Accounts for NFPs resolves this by specifically formulating an accounting standard for NFPs. It is supported by Queensland Treasury. It provides a common approach to the capture of accounting information by community organisations across Australia.

It is primarily designed for small to medium NFP organisations that may not have an accounting department or a sophisticated accounting system. For consistency purposes, larger NFPs may comply with the Standard Chart of Accounts requirements by adopting the data dictionary component.

In April 2010, the Council of Australian Governments (COAG) agreed that all jurisdictions would adopt the standard chart of accounts, where possible, by 1 July 2010. Government Department use of standardised terminology for account codes (and costs to be included in

those codes) in their application/acquittals processes will significantly streamline current reporting requirements and reduce the administrative burden for non-profit service providers, particularly those receiving grants from a number of Departments.

<http://www.treasury.qld.gov.au/office/knowledge/docs/nonprofit-organisations/index.shtml>

Recommendation

2. FIA recommends that:

- Disclosure requirements relate to the size of the NFP, so that smaller NFPs are not burdened by excessive administration.
- The Australian Charities and Not for Profit Commission adopts the Standard Chart of Accounts as agreed by COAG.

Risk Management (Section 6.3 of Consultation Paper)

The fears expressed in the consultation paper concerning risk management practices are not supported by the most recent research, which shows that the majority of NFPs are aware of risk management practices and actively implement them.

The new Standard of Risk Management AU NZ ISO 31000:2009 provides authoritative guidance on risk management practice. In 2010, FIA and national Roundtable of Nonprofit Organisations sponsored the PPB not for profit risk survey 2010 <http://www.appichar.com.au/pages/risksurvey.html>. PPB surveyed the risk management practices of not for profit organisations and compared them to the key components of the recently introduced standard, as there were several significant differences between the 2009 standard and its predecessor. The survey is the most recent survey of risk management practice available. The outcome was encouraging; over 70% of respondents indicated they placed a high level of importance on risk management practices and understood the link between risk management and the organisation's ability to achieve its outcomes. Larger NFPs had a more corporate structure with more sophisticated and mature systems in place to identify and manage risk, which is to be expected, especially in view of the survey finding that implementation of risk management practices had a significant relationship to a NFP's budget; smaller organisations did not have sufficient capacity to devote resources to risk management policy and practice. Less than half the survey participants have had risk management identification and training. This fact indicates an area where the ACNC has the opportunity to provide practical guidance and assistance, in particular to smaller, under-resourced NFPs, who would benefit from risk management guidance being included in the ACNC information portal and possibly other education programs as well. An educational focus is more appropriate than an enforcement focus, as smaller NFPs pay less attention to formal risk management policy and practices because of budgetary constraints, rather than ignorance of compliance issues.

Recommendation:

3. FIA supports:

- the inclusion of risk management guidance in the ACNC information portal; and
- the application of Standard of Risk Management AU NZ ISO 31000:2009 to NFPs.

Internal and external reviews (Section 6.3.1 of consultation paper)

As acknowledged in the consultation paper, smaller NFPs find it difficult to fund the cost of annual audits, and FIA suggests that in the case of such NFPs, annual audits are unnecessary due to the smaller risk involved. The requirements under NSW and Victorian legislation for audits incur unnecessary expense to small organisations, as the limits set are unrealistically low given today's standards for revenue raising. An organisation with gross receipts of \$250,000 per year would barely be able to fund staff and an office, let alone auditors' fees. FIA suggests that the Corporations Act rules for companies limited by guarantee are to be preferred, in particular the requirement that companies with revenues between \$250,000 and \$1 million must prepare a financial report, but are not required to be audited.

Recommendation:

4. FIA recommends that the new ACNC legislation reflect the provisions in the Corporations Act for financial disclosure by companies limited by guarantee, in preference to requirements set by individual States and Territories.

Minimum requirements for an entity's governing rules (Section 6.4 of consultation paper)

Both NSW and Victoria provide model rules for incorporated associations, which are highly satisfactory, with the caveat that they may be too complex for very small NFPs to administer, as the rules create a significant amount of administration that is beyond the capacity of small NFPs to cope with.

It would be useful for the ACNC to provide model rules for the assistance of NFPs, as the intention of the ACNC is to streamline registration and provide national registration, rather than State by State.

However, PAFs will need to be treated separately as they do not operate in the same way as incorporated associations or companies limited by guarantee.

Recommendation:

5. FIA supports the introduction of model rules for all NFPs except PAFs by the ACNC.

Relationship with members (Section 6.5 of consultation paper)

Both NSW and Victoria provide model rules for incorporated associations, which include detailed provisions for the relationship with members, including registration, liabilities, discipline and dispute resolution. These are satisfactory and provide a template for the ACNC in relation to members. The CATSI Act is not appropriate, as it was designed for a specific types of corporation (Aboriginal and Torres Strait Islander) and does not necessarily have broader application to non-indigenous NFPs.

Recommendation:

6. FIA supports the provisions of the NSW and/or Victorian model rules as a template for the ACNC provisions for relationship of NFPs with members.

