Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

December, 2011

To whom it may concern

Re: Review of Not-for-profit governance arrangements

This submission has been prepared by Dr. A. Keith Thompson, Special Counsel at Harris Freidman Lawyers, Level 10, 25 Bligh Street, Sydney, 2000. It has not been prepared at the request of any particular institution or client but rather reflects significant experience in the international not-for-profit sector. Dr. Thompson is willing to respond to any further questions that may be addressed to him by the regulators after they have reviewed these responses to the questions in the discussion paper. While this response answers all the questions in some measure, there are some general comments to begin with.

General

Entity Structure - It should be recognised that many NFPs have chosen "Company Limited by Guarantee" status because there was previously little other incorporation choice in Australia if the NFP concerned wanted to have entity status and operate through the whole of Australia. Registering Incorporated Societies state by state in Australia has always been unwieldy and expensive unless the NFP concerned wished to limit its activities to just one state or territory. Though the individual state reporting requirements for Incorporated Societies are lower, this benefit is outweighed by having to comply eight times if the NFP intends national operation. While Pty or Public Company incorporation has also been available, only "companies limited by guarantee" are universally recognised as likely being NFP entities – even though they have always carried significantly more onerous public company-like reporting requirements. For this reason it is highly desirable that a purpose designed NFP entity should be created as in the UK (the Charitable Incorporated Organisation or CIO), with simple legislation allowing existing companies limited by guarantee to choose to become CIOs by operation of law without going through expensive and time consuming winding up and new entity creation processes. If Companies Limited by Guarantee choose to become CIOs and do not need members for such incorporation, then they may not owe duties to members, though that will depend on what kind of NFP CIO entity the NCDC designs for Australian use.

Duties to Donors – The discussion paper has assumed throughout that NFPs should owe duties to their donors. It is submitted that this assumption may be unwise and that more careful analysis is required. It is not clear that NFPs should owe duties to their donors in the same way that Trustees should owe duties to both their settlors and the beneficiaries of their trust. Why not? Because gifts are different than trust settlements, government grants and other forms of indirect government funding. In law, gifts do not have strings attached to them as do settlements upon trust and

government grants. For example, in GST law and practice, a gift is different than a grant, the latter being recognised as having strings attached. This recognised difference sees gifts and grants treated differently in GST law. Even though it is agreed that a donation to an NFP with DGR status should invoke a duty on the NFP to report about the use of the money received to government (since the government part funded the gift by allowing the donor a tax deduction when it was given), it is submitted that it is not wise to impose an additional duty to report to the donor for that would compromise the nature of the gift. It is submitted that a NFP DGR duty to report to government, adequately protects both the public and donor interest in ensuring that the gift was used for the purpose for which it was given – without compromising the underlying nature of the gift by the donor as a gift with no strings attached. While the purpose for which an NFP will use a gift may be the governing consideration when a donor makes a gift, it is submitted that it is unwise to require NFPs to account to their donors in respect of gifts. If the directors of NFPs wish to account transparently to encourage future donations, they can choose to do so, but this requirement should not be imposed as a statutory duty.

Public interest in NFP activities is said to justify the official regulation of the NFP sector – Again, the discussion paper assumes without justification that all NFPs deserve to be regulated in the 'public interest'. The closest the paper comes to explaining that justification is the rather vague suggestion that oversight is justified because NFPs receive funds from the public. That generalisation seems intended to justify public overview of every aspect of the work of every NFP.

'The public' is different for every NFP. 'The public' that contributes to a particular NFP will certainly be 'interested' to see the use to which their donations are put, but for reasons already explained above in relation to 'duties to donors', donors of gifts really should not have a right to trace and follow their money and hold the donee to account. To think otherwise, confuses the nature of the law relating to gifts and could have concerning ramifications outside this NFP discussion context. In any event, donors who are dissatisfied with what an NFP does with its gifts have the ultimate sanction if a NFP strays from its mission. They can decline to make further donations and tell the NFP why they have stopped donating as many do.

