

Australian Government

“Review of not-for-profit governance arrangements”

Consultation Paper

Dated 8 December 2011

Submission by:

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1. Executive Summary

1.1. The Australian not-for-profit sector has been the subject of numerous Australian Government inquiries and initiatives over the last 10 years, the most recent being the Australian Government:

- (a) "Scoping study for a national not-for-profit regulator" Consultation Paper dated 21 January 2011
- (b) "Better targeting of not-for-profit tax concessions" Consultation Paper dated 27 May 2011;
- (c) "Definition of Charity" Consultation Paper dated 28 October 2011;
- (d) "Review of not-for-profit governance arrangements" Consultation Paper dated 8 December 2011; and
- (e) "ACNC Implementation Design Discussion Paper" dated 9 December 2011.¹

1.2. RSL (Queensland Branch) is part of the Returned and Services League of Australia (**the League**). The League is a national charitable organisation. RSL (Queensland Branch) is also a charitable organisation and carries out charitable, including patriotic, objects in its own right.

1.3. RSL (Queensland Branch) has a number of district branches (**District Branch**) and sub-branches (**Sub-Branches**) established throughout Queensland to deliver charitable including patriotic services in local communities. One of the main objects of the RSL is to:

...provide for the sick, helpless, wounded, aged, vulnerable, destitute and needy among those who are serving or who have served in the Australian Defence Forces and their dependants...

In this regard, the objects of the RSL (Queensland Branch) and its District Branches and Sub-Branches are attached in Annexure 1.

1.4. RSL (Queensland Branch) is of the view that the duplication, burdensome and unclear governance requirements for not-for-profit (**NFP**) organisations across all Australian jurisdictions should be a focus for the Australian Government. RSL (Queensland Branch) welcomes any initiative to ease the administrative and financial burden on the NFP sector in this regard. Much of the duplication and burden originates from the diverse requirements of the various Government bodies that regulate different facets of the work undertaken by RSLs throughout Queensland and the NFP sector generally.

1.5. The RSL (Queensland Branch) submission (**Submission**) in response to the Australian Government "Review of not-for-profit governance arrangements" Consultation Paper dated 8 December 2011 (**Consultation Paper**), in summary, is as follows:

- (a) The legal duties of *responsible persons* should, as much as possible, mirror the common law and/or *Corporations Act* to provide certainty and standards for "responsible

¹ See also Industry Commission 1995, "Charitable Organisations in Australia"; Australian Government 2001, "Report of the Inquiry into the Definition of Charity and Related Organisations"; Senate Standing Committee on Economics 2008, "Disclosure Regimes for Charities and Not-for-Profit Organisations" to name but a few

individuals” (as defined in paragraph 85 of the Consultation Paper) engaged in not-for-profit endeavours. This common law/*Corporations Act* regime is sufficiently flexible to allow responsible individuals to understand their duties and responsibilities (if the duties and responsibilities are similar to the ‘executive officer’ role under the *Corporations Act*).

- (b) There is a strong nexus between the moneys received by RSLs throughout Queensland, membership control and the delivery of the RSL mission. This nexus manages risk, creates accountability and maintains the RSL’s focus on achieving its mission.
 - (c) RSL (Queensland Branch) acts as an “umbrella” organisation for the District Branches and Sub-Branches. In this regard, RSL (Queensland Branch) lessens governance risk throughout RSLs in Queensland through proper supervision of its District and Sub-Branches and the continual commitment of its own funds to:
 - (i) ensure appropriate standards are maintained throughout District and Sub-Branches; and
 - (ii) adequate resources are available to District and Sub-Branches.
- 1.6. RSL (Queensland Branch) would welcome the opportunity to be involved in any further consultation including participating in any working parties or round tables associated with the matters raised in the Consultation Paper or this Submission, given the breadth and diversity of the RSL governance experience.

