



**S·A·R·R·A·H**  
Services for Australian  
Rural and Remote Allied Health

## **Response to a Consultation Paper**

# **‘Review of Not-for-profit Governance Arrangements’**

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## **Background**

SARRAH welcomes the opportunity to respond to the consultation paper titled ‘Review of not-for-profit Governance Arrangements’. In developing this document SARRAH has taken into account the above mentioned consultation paper as prepared by The Treasury and Treasury’s Not-For-Profit (NFP) Reform Factsheet ‘Review of Not-For-Profit Governance Arrangements’ and Frequently Asked Questions.

SARRAH acknowledges the concerns of the NFP sector that current governance requirements across all Australian jurisdictions can be duplicative, burdensome and unclear. SARRAH supports a principles-based approach to governance centralised through the Australian Charities and Not-for-profits Commission (ACNC). SARRAH agrees that governance rules need to take into account the size of the entity, the risks it presents by virtue of its activities, and turnover as well as the level of government support that a NFP receives.

SARRAH is a NFP organisation, recognised as a national peak body representing rural and remote Allied Health Professionals working in both the public and private sector.

SARRAH advocates for and provides services to rural and remote Allied Health Professionals on a local, state and national level. As a consequence SARRAH is committed to supporting Allied Health Professionals who provide primary health care services to people residing in rural and remote Australian communities.

SARRAH maintains that every Australian should have access to equitable health services wherever they live and that Allied Health Professional services are basic and core to Australians’ primary health care and wellbeing.

SARRAH provides the following responses against each of the consultation questions.

## **Responses to 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 to?

*Yes. The legislation should clearly state who responsible individuals must consider when exercising their duties and to whom they owe duties to.*

*Any governance arrangements must ensure that the legitimate interests of stakeholders are properly and appropriately considered.*

*NFP organisations primarily operate for a social or community purpose and legislation must account for their diverse purposes (member-based, fundraising, charitable), the types of entity, the size and structure of organisations, reliance on volunteers, stakeholders including funding providers, service providers and other funding arrangements.*

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?

*The responsible individuals of NFPs need to consider all stakeholders including members, donors, beneficiaries, external funding providers, as well as entity employees and the mission and purpose of the entity. The public need to be considered in the particular role in which they interact with NFP's such as members, funding providers, service providers (volunteer and non-volunteer), service recipients and entity involvement (Board/Committee members).*

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

*The core duties of responsible individuals that should be outlined in legislation include ensuring that the relevant NFP meets all legislative standards, undertakes best practice elements for good corporate governance and achieves the NFPs objectives in an effective and transparent manner. While governance principles cannot, in themselves, prevent corporate failure or poor corporate decision making the principles should provide a reference point to minimize problems and optimize performance & accountability.*

*The duties of responsible individuals should also include policy making (including a Business or Operational Plan and an Annual Budget), strategy formulation, risk management, monitoring and supervising and providing accountability including regular evaluation of the NFP. Responsible individuals have a duty to act according to high ethical standards and to not misappropriate funds. The responsible individual will distinguish and delineate between the role, responsibilities, authorities and processes of governance (activities of the Board) and that of operations (Management).*

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

*The minimum standard of care required to apply to duties should be determined on a entity basis but would include adherence to the policy and objectives of the entity, following of operational guidelines, financial delegations and codes of conduct. The same minimum standard of care should apply to all entity employees and volunteers but the requirements under the minimum standard of care may differ depending on the role of the employee i.e. paid employees, volunteers, professionals or lay persons. Paid employees should have a higher level of accountability and responsibility within the*

*entity's organisational structure. Professional employees need also to adhere to the legal and ethical requirements of their profession.*

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)?

*Responsible individuals should not be required to hold particular qualifications however, it is essential that they have relevant experience and skills (developed historically) and be required to have undertaken or undertake governance training. The experience and skill set required by responsible individuals should be tiered depending on the size of the NFP, the amount of funding it administers and the purpose/activities of the organisation.*

*The responsible individual requires a blend of qualities, skills, knowledge, experience, operational and technical expertise relevant to the operations of the entity including policy development, executive and leadership experience, financial management and knowledge and understanding of government and governance processes. Appropriate entity specific knowledge will be developed through on-the-job training and experience.*

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

*No. If there is more than one designated responsible individual then the minimum standards should apply to all of the responsible individuals of an entity.*

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

*Yes. There will be issues in attempting to standardize the duties required of responsible individuals across all entity structures and sectors registered with the ACNC. The NFP sector is comprised of vastly different entity sizes, structures, purposes and activities. However there is commonality in the overall responsibilities of NFPs and the duties of responsible individuals of an entity and these can be generically documented.*

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?

*Yes. The role and accountability of volunteers within NFPs needs to be clearly documented and defined for the protection of both the NFP entity and the volunteers particularly in respect to dealings with the public. Valid insurance that covers the entity and volunteers within the entity is essential.*

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

*Yes. Any NFP that is responsible for large financial and property transactions such as fundraising and public donations will require a higher standard (i.e. more defined) of*

*accountability and procedural requirements particularly with respect to record keeping and reporting. NFPs that receive government funding sign specific funding agreements that dictate operational and reporting requirements.*

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?