But there are other reasons for concern about such generalising of 'the public interest' so as to justify legislation to supervise everything that every NFP does. As a matter of general principle such legislation is an unjustifiable intrusion into human freedom. It encourages government in its belief that the abrogation of the freedom of individuals and groups of individuals, is justified by whatever thin 'public interest' measure government can conceive. This assumption is a problem. Government can and should justify each and every limitation of human freedom (including the freedom of groups of humans whether associated together as NFPs or otherwise) by a compelling interest or compelling need to avoid harm test. When national security is threatened, it is easy to demonstrate that government in its role as public representative of the citizenry, can easily justify legislation to create, fund and develop defensive capability. There is similar demonstrable public interest in building safer roads and intersections. But the regulation of the NFP sector has to be justified by the need to curb abuse or to supervise the expenditure of direct and indirect government funding. Where NFPs operate wholly without government funding and there is no suggestion of abuse, it is difficult to justify regulation. It would be different if NFPs were being systematically used as trading vehicles to avoid taxation. But even then, there are other existing methods which can be used to clean up tax evasion without intruding into this highly valuable and diverse manifestation of collective human freedom. The author appreciates that government has worthy interests at heart in

creating the NCDC and has no argument with the creation of a National Charities Commission. But it should not go too far. Some of the discussion questions beg the question of how far they should go. The author submits that the government should not legislate deeply and intrusively just because it can. Wise government will encourage altruism and philanthropy in human society without squeezing the life out of it with unnecessary and excessive regulation. It is submitted that what is truly necessary should be governed by an objective view of removing abuse. It is further submitted that there is not much abuse in the NFP marketplace at present and there is thus a compelling reason for government to tread more lightly than her discussion paper questions portend.

As a matter of contemporary common law, it is axiomatic that we are free to do anything we like unless there is a law against it. Responsible legislatures do not unnecessarily abrogate the scope of human freedom whether individual or collective and in this case, the freedom of NFPs. We legislate when there is an abuse to be stamped out. Responsible legislation is proportional to the abuse it is intended to remedy.

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

Comment: There is a risk that if the legislation does not differentiate between different types of entity and specify separate duties, that a higher than necessary and even an unreasonable level of responsibility will be imposed upon the responsible individuals of small NFPs. While such differentiation will complicate the legislation, it is elsewhere self-evident in the discussion paper that all NFPs are different and it could be unjust to hold them all to the same standards. Where NFPs have members, there should be accountability to those members. But it should also be recognised that many NFPs have chosen "Company Limited by Guarantee" status because there was no other choice if the NFP concerned was to have entity status and operate through the whole of Australia (see general comments above).

To whom then should NFPs owe duties? To the extent they have creditors, NFPs should owe duties to those creditors. To the extent they have received direct or indirect government funding, they should report to government what they have done with that funding. But it is not clear that NFPs should owe duties to their donors in the same way that Trustees should owe duties to both their settlors and the beneficiaries of their trust (see general comments above in relation to the difference between gifts and grants in established tax law). While the purpose of an NFP may be the governing consideration when a donor makes a gift, for the reasons expressed generally above, it is submitted that it is unwise to require NFPs to account to their donors in respect of gifts. If the directors of NFPs wish to account transparently to encourage future donations, they can choose to do so, but this requirement should not be imposed as a statutory duty.

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?

Comment: Again, it will be unwise for new NFP legislation to generalise duties. The duties owed by Trustees are different from those owed by company directors, and perhaps in the future, by those who are appointed to 'direct' or manage CIOs. If the legislators wish to create a code for the sake of clarity when guiding the responsible individuals of NFPs, there should be separate treatment of the responsible individuals who are trustees, directors or other officers of the relevant NFPs. Again, this writer submits that it is not necessary or desirable that donors should be considered. Such a statutory requirement could confuse the legal nature of their gift and have other unforeseen ramifications in law. Responsible individuals should certainly consider the mission or purpose of their entity and their beneficiaries. It is submitted that explicit consideration of the wider public is not necessary if the NFP and its purpose have already been approved for NFP registration purposes. An obligation to consider the wider public would become an onerous duty if it stifled or slowed NFP decision making by creating uncertainty.

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

Comment: In paragraph 87 of the discussion paper it is stated that:

> NFP entities have responsibilities to donors, beneficiaries, volunteers, government, members (where applicable) and the public at large, and responsible individuals must act with care and diligence, in good faith, and not misuse their position. Responsible individuals must exercise at least the same degree of care, diligence and skill that a prudent individual would exercise in managing the affairs of others.

For reasons already stated, this writer believes that the responsible individuals of NFPs should not owe separate duties to donors. In this context, the government is not a donor, but rather a grantor. Grants are legally accepted as having strings attached which invokes a reporting or accountability responsibility. It is submitted that this reporting duty to the government discharges any duty to report to the public at large. It is undesirable that any member of the public at large or any group of members should have personal or group status to bring legal action against an NFP. If the government or its appointed regulator independently wishes to bring breach of duty action against the NFP or its officers, it can independently do so. Such regulator may also heed or disregard the lobbying of members of the public at large. But again, neither individuals nor members of the public at large should be given status to hold NFPs to account as would be the case if a duty to the public were created, other than a direct duty to the government or its regulator.