2. RSL (Queensland Branch) – an overview

- 2.1. The League is a national charitable institution with tax concession charity (**TCC**) status as a result of its charitable, including patriotic, objects.
- 2.2. Under the League’s constituent documents, it has established State branches in each State and Territory of Australia (**State Branch**), of which the RSL (Queensland Branch) is one. All State Branches have TCC status.
- 2.3. The League and its State Branches are not-for-profit, charitable, apolitical, non-sectarian organisations.
- 2.4. In order to ensure local responses to local needs, local ex-service men and women in the community can establish a Sub-Branch to deliver services consistent with the RSL’s objects to current and ex-service men and women in their local communities. Each Sub-Branch falls within the geographic boundaries of a District Branch and receives assistance and guidance from the District Branch. Women’s and Citizen’s Auxiliaries fundraise and carry out volunteer services for the charitable activities of District Branches and Sub-Branches. RSL (Queensland Branch) *umbrellas* this whole structure providing support and monitoring throughout.
- 2.5. There are currently 10 District Branches and 248 Sub-Branches in Queensland. The District Branches and Sub-Branches represent approximately 40,000 members in Queensland, all of whom have served in the Australian Defence Forces (**ADF**) or who are currently serving in the ADF. Members also include allied foreign servicemen and women.

- 2.6. RSL (Queensland Branch) has a large and engaged membership – it is a highly participatory not-for-profit. The 40,000 members of RSL (Queensland Branch), which come from its 248 Sub-Bran­ches, provide a significant amount of volunteer services to RSL (Queensland Branch) through the District and Sub-Bran­ches. This includes volunteers being elected or appointed on the board of each District and Sub-Bran­ch, as well as State Branch.
- 2.7. There is a significant volunteer base upon which RSL (Queensland Branch) and its District and Sub-Bran­ches rely, including the Women’s and Citizen’s Auxiliaries referred to in paragraph 2.4 above.
- 2.8. The majority of the volunteers who deliver services in their communities are RSL service members. A service member is a person who has served in the ADF or who is currently serving in the ADF. Many of these service members are providing support to other serving or ex-service men and women. The RSL therefore is a living example of “mates helping mates” and reflects the kinship and solidarity that comes with the ADF connection they all have.
- 2.9. Without these volunteers many commercially unviable and unsustainable services (if charged at full or even a fraction of the value) would not be able to be undertaken in the same quantity, quality or at all. RSL (Queensland Branch) currently estimates that its members contribute in excess of 1 million hours of volunteer time carrying out the charitable, including patriotic, objects. It is our estimate that, on average, RSL (Queensland Branch) through its District and Sub-Bran­ches helps one Queensland­er every 3-4 minutes.
- 2.10. The charitable and patriotic objects of the RSL are fulfilled in many different ways throughout Queensland through RSL (Queensland Branch) and its District and Sub-Bran­ches. The activities which achieve the charitable and patriotic objects include, but are not limited to:
- (a) Providing welfare and social support services to veterans comprising ADF and former-ADF personnel, and their dependents as and when needed through its pension, advocacy and welfare service (**PAWS**);
 - (b) Providing welfare services to the sick, helpless, wounded, vulnerable, aged, destitute and needy to the veteran community and the community at large²;
 - (c) Running, co-ordinating and often funding commemorative and patriotic services including ANZAC Day and Remembrance Day activities to ensure that the community at large remembers and honours those service men and women who have made the ultimate sacrifice for the nation; and
 - (d) Fostering an environment to break the social isolation and loneliness of old age by providing companionship, mutual activities and mateship in a secure, accessible and comfortable premises.
- 2.11. RSL (Queensland Branch), District and Sub-Bran­ches operate using self-generated funds from “...volunteers and donations from the public...”³. Some the District Branches and Sub-

² Includes providing accommodation services for those in need due to health or financial reasons, hospital visits; transportation for people to and from hospital and many other welfare activities

³ Industry Commission 1995, “Charitable Organisations in Australia”, page XVII

Branches undertake commercial activities in an effort generate moneys to support their charitable objects. Some others receive small grants from the Commonwealth government in relation to minor projects/programmes which grants have been reduced over the last 5 or more years. These projects/programmes are therefore often supported, at least administratively, from self-generated RSL funds.