APPENDIX
FIA'S ANSWERS TO CONSULTATION QUESTIONS

No	Question	Response
	Responsible individuals' duties	
1	Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe their 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 Yes Yes Yes
3	What should the duties of responsible individuals be and what core duties should be outlined in the ACNC legislation ?	FIA Recommendation 1: FIA submits that the Bill should distinguish between directors and senior managers of NFPs and volunteers, as well as distinguishing between smaller and larger NFPs.
4	What should be the minimum standard of care required to comply with any duties? Should the standard of care be higher for paid employers than volunteers? For professionals than lay persons?	Yes Yes. It already is at law.
5	Should responsible individuals be required to hold particular qualifications or have particular experience or skills (tiered depending on size of NFP entity or amount of funding it administers)?	No. This is not required of responsible officers in corporations. It would be unfair to impose a higher standard of qualifications on responsible individuals for NFPs.
6	Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?	No. However, the class of responsible individuals should be limited to directors or senior managers of an NFP, not to all employees or volunteers.
7	Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with ACNC?	Yes. Smaller NFPs should be more lightly regulated as they handle smaller sums of money and the risk of loss is smaller.
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.	Need to distinguish between volunteer directors and paid directors.
9	Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?	Most NFPs have no higher risk than similar sized corporations and there is no need to single out particular entities.
10	Is there a preference for the core duties to be based on the Corporations Act, CATSI Act, the office	The Corporations Act or NSW and Victorian legislation applying

	holder requirements applying to incorporated associations, the requirements applying to trustees of charitable trusts or another model?	to incorporated associations are the most appropriate as they already apply to the majority of NFPs. CATSI Act does not apply to non-indigenous NFPs and is therefore too little known and too specific for general use. The rules applying to trusts only apply to trusts and have no general application to non-trust NFPs (the majority of NFPs).
	Disclosure requirements and managing conflicts of interest	
11	What information should registered entities be required to disclose to ensure good governance procedures are in place?	<p>FIA Recommendation 2: FIA recommends that:</p> <ul style="list-style-type: none"> • Disclosure requirements relate to the size of the NFP, so that smaller NFPs are not burdened by excessive administration. • The Australian Charities and Not for Profit Commission adopts the Standard Chart of Accounts as agreed by COAG.
12	Should the remuneration (if any) of responsible individuals be required to be disclosed?	Only disclosure of directors' remuneration is appropriate.
13	Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?	There is no need to mandate conflict of interest policies, as these should be a matter of internal governance.
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?)	FIA cannot comment as this does not reflect its membership.
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'?	The Corporations Act provision is widely applicable and well established.
	Risk management	
16	Given NFPs control funds from the public, what additional risk management requirements should be required of NFPs?	<p>FIA Recommendation 3: FIA supports:</p> <ul style="list-style-type: none"> • the inclusion of risk management guidance in the ACNC information portal; and • the application of

		Standard of Risk Management AU NZ ISO 31000:2009 to NFPs.
17	Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?	Refer to FIA Recommendation 3
18	Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?	It may not be possible to mandate minimum insurance requirements, given the limited availability of NFP insurance.
19	Should responsible individuals generally be required to have indemnity insurance?	No. Such insurance is too expensive, especially if the responsible individual is a volunteer. If required, NFP should pay. Directors and officers insurance, volunteers insurance already available.
	Internal and external reviews Minimum requirements for an entity's governing rules	
20	What internal review procedures should be mandated?	FIA Recommendation 4: FIA recommends that the new ACNC legislation reflect the provisions in the Corporations Act for financial disclosure by companies limited by guarantee, in preference to requirements set by individual States and Territories.
21	What are the core minimum requirements that registered entities should be required to include in their governing rules?	FIA Recommendation 5: FIA supports the introduction of model rules for all NFPs except PAFs by the ACNC.
22	Should the ACNC have a role in mandating requirements of the governing rules, to protect the mission of the entity and the interest of the public?	Yes
23	Who should be able to enforce the rules?	ACNC
24	Should the ACNC have a role in the enforcement and alteration of governing rules, such as wind up or deregistration?	
25	Should model rules be used?	Yes
	Relationship with members	
26	What governance rules should be mandated relating to an entity's relationship with its members?	FIA Recommendation 6: FIA supports the provisions of the NSW and/or Victorian model rules as a template for the ACNC provisions for relationship of NFPs with members.

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 ACNC?	Yes
	Summary	
29	Are there any types of NFPs where specific governance requirements being administered by the one stop shop regulator will lead to a reduction in red tape for NFPs	No. If the questions in this consultation paper reflect government policy, there will be no reduction of red tape.
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	By the following means: ensuring streamlined registration and reporting procedures; and Providing tiered reporting procedures depending on size of NFP.
31	What principles should be included in legislation or regulations, or covered by guidance materials, to be produced by the ACNC?	The NZ Charities Commission has an excellent information portal which would be a good model for ACNC
32	Are there any particular governance requirements which would be useful for indigenous NFP titles?	FIA cannot comment as this does not reflect its membership
33	Do you have any recommendations for NFP governance that have not been covered through previous questions that you would like the Government to consider?	NFPs should be able to self-regulate on their own operations and procedures. Self regulation through the use of industry developed codes of practice is encouraged by the Federal and various state governments to ensure informed involvement by practitioners. FIA's Principles & Standards were developed in consultation with government, FIA members and industry stakeholders and complement legislation, ensuring its relevance to best practice.