The author agrees that responsible individuals should be required to "exercise at least the same degree of care, diligence and skill that a prudent individual would exercise in managing the affairs of others." If those responsible individuals are also qualified as professionals and owe higher duties of care by virtue of their qualifications, they should be held to these higher standards when acting as responsible persons in an NFP. That is, they should not be exonerated from their higher standards of care even though other responsible individuals are not held to the same standards. This may discourage some professionals from NFP service, but that does not justify reducing society's expectations of those who are accorded professional rank.

If NFPs choose to incorporate as companies or trusts, then the normal duties applying to such officers should apply to them. To change their underlying duties when they have decided to be incorporated in these ways could cause confusion in society. However, if existing NFPs incorporated as Companies Limited by Guarantee are given the opportunity to become CIOs 'by operation of law' (see general comments above), then their separate duties as company directors should cease and only the duties outlined in paragraphs 87, 91 and 93 of the discussion paper should apply. It is submitted that those NFPs which have been created as Trusts should not be given the opportunity to become CIOs. Their donors and other funders have donated with expectation that trustee duties should apply. While the author does not expect the duties cast upon the responsible individuals of NFPs generally will be significantly different than trustee duties in statute and common law, there are some higher duties that should remain.

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?

Comment: As already stated in comment on question 3, professionals should comply with their professional duties in all of their lives. That is a simple matter of integrity. However, where volunteers serve as the responsible persons of NFPs, they should observe the same standards of care as paid employees. Volunteers who serve in other capacities are in a different situation. Volunteers who serve as the 'responsible persons' of NFPs have a significantly higher degree of trust reposed in them than say, volunteers who work as carers. To put it another way, volunteers who serve as carers should not be subject to the same level of scrutiny or the same duties of care as the responsible persons of NFPs. Society does not want to discourage altruistic volunteerism, but those who accept office as responsible persons should understand they are accepting more significant responsibilities than those volunteers who work as carers. In the case of volunteers who do not serve as responsible persons, it is submitted that the approach outlined in the *NSW Civil Liability Act 2002* in sections 55, 56, 60 and 61 is wholly appropriate.

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)?

Comment: No. The NFP sector benefits from diversity. That advantage remains regardless of the size of the NFP.

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

Comment: No. These duties should apply to all responsible individuals.

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

Comment: Yes – see general comments above. A new NFP specific entity like the UK CIO should be created. Companies Limited by Guarantee should be given the opportunity to become such 'by operation of law'. If they choose not to become such, directors duties should still apply to their responsible individuals in addition to those arguably lesser duties that would apply in CIO cases. NFPs created as trusts should remain as trusts and the arguably higher duties of trustees should continue to apply. It is observed that trustee and director duties would generally include all the duties that would be required of the responsible individuals of other NFPs.

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?

Comment: No.

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

Comment: No. If there are higher risk NFP cases, the regulator can simply watch these more carefully. The general duties do not need to change.

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?

Comment: As stated above in response to question 3, this author considers that "the duties outlined in paragraphs 87, 91 and 93 of the discussion paper [are adequate and are the duties that] should apply".

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

Comment: Responsible individuals should be required to disclose 'material personal interests' and abstain from voting in such cases. The failure to do so is misconduct and should allow proportionate sanctions ranging from warnings to fines and disqualification for up to five years. In the interests of clarity and general knowledge, the legislation should dictate what constitutes both a 'conflict of interest' and a 'material personal interest'. The legislation should also require such disclosure and abstention from voting in applicable cases. The sample policy set out in paragraph 126 is unobjectionable.

12. Should the remuneration (if any) of responsible individuals be required to be disclosed?

Comment: All remuneration paid by an NFP to responsible individuals should be disclosed. In public corporations in some jurisdictions a right of shareholder or member veto is now required in addition to disclosure. The author considers that disclosure is sufficient in the case of NFPs. Perceived excess will be punished by donors. Staff remuneration should not be disclosed. The fiduciary duties of responsible individuals will require staff remuneration be kept within reasonable bounds.

13. Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?

Comment: The suggested criteria are acceptable.

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)?

Comment: Sadly, the exercise of undue influence by senior family members is frequent in tribe and clan groups in many parts of the world. However, it is desirable that native title groups not be singled out for special mention lest the legislation appear discriminatory. The author believes that the simple guidelines outlined in paragraph 126 are adequate to 'police' even tribal groups where the regulator has the will to do so. Many jurisdictions have rushed to pass anti-terrorist legislation in the wake of the 2001 terrorist attacks. In the author's view, all the elements of those attacks were criminal under existing legislation. Though those attacks may have justified legislation to enhance legitimate surveillance methods without curtailing other civic freedoms, there was no need to populate the statute books with new legislation when the underlying acts were already criminal in all respects. The same is true in this case. Carefully drafted universally applicable legislation will cover all cases. What is needed to prevent tribe and clan abuse is a focused and engaged regulator, not additional legislation.