- 2.12. The RSL, through its network of District Branches and Sub-Bran­ches are considerable employers across the State. The overwhelming majority of Sub-Bran­ches are governed by volunteer Boards, and in some smaller towns and communities, the local Sub-Bran­ch can be the largest employer in the region and supports the local community in terms of using local suppliers and contractors who provide necessary good and services to the Sub-Bran­ch.⁴
- 2.13. The patriotic objects are met by remembering and honouring those who have made the ultimate sacrifice for the nation or who have served or are still serving the nation by ensuring:
- (a) the prominent placement of memorabilia and libraries throughout the building;
 - (b) the ode is played at the appropriate time of day; and
 - (c) financial and other support for commemorative activities particularly on days of national significance such as ANZAC Day and Remembrance Day.⁵
- 2.14. As noted above, the governance of each Sub-Bran­ch and District Branch vests in a board or committee of management (**board**) which, depending on the size of the Sub-Bran­ch or District Branch, may or may not be assisted by paid employees.

3. Consultation Questions

- 3.1. RSL (Queensland Branch) has chosen to respond to only those questions in the Consultation Paper which specifically relate to the operation of RSL (Queensland Branch) and its District and Sub-Bran­ches throughout Queensland.⁶

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

- 3.2. The responsible individual description in paragraph 85 of the Consultation Paper generally reflects the definition of “officer” in section 9 of the *Corporations Act*. This appears to be a sound starting position to ensure those persons who are integrally involved in the governance of any NFP are all considered responsible for and owe duties to the NFP organisation.
- 3.3. From RSL (Queensland Branch)’s perspective, those persons who would comprise *responsible individuals* ought to focus on ensuring that the mission of the NFP is of paramount importance when exercising the duties articulated in paragraphs 91 and 93 of the Consultation Paper.

⁴ From RSL (Queensland Branch) submission to Productivity Commission, November 2009 and RSL (Queensland Branch) submission to “Better targeting of not-for-profit tax concessions” Consultation Paper in 2011

⁵ Although it should be noted that there are many other days honouring service men and women held by RSL (Queensland Branch) and its District and Sub-Bran­ches which are also financially supported by RSL (Queensland Branch) and its District and Sub-Bran­ches.

⁶ See paragraph 75 of the Consultation Paper

Accordingly the responsible individuals should undertake their duties to act in the best interests of the NFP as a whole. Therefore the duties, when exercised, are owed to the NFP (whilst balancing the competing interests of stakeholders, as discussed in paragraph 3.7 below).

- 3.4. Common law has built up a body of precedent which allows those who would be considered *responsible individuals* to undertake their role with a sufficient level of certainty, clarity and flexibility to understand their duties and responsibilities in any given NFP organisation. In RSL (Queensland Branch's) view any further legislation in relation to the duties or responsibilities of *responsible individuals* ought to reflect a director's or management committee member's common law fiduciary duties. The creation of new and untested duties to a list of "other" stakeholders is likely to become fertile ground for disputes and litigation and potentially cause the NFP sector to seek and pay for more legal and other advice to understand any new legal duties.
- 3.5. Any new legislation may wish to give examples or guidance as to who responsible individuals *may* consider, if applicable, when exercising their duties however there should be no legal compulsion in this regard.

Question 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?

- 3.6. The responsible individuals should be focussed on the fulfilment of the NFP mission subject to any legal or contractual duties required or undertaken by the NFP with proper and due consideration of the NFP's ethical/moral duties. The ultimate aim of the NFP is to fulfil its mission as expressed in the NFPs governing rules' objects.
- 3.7. There are many times when the various stakeholders such as donors, beneficiaries and the public will need to be considered, and the wishes or desires of those various external stakeholders, balanced by the responsible individuals.
- 3.8. The balancing of competing stakeholder interests is a very difficult role in some not-for-profits and it certainly permeates many of the decisions of responsible individuals on RSL boards and their management teams throughout Queensland. Quite often donors, beneficiaries, the public and other stakeholders have very different views as to what NFPs ought to be and should be doing however it is the responsible individuals of the NFP who are more likely to be in a position to understand (or be able to put themselves in a position to understand) the current circumstances or predicaments in which the NFP may find itself. The responsible individuals are privy to confidential information of the NFP and therefore are best to make the decisions in relation to it.
- 3.9. The duties on responsible individuals as contemplated by the answer in question 3 below, means that at all times responsible individuals would be acting in the best interests of the NFP. Donors, beneficiaries, the public, the media, are all entitled to their opinion and to express that opinion however there are often circumstances in which those external parties may act frivolously, vexatiously, capriciously or out of self-interest because they do not have

the legal duties to the NFP as a responsible individual. Responsible individuals should not be legislatively bound to consider these stakeholders when exercising their duties.

