



## **Comments on the Consultation Paper on NFP Governance**

Professions Australia (PA) welcomes the opportunity to comment on the consultation paper on NFP governance and on the exposure draft of the legislation.

PA is a member based national organisation of professional associations. These associations represent more than 350,000 professionals in the broad areas of: the built environment; business services; human and animal health; and resources. We seek to champion the importance of the professions and professionalism to the economic social and environmental well being of Australia.

PA is a not-for-profit company limited by guarantee. We have 24 members and 8 associate members. A list of members is attached. We have two permanent part time staff members. We have revenue of less than \$250,000 and PA is not a deductible gift recipient within the meaning of the Income Tax Assessment Act. As such we are no longer required prepare or lodge any financial reports with ASIC although to date we have still had a financial report prepared and audited. We are looking at what simplified reporting and review we will require for our own purposes in the future.

Our governance arrangements are as set out in our Constitution and the relevant parts of the Corporations Act.

We currently receive no assistance from government or the public. In the past we have received grants from the Australia / Japan Foundation (AJF) to support the building of linkages between the professions of the two countries.

PA would expect to be covered by the Act as a “Community Service Organisation” when that part of the Act comes into force which we understand will not be after the end of the 2013-2014 financial year.

PA is in general agreement with the thrust of the consultation paper, in particular that any governance requirements to be included in the ACNC arrangements be principles-based and proportionate. In regard to the latter, the tiered arrangements under the amended Corporations Act seem to be a good foundation on which to develop the new arrangements. While we have not yet taken full advantage of the new tiered reporting arrangements, the previous requirements were costly and time consuming for a small organisation with a very small budget.

PA found that the contract and reporting requirements for its grants from the AJF seemed to be disproportionate to the size of the grants and became increasingly so.

We suspect that this may be the case with small government grants generally and hope that the ACNC arrangements will make the understandable requirements for accountability less onerous.

PA would hope that any new ACNC governance requirements would not necessitate our having to have a new constitution drawn up as this can be quite expensive. In this regard, while the proposal is for principles-based requirements, there would be value in the ACNC having templates prepared and available for NFP's to build on to meet their own needs.

A general point which we believe is worth making is that there is a number of different categories of NFP's of which Professional Associations are one. Others include charities which collect donations and distribute them in cash or by way of good works to needy sectors of society and industry associations who advocate on behalf of their industry and its members. Professional Associations generally seek to raise and maintain the standards and ethical conduct of their professions for the benefit of society as a whole - they are about the pillars of professionalism namely

- Entry standards
- Professional and ethical standards and conduct; and
- Continuing professional development.

As such the stakeholders to whom professional associations are accountable are at the one time narrowly based in the form of the members who subscribe to the association financially and by donating their time and expertise and widely dispersed in the form of society as a whole as the beneficiary of having high standards of professionalism.

Given this diversity of the NFP's it will be important that the governance requirements are sufficiently flexible to allow the individual entities to fulfil their objectives while being accountable. This would support the adoption of a principles based tiered approach.

As an aside regarding reporting requirements, one of our members (The Institute of Chartered Accountants in Australia) published a document "Enhancing not-for-profit annual and financial reporting. Best practice reporting – March 2011". It may be of assistance to you in this exercise.

#### Consultation Questions

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

**2 Who do the responsible individuals of NFP's need to consider when exercising their duties? Beneficiaries? Donors? The public ? The entity or mission and purpose of the entity?**

In the case of professional associations there is a number of stakeholders/interested parties who need to be considered when exercising duties

- The entity its mission and purpose
- Members
- Society

- Creditors
- Universities
- Skilled migrants

It is not clear whether these should be spelt out in the legislation. Rather the principles as to the types of bodies which should be considered could be in the legislation with details to be in the individual NFP governance documents.

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

Day to day activities such as ensuring the organisation acts within the law and its financial means; longer term planning; implementation of the governance arrangements.

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

The standards of care should be the same for all. That is not to say that the duties and levels of responsibility should be the same. Rather they should be tailored to meet the capabilities of different people or the people should be selected to meet the requirements of positions.

### **5 Should responsible individuals be required to hold particular qualifications or have particular experience or skills (tiered depending on size of the NFP or amount of funding it administers)?**

No, but they must be considered to be capable of doing their job well by whoever appoints them. This judgement will be influenced by the size and funding of the organisation.

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

See 5 above.

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

As noted above, professional associations differ from other NFP's in some respects and this may make it difficult to standardise duties across all NFP's. However there could be a standard set of principles as to the kinds of duties which need to be fulfilled.

### **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 NFP's?**

The obligations to the entity and its stakeholders for volunteers should be no different from others. What may differ could be the roles that they play.