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'?

Comment: The Corporations Act concept of 'material personal interest' is sufficient. If the government is legitimately concerned that a particular type of interest applicable in a native title (tribe or clan) setting has not been captured under existing Corporations law, then the definition of 'material personal interest' could be enhanced for these NFP purposes. However the author doubts that such enhancement is necessary and counsels against it. He also observes that the Corporations law would already have been amended if a conflict of concern had somehow escaped the existing 'material personal interest' test.

16. Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?

Comment: The author has a concern about the phrasing of this question. For reasons set out above in the general comments about the regulation of the NFP sector, it is submitted that it is a mistake to generalise that all NFPs control funds from the public. The generalisation seems intended to justify public overview of every aspect of the work of every NFP. 'The public' is different for every NFP. Responsible legislatures do not unnecessarily abrogate the scope of human freedom whether individual or collective and in this case, the freedom of NFPs. We legislate when there is an abuse to be stamped out. Responsible legislation is proportional to the abuse it is intended to remedy. Therefore the risk management we legislate should be responsive to the abuse to be eliminated. What is the abuse? The discussion paper identifies five kinds of risks that NFPs need to mitigate, although there is no explanation of why the government is acting to resolve them.

The five kinds of risks which the government wants NFPs to protect against are:

1. Fraud
2. Mission drift including the use of funds for unauthorised purposes
3. Breach of applicable laws including tax and OHS laws
4. Internal and external dispute
5. Injury to a key volunteer.

The risk management strategies which are proposed to mitigate these risks are:

1. Internal and external auditing, both for financial, mission and legal compliance purposes
2. Requirements to report breaches identified in audits
3. Mandated dispute resolution processes
4. Insurance or other provision to meet financial loss however caused

But in this case no suggestions are made as to what reasonable requirements should be imposed. That gap in the discussion paper recognises that small NFPs won't have the resources to meet all or perhaps any of these requirements. To meet such new and additional reporting requirement might even take the NFP 'off mission' because all its resources would be consumed by compliance. Therein lies the answer to this question in the discussion paper. Until there is an abuse to be resolved, the proper response to concerns about risk management is for the legislation to suggest risk management strategies that might be implemented by NFPs in all three tiers without making compliance mandatory. The temptation for government here is to overuse its power and to make compliance mandatory at some transitional time in the future. The author submits that government should resist this temptation until and unless there is clear and recurrent abuse that needs to be resolved. It is further submitted that government's action in creating a NFP Commission will in and of itself mitigate a lot of the risks that may currently exist in the NFP marketplace without the need for a heavier hand. That is, the mere creation of the Commission without more will see most NFPs look to their internal governance and spruce up to ensure they qualify for registration and any concessional treatment that may follow.

17. Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?

Comment: No. The example of an investment strategy is a case in point. It is submitted that if an NFP chooses to simply hold its limited funding in a trading bank, that should not be objectionable. Unlike investors, donors have no right to expect more prudent investment. If government wants to tag its grants with investment qualifications, it can do so though it is submitted that government should retain and invest its own funds before it grants them to an NFP after which they should be promptly expended. There is no need to impose additional rules on NFPs. The author doubts that even broad requirements are necessary. Government does not need to legislate for the sake of legislating. It should only do so if there is a demonstrable abuse to be cured.

18. Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?

Comment: No. Mandatory insurance requirements could take small NFPs 'off mission' and worse, could force them out of business. Conversely, some large NFPs have very sophisticated self-insurance and internal risk management arrangements in place which are more efficient than commercial insurance products. While government may fear the loss of an NFP if it is uninsured or inadequately insured, government has no direct interest in ensuring that NFPs stay in business. Indeed, to impose additional overhead upon an NFP is arguably an illegitimate use of government power absent any abuse to be cured.

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

Comment: Again, no. Whether to insure should be left to the individual as it is in most aspects of private life. The need to mandate compulsory personal injury insurance as a pre-registration requirement for motor vehicles is a legitimate government response to widespread losses born by the public system when motor vehicle driver are uninsured. Absent a comparable government interest in mandating compulsory insurance in the NFP sector, government should refrain from doing so.

20. What internal review procedures should be mandated?

Comment: Variable audit requirements depending on the size of the entity as variously described in paragraphs 142 to 147 work in practice and should be carried through into the new legislation particularly if NFPs are to exonerated from such compliance under other legislation.