3.10. RSL (Queensland Branch) also foresees great difficulties in any dispute in which an external stakeholder purports to challenge how and to what degree responsible individuals considered their interests balanced against any number of other listed and/or legislated external stakeholders' interests. It would be uncertain ground in any dispute or litigation to ask a judge (or other independent arbiter) to provide a ruling regarding the hierarchy of any competing interests and the resolutions made by the responsible individuals regarding those competing interests.

3.11. There is also a difficulty in listing the potential stakeholders of NFPs generally. Whilst RSL (Queensland Branch) has not had the opportunity to consult with all its District and Sub-Branches given the limited time within which to respond to the Consultation Paper, each of these RSL entities would have very different stakeholders to whom the NFP may be accountable. For example, some Sub-Branches' contractual obligations such as funding and/or banking covenants entered into voluntarily influences who would be a key stakeholder for that Sub-Branch but for others, there is no such stakeholder.

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

3.12. The duties of responsible individuals should mirror as closely as possible the requirements in the *Corporations Act* which incorporates many of the fiduciary duties of directors at common law. To start shifting the goal posts in relation to the legal duties of responsible individuals, could confuse responsible individuals on NFP boards given that it would be unlikely that any lesser duties would supplant the numerous compliance duties in various other State and Federal legislation which applies to the RSL (and all other NFP organisations) throughout Queensland.

Question 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?

3.13. This question is framed to imply that:

- (a) a paid employee may be more competent than a volunteer; and
- (b) a professional person more competent than a lay person.

3.14. In this regard, RSL (Queensland Branch) and through its District and Sub-Branches has had the privilege of utilising the services of extraordinarily competent volunteers and has unfortunately also seen rather incompetent employees. The same applies to professionals and lay persons.

3.15. The minimum standard of care required to comply with any duties ought to be that which is required under the common law for any person who undertakes the role equivalent to that of a *responsible individual*.

Question 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)?

- 3.16. It always appealing to categorise NFPs by looking solely at quantifiable/objective data. For example, a number of RSL Sub-Branches are very small operations with limited funds, no employees and run solely on volunteer effort and resources. On the other hand, other Sub-Branches run significant business operations in order to fund their welfare and other RSL related activities.
- 3.17. It is an anathema to good governance principles to determine the qualifications, experience or skills for responsible individuals based on objective/quantifiable data only such as size or amount of funding being administered. Good governance requires responsible individuals who can, amongst other things:
- (a) understand the NFP as a whole (including for example understanding those external stakeholders referred to in question 2 of the Consultation Paper);
 - (b) bring their skills and expertise to the decision-making table; and
 - (c) ask intelligent and meaningful questions on the information provided to them.
- 3.18. Responsible individuals should be sufficiently and adequately competent to undertake the role of governing the NFP in question.
- 3.19. The drafting of this question also does not seem to contemplate that individuals may acquire experience or skills whilst undertaking the role as a responsible individual.

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

- 3.20. The whole of the responsible individuals should have appropriate skills (or minimum standards) which must be applied to all individuals. If, as suggested by this question, minimum standards apply to only a portion of the responsible individuals, these “minimum standards” would not override the numerous compliance duties and various other State and Federal legislation which applies to RSLs (and all other NFP organisations) throughout Queensland (and indeed Australia).

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

- 3.21. Standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC could, if those duties differ significantly from the common law, create a great deal of confusion in the NFP sector. Again as noted above, RSL (Queensland Branch) is of the view that the duties of responsible individuals should reflect the common law/*Corporations Act* so that the duties remain sufficiently flexible to accommodate any increasing expectations of society over time but also remains sufficiently certain for responsible individuals to be able to understand the legal governance frameworks in which they operate.