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

It is understood that a tiered approach is being proposed based on the tiers in the Corporations Act and this in itself provides for differing reporting and auditing requirements. This does not equate to a different standard of care. Professions Australia supports this but does not believe that other than that differing standards of care need to apply.

**10 Is there a preference for the core duties to be based on the Corporations Act, CTSI Act, the office holder requirements applying to incorporated associations, the requirements applying to trustees of charitable trusts, or another model?**

The Corporations Act.

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

Their Constitutions, and names of responsible individuals, annual reports (if any under the tiered reporting arrangements).

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

Where a NFP is not in receipt of donations or public funding the remuneration should largely be a matter for the governing body and the members of the entity. Where funding from the public purse and/or tax deductible donations is involved and constitutes a significant proportion of the income of a NFP there is a case for public disclosure.

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

The suggested conflict of interest policy outlined is reasonable and could form part of the principles based approach. Criteria dealing with conflict of interest are outlined in the Corporations Act and there is a substantial body of law associated with this legislation which should suffice. As a general point, where there is already arrangements under the Corporations Law in relation to the for profit sector dealing with things to be covered by the ACNC, there should be consistency if it is a good fit.

**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)?**

Not qualified to comment.

**15 Should ACNC governance obligations stipulate the types of conflict of interest that responsible individuals in NFP's should disclose and manage? Or should it be based on the Corporations Act understanding of "material personal interest?"**

Base on Corporations Act understanding.

**16 Given that NFP's control funds from the public, what additional risk management requirements should be required of NFP's.**

The issue will be to ensure that they are at least as stringent as for the for profit sector. The matter of risk management should be covered in the principles with the entity to determine its own needs on the basis of a risk analysis the conduct of which should mandatory.

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

Broad requirements to have adequate procedures in place which match the needs of the objectives of the entity should be covered in the principles.

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

The risk analysis referred to in response 16 above should cover the need for and the appropriate level and type of insurances which should be taken out by an entity.

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

Again, this should be part of the mandatory risk analysis.

**20 What internal review procedures should be mandated?**

The tiered approach in the Corporations Act seems to be a good approach. For the small category where no external audit or review is required it would seem prudent for management to provide the board with a regular Balance Sheet and Profit and Loss Account. The requirement for two to sign cheques/ payment authorisations is also prudent and adds a degree of confidence.

The risk analysis should cover the internal procedures for individual entities.

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

The minimum requirements the governing rules should cover include

- Objects
- Income and property
- Membership (admission, ceasing to be a member, subscriptions)
- General meetings ( calling, proceedings )

- Votes of members
- Appointment and removal of directors
- Powers of directors
- Proceedings of the Board
- Accounts and audit
- Winding up

**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?**

Yes in a generic sense in defining the minimum requirements necessary to meet protect the interests of the public. These can be built on to meet the particular needs of an entity and its mission.

**23 Who should enforce the rules?**

The prime responsibility for ensuring that the entity is operating within the governing rules should rest with the entity and its members with the ultimate sanction resting with the ACNC.

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

The ACNC should have a role in the enforcement of the governing rules on wind up or deregistration. The ACNC should have a say in whether it accepts any alteration of the governing rules which it has previously accepted as part of the registration process.

**25 Should model rules be used?**

It would certainly be helpful if model rules were available for an entity to utilise should it wish to do so. They should cover the core requirements which should be common to most entities leaving the entities to add to them to suit their mission.

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

The governing rules should cover the holding of meetings of members and the meeting procedures and also cover dispute resolution. The provisions in the Corporations Act seem to be satisfactory.

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

A report which gives non-member stakeholders a window on the operations of the entity could be of value to the transparency and bona fides of its activities and

thus enhance its capacity to achieve its objectives. The nature and extent of the relationship should be a matter for the entity to determine.

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

It would seem to be an integral part of the registration process.

**29 Are there any types of NFP's where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFP's?**

The principles based approach together with model rules should assist all types of NFP's

**30 How can we ensure that these standardised principles based governance requirements being administered by the one stop regulator will lead to a reduction in red tape for NFP's?**

The Federal Government needs to ensure that all of its own agencies associated with the sector are covered under the one stop shop umbrella and that there are no duplications and/or and conflicting requirements. Abide by the tiered approach.

Enter into dialogue with other jurisdictions on making their requirements consistent with that of a one stop shop approach.

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

The principles relating to what is required to be covered in the governing rules for NFP's limited by guarantee should be included in legislation or regulations together with transition arrangements. The guidance material could cover how the principles may be translated into practice and areas where the entity may wish to go beyond the core elements in their governing rules.

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

Not qualified to comment.

**33 Do you have any recommendations for NFP governance reform that have not been covered by previous questions that you would like the Government to consider?**

Not at this stage.

20 January 2012