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

Comment: For reasons of freedom and autonomy already discussed, model rules or guidelines should be provided but they should not be mandatory. If tax exempt status is required, ATO requirements will be voluntarily factored in when NFP entities are formed. Again, government should resist the temptation to legislate to cover every contingency – or opportunity.

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?

Comment: No, and for the reasons of autonomy and freedom already set out in the author's general comments and in the specific answers to questions 16 to 21.

23. Who should be able to enforce the rules?

Comment: The question begs the question. Government should not mandate the rules or enforce them. Members and beneficiaries have proven perfectly competent at doing that themselves. There are some occasionally third parties who are aggrieved when they cannot make a for profit body corporate or an NFP do something they would like done. But to date our law has wisely left these issues to the private sector and for the courts to determine whether someone who is neither a member nor a creditor has standing to enforce a private entity's rules. Again, that members of the public contribute to an entity, does not make that entity public property. There remains a sphere of private autonomy that is best left alone by government until there is widespread or obvious abuse to remedy.

If future experience demonstrates widespread NFP violation of internal constitutional rules, then at that time and to cure a demonstrated abuse, government can grant additional regulatory powers to the NCDC. However it is noteworthy that internal compliance with the constitution in 'for profit' legal entities has been left to that sector itself and existing legal remedies appear to work satisfactorily without more government regulation.

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

Comment: The ACNC should not be enforcing or altering governing rules during the operational life of a NFP. However, if the government wishes to delegate the Attorney-General's historic role in winding up either delinquent or defunct entities and 'cy-pres' distributing their assets, this author has no objection.

25. Should model rules be used?

Comment: Only as a 'model'. That is, model rules should not be made mandatory.

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

Comment: Again, there is no minimum content of an entity's constitution that should be mandated.

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

Comment: No.

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

Comment: The requirement of an Annual General Meeting does not seem unreasonable. It has become customary and signals to the members and the regulator that the NFP concerned is still functioning. Failure to provide such a report is a useful tool to determine unobtrusively whether a NFP is alive and well.

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

Comment: The author does not have any experience with CATSI entities and so cannot make suggestions of what additional support might be useful to support them. However as a general principle, government needs to recognise that effective long term good governance only grows from within an organisation and is not imposed. Funding is not always constructive. NFPs like natural human beings, often develop the most strength when they have to struggle to exist and grow.

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?

Comment: By insisting that non-NCDC requirements are promptly eliminated so that there is only very limited duplication.....and by resisting the legislative temptation to dot every 'i' and cross every 't' for NFPs. They will be governed best when having been taught correct principles (with model rules and the like), they are left to largely govern themselves. One particular area where government could enhance Australian society and her international reputation as an altruistic society with compassion for those less fortunate in the rest of the world, would be to encourage genuine overseas philanthropy and to help interested NFPs qualify. At present, the AusAID application process is painful for all involved and sends a message to altruistic Australian individuals and NFPs that Australia is a self-interested country and is actively seeking to thwart overseas help because 'charity begins at home'. We can do better and it is submitted that the NCDC has a role to play in encouraging government to meet its international social obligations. Better still would be if AusAID and Treasury involvement were collapsed in favour of the NCDC supervising these applications and along more generous lines. The author has no issue for example with the notion that overseas welfare projects should be focused on building capacity and in 'teaching people how to fish' rather than simply providing them with the food they need. But the current processes seem beset by paradigmed expectations that are not applied domestically.

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

Comment: An emphasis on guidelines rather than mandatory requirements will be the most helpful. The discussion paper correctly understands that NFPs are generally so focused on mission that many do not consider risk management. An NCDC that provided counsel and guidelines on tiered risk management planning for small NFPs would resolve those concerns that arise from the unknown. Since many NFPs struggle with affordable insurance, the NCDC could lobby the insurance sector for more affordable generic products and failing improvement, could recommend government mandate base level products at a commercial while affordable price. But again unless widespread and continuing social cost is shown to be accumulating because of uninsured NFPs , government should not make any particular insurance compulsory for NFPs for reasons already explained.

The NCDC could also run tiered training seminars for 'responsible persons' in NFPs to educate them in their duties and compliance with same. A voluntary certification system could also be offered, but again it should not be mandatory. Conscientious NFPs would quickly distinguish themselves by involvement and achievement which they would then use as a marketing device.

32. Are there any particular governance requirements which would be useful for Indigenous NFP entities?

Comment: The author has suggested above that indigenous NFPs should not be singled out for intrusive special treatment. Where there is perceived risk of abuse, the correct general principles can simply be supervised more regularly by a competent regulator.

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?

Comment: See my general observations above – before answers to your specific questions.