3.22. If there are lesser governance standards for responsible individuals in the NFP sector than in the for-profit sector, there may be a flow on effect that NFP responsible individuals fail to appreciate that the “easing” of their duties from a governance perspective does not necessarily override the numerous compliance duties encapsulated in various other State and Federal legislation which applies to RSLs.

Question 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?

3.23. These requirements ought to be the same as per question 7.

3.24. It should also be noted that Queensland has civil liability legislation which deals with volunteer liability.⁷

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

3.25. The standard of care and minimum standards that should be applied in an NFP which is considered high-risk (which in itself would be difficult to define) is already dealt in question 4 above. If, as submitted by RSL (Queensland Branch), the common law duties and standards are applied to responsible individuals then an objective and subjective test will apply to determine each responsible individual’s duties (as generally described in paragraphs 91 and 93 of the Consultation Paper). The risks of the NFP will be taken into account in the subjective test.

3.26. Circumstances such as dealing with children and other areas where the community is seen to be vulnerable or at risk, is ordinarily covered through other State or Federal legislation with which the NFP must comply. The RSL (Queensland Branch) would support moves to encapsulate the protection on minors in any ACNC legislation regarding duties and responsibilities.

Question 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?

3.27. The core duties ought to be based on the common law/*Corporations Act* requirements in order to create a greater level of consistency of duties throughout Queensland and Australia.

3.28. There are no appropriate provisions in the *Queensland Associations Incorporations Act* to assist in this regard.

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

3.29. Registered entities should be required to disclose a copy of their governing rules (or constitution) and audited annual accounts to ensure good governance procedures are in

⁷ *Civil Liability Act 2003*

place. Whilst some NFPs may have the resources and technical ability to publish governance policies and protocols on-line, there is a percentage of Sub-Branches who do not have the technology, nor the resources, in order to undertake disclosure of all governance related policies and protocols.

- 3.30. It should be noted that, from the RSL (Queensland Branch's) perspective, good governance does not automatically equate to the fiscal and economic drivers of for-profit entities. The genesis of the RSL (and many NFPs) ensures that the objects of the RSL are delivered in a participatory manner throughout Queensland. Whilst this may result in a business or operating model which may not be the most cost-efficient or effective method possible, the for-profit mantra of effectiveness/efficiency is not the sole driver of achieving the objects in any RSL in Queensland. In saying this however matters concerning the running of many of the Sub-Branches is overlooked by RSL (Queensland Branch) as an over-arching or umbrella organisation as noted in paragraph 3.35 below.

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

- 3.31. The remuneration (if any) of responsible individuals who are non-executive directors only (i.e. those persons sitting on the governing body of an NFP) ought to be disclosed. Salaried/paid employees' remuneration ought not be disclosed as this can, as has happened in ASX listed companies, cause a ratcheting effect on executive/management remuneration.

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

- 3.32. The suggested criteria in relation to conflicts of interest appear to be appropriate.

Question 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)?

- 3.33. In the RSL, there are a small number of responsible individuals who sit on the governing bodies of the District and Sub-Branches who are drawn from a large class of possible or potential beneficiaries. Accordingly, there is very little potential for conflicts of interest to arise and any requirements regarding conflict of interest ought to take the RSL's circumstances into account in this regard.

Question 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'?

- 3.34. From the RSL perspective, the conflict of interest obligations of responsible individuals ought to be based on the *Corporations Act* understanding of "material personal interest". The requirements of the *Corporations Act* in this regard are sufficient to cover financial and non-financial interests and there is a substantial body of case law on conflicts of interest under the *Corporations Act* to give credible and certain guidance to those who would be considered responsible individuals.

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

- 3.35. The basis upon which this question is asked, contemplates risks such as fraud, compliance and then mission drift (paragraph 131). All of these are very different types of risk which would be addressed differently in any given NFP.
- 3.36. RSL (Queensland Branch) acts as an umbrella organisation for District Branches and Sub-Branches throughout Queensland. This overarching responsibility undertaken by RSL (Queensland Branch) lessens governance and other risk throughout Queensland District Branches and Sub-Branches through proper supervision of the District Branches and Sub-Branches and the continual commitment of RSL (Queensland Branch) own funds to:
- (a) ensure appropriate standards are maintained throughout District and Sub-Branches; and
 - (b) adequate resources are available to District Branches and Sub-Branches.
- 3.37. In addition to the above, part of the risk mitigation undertaken by the RSL (Queensland Branch) requires its District Branches and Sub-Branches to:
- (a) publish their annual accounts, either publicly through the *Collections Act* or to all members through the AGM process;
 - (b) publish the governing rules, which are available publicly from the Office of Fair Trading; and
 - (c) ensure clarity of objects in those governing rules.
- 3.38. A rigorous and engaged membership combined with the conduct of annual general meetings also mitigates risks within the RSL. Each year each RSL entity is required to conduct an annual meeting of its members to consider the audited accounts, amongst other things. Also each constitution allows Sub-Branch and District Branch voting members to call a special general meeting or extraordinary general meeting during the year if the membership is of the view that matters need to be addressed prior to any AGM.
- 3.39. It should also be noted that RSL (Queensland Branch) is also oversighted by the national League.

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

- 3.40. Particular requirements around investment strategies ought to be aligned with the current responsibilities of a trustee who is required to invest moneys for the benefit of beneficiaries.

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

- 3.41. It is our view that at least once a year each NFP board ought to turn its mind to insurance requirements to cover the NFP in the event of unforeseen circumstances. There should be no

obligation or mandated minimum insurance requirement, particularly given that insurance in and of itself does not mean that the unforeseen circumstance will be covered by the insurance policy or, if it is, there is no guarantee that the insurer will be forthcoming in paying out on the policy.

- 3.42. RSL (Queensland Branch) provides an overarching insurance for those Sub-Branches and District Branches who choose to opt in however other Sub-Branches and District Branches choose their own level of insurance as the board sees fit.

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

- 3.43. Again, as with question 18, each NFP board should turn its mind to whether the responsible individuals ought to be required to have indemnity insurance at least once a year however for many smaller NFPs, indemnity insurance for responsible individuals is financially unrealistic and could cause smaller NFPs to become unsustainable.
- 3.44. Insurance markets go through hard and soft phases and during those times when it is difficult to buy insurance or insurance premiums are significantly increased from one year to the next, any mandated insurance requirements, which are subject to exactly the same foibles as listed in the response to question 18, could mean the difference between a NFP being sustainable or unsustainable.

Question 20: What internal review procedures should be mandated?

- 3.45. The newly introduced requirements for auditing accounts of companies limited by guarantee under the *Corporations Act*, are the appropriate internal review procedures that should be mandated, together with the requirement that any such audited accounts are made available on-line to all voting members of the NFP.
- 3.46. In addition to the above, RSL (Queensland Branch) also annually reviews each Sub-Branch and its operations by, amongst other things, reviewing each Sub-Branches financial statements and audit reports. This “self-auditing” function which is seen by the RSL (Queensland Branch) board and management as part of the umbrella functions of the RSL (Queensland Branch), allows the RSL (Queensland Branch) to exercise a level of internal control to ensure that the League objects are being met and carried out in a manner that is economically prudent and fiscally responsible.
- 3.47. There is a high level of probity, examination and analysis of the delivery of the RSL’s objects by the RSL (Queensland Branch), District and Sub-Branches though the RSL’s service members which can be a sharp (and sometimes very pointy) accountability that can come with direct member-oversight and engagement.
- 3.48. This accountability to members can also prevent mission-drift.

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

- 3.49. The core minimum requirements for registered entities should be:

- (a) clear objects to guide all responsible persons in the governance and operations of the NFP; and
- (b) those matters set out in the *Associations Incorporation Regulation 1999* (Qld) in Schedule 3.

Question 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?

3.50. The ACNC should not have a role in mandating requirements of governing rules to protect the mission of the entity and the interests of the public. The role the ACNC should undertake in relation to governing rules ought to be to ensure that the core minimum requirements have been met before registering same.

Question 23: Who should be able to enforce the rules?

3.51. Members should be able to enforce an NFP's rules.

3.52. The ACNC ought to be able to investigate a complaint in relation to the breach of rules which is made on reasonable grounds.

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

3.53. The ACNC should have a role in the enforcement of the governing rules as set out in the response to question 23 above however the alteration of the governing rules is part of the democratic right of members to undertake in accordance with the rules themselves and any legislation that deals with this issue. Any issues on the winding-up or de-registration of a registered entity could be overlooked by the ACNC.

Question 25: Should model rules be used?

3.54. Model rules ought to be drafted and made available to NFPs in default of individually drafted rules. If an NFP chooses to draft its own governing rules, then provided that the minimum requirements for rules are met, it ought to be a matter for the membership to determine, not the ACNC.

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

3.55. The governing rules ought to mandate the NFPs relationship with its members through the following core requirements:

- (a) Dispute resolution; and
- (b) The voting or non-voting rights of the members.

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

3.56. No, the requirements for relationships with members need not apply to non-membership based entities such as trusts etc.

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

3.57. In our view, it is appropriate to have compulsory meeting requirements for all membership based entities registered with the ACNC however the meetings need not be limited to personal attendance at such meetings.

3.58. It is one of the key requirements and accountabilities for each Sub-Branch and District Branch, together with RSL (Queensland Branch), to ensure that the will of the members is understood and canvassed at least annually.

3.59. The meeting of members provides a strong nexus between the moneys received by RSL (Queensland Branch), its Sub-Branches and District Branches and how those moneys are applied in achieving the mission of the RSL thus increasing accountability of the responsible individuals and the organisation at large.

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

3.60. Better governance outcomes for NFPs could be assisted if government funding included a requirement that a percentage of granted funds be directed towards capacity building (without reducing the core funded programme itself). In this regard, government funding can keep NFPs in a funding roundabout where the inability to invest in capacity (because all funds must be accounted for against programme measures) means that NFPs are unlikely to ever achieve greater financial independence from government. Whilst RSL (Queensland Branch) understands the need to ensure outcomes for funding received, an investment in capacity building for the sector would be moneys well spent.

Question 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?

3.61. In Queensland, many entities must deal with the Office of Fair Trading for the purpose of compliance with the *Associations Incorporations Act*, the *Collections Act* and then the Office of Liquor and Gaming for any licensed premises. This in itself creates a great duplication which could be avoided with a one-stop-shop regulator.

3.62. To reduce red tape for NFPs, the one-stop shop regulator ought to turn its mind to the information that must be collected from NFPs, determine whether the information is sufficiently comparable to other NFPs (and where is it not, reconsider its collection) and request a standardised form to be lodged with all relevant information about the NFP in the one location. The use of the standard chart of accounts as suggested in the ACNC

Implementation Design Discussion Paper is a good starting position to create comparability in data.

Annexure 1

The objects for which the RSL (Queensland Branch), District Branches and Sub-Branches are established are as follows:

1. provide for the sick, helpless, wounded, aged, vulnerable, destitute and needy among those who are serving or who have served in the Australian Defence Forces and their dependants;
2. perpetuate the close and kindly ties of friendship created by a mutual service in the Australian Defence Force or in the forces of nations traditionally allied with Australia and the recollections associated with that experience;
3. maintain a proper standard of dignity and honour among all past and present members of the Defence Forces of the nation and to set an example of public spirit and noble hearted endeavour;
4. preserve the memory and the records of those who suffered and died for Australia, erect monuments to their valour, provide them with suitable burial places, and establish and preserve, in their honour, the annual commemoration days known as ANZAC Day, Remembrance Day and other commemorative days;
5. encourage loyalty to Australia and secure patriotic service in the interests of Australia;
6. protect the good name and preserve the interests and standing of members of the Australian Defence Force;
7. encourage Members, as citizens, to serve Australia with that spirit of self-sacrifice and loyalty with which they served as members of the Australian Defence Forces; and
8. provide welfare to the sick, helpless, wounded, vulnerable, aged, destitute and needy.