*Yes. The core duties should be based on existing legislation and requirements.*

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

*Registered entities should be required to disclose who the responsible officer is for the entity, the organisational structure of the entity including remuneration, the purpose and objectives of the entity, key stakeholders, and all relevant documentation such as the Constitution, Strategic, Annual or Operational Plans, Chief Executive Instructions (including Information Technology, Risk Management and Fraud Policies), Human Resource Policies, Codes of Conduct, Job or Duty Descriptions, Operational or Procedural Manuals and Audited Financial Statements. A requirement to provide an Annual Report will also ensure accountability to primary stakeholders.*

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

*For entities to be fully accountable, remuneration (if any) of responsible individuals should be disclosable. It is important that such remuneration can be separately identified in financial and other reports (as applicable).*

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

*Yes. The suggested criteria in relation to conflicts of interest are appropriate.*

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)?

*Yes. Where the beneficiaries and responsible individuals are related a conflict arises between public duty and private interest and this could influence the performance of entity duties and responsibilities.*

*It is essential that the criteria specifically states "that the personal interests of a responsible individual member, and those of associated individuals, must not be allowed to take precedence over those of the entity generally" is included as a specific conflict of interest requirement".*

15. Should ANCN 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'?

*Yes. The ANCN governance obligations should stipulate the types of conflicts of interest that responsible individuals in NFP's should disclose and manage and this should reference the Corporations Act understanding of 'material personal interest' as relevant. Although the types of conflict of interest specified may not be applicable to all NFPs they still need to be clearly stipulated.*

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

*It is essential that all NFPs have a formal Risk Management or Fraud and Corruption Plan that clearly states the entity's attitude to fraud and corruption and commitment to risk management and control (i.e. prevention, detection, response). A key strategy in managing the risk of fraud is the development and maintenance of a sound ethical culture that is engendered from the Board and management down, together with effective communication of the expectations of employee and volunteer conduct.*

*Internal controls are essential for fraud prevention and detection and internal control policies and procedures should be developed and made accessible to all employees and volunteers. Operational procedures including financial delegations and authorities should be clearly documented. Accounting Standards where relevant should be adhered to such as AS8001:2008 (Fraud and Corruption Control) and AS/NZS 4360:2004 (Risk Management).*

*Appropriate staff training is essential and all employees and Board members should receive training in the Code of Ethics and Conduct at the time of induction to the NFP. Training should include the accepted procedures for reporting of suspected fraud. Employees and volunteers who have responsibility for services delivered by third parties/service providers to customers/clients or the entity should undertake additional training in contract management. Initial confirmation of the bona fides of suppliers and customers may also be useful in minimizing risk.*

*Employee screening may be conducted including independent reference checks, verification of formal qualifications and credentials claimed, police criminal history checks, employment history checks, ASIC Directorship and Shareholding searches and Bankruptcy searches.*

*Comprehensive record keeping requirements (particularly the use of an IT-based financial management system with internal tracking of transactions), monthly reconciliation of expenditure, revenue and bank accounts, and management accounting reporting should be implemented. Public funds should be able to be accounted for separately from private or entity-specific funds.*

*NFPs should maintain insurance cover that meets the needs of the entity.*

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

*Due to the variance in NFPs, broad requirements that ensure adequate procedures are in place are preferable than to particular requirements.*

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

*Yes. It is appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances. Any NFP with an existing government Funding Agreement will already have complied with government mandated minimum insurance requirements.*

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

*No. The responsible individual's entity should be required to have indemnity insurance that will provide cover for the responsible individual.*

20. What internal review procedures should be mandated?

*All NFPs should be required to undertake an annual internal review of financial procedures that should then be signed off by either the Audit Committee or Board. Reviews should be conducted on financial delegations to ensure these are current and appropriate including bank account access and signatories, authority to sign cheques, funds authorization, accounts payables and receivables processes, banking procedures, record-keeping and reporting. All NFPs should be required to prepare an annual financial report even if they are not required to have it audited.*

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

*NFPs should be required to include in their governing rules the objects and powers of the entity and if a member-based entity then the qualifications for membership, how to join and subscribe and suspension or termination of membership. The governing rules should also cover the Board and other Committees, delegations and Charter including how to fill vacancies and proceedings of the Board, meetings of the Board including quorums and minutes, Annual General Meeting including members rights, amendment of the governing rules, funds, accounts and inspection of records, disputes and mediation, dissolution of the entity and distribution of property on 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. The ACNC should assist in determining the core minimum requirements of the governing rules for NFPs, which should then be mandated.*

23. Who should be able to enforce the rules?

*The ACNC should be able to require a NFP to abide by the governing rules of that entity. Any legislation that the entity is bound by should also be enforceable by the relevant legislative body or agency.*

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 within its regulatory and reporting responsibilities have a role in enforcing and altering governing rules in particular circumstances such as the wind-up or deregistration of an entity, or the non-compliance of an entity with legislation.*

25. Should model rules be used?

*Yes. A template document (i.e. model rules document) would be beneficial in standardising a format for governing rules and ensuring minimum governance measures are met. There needs to be allowance in the model rules document, together with the mandatory rules, for replacement rules to accommodate the differing needs of NFPs. It is feasible that more than one model rules document or a menu of model rules including core and optional components will need to be developed.*

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

*Governance rules should mandate the rights of members including for the Annual General Meeting, general and special meetings, dispute resolution and Board or Committee membership.*

*Governance Rules should specify qualifications for membership, register of members, how to subscribe and information concerning suspension, withdrawal or termination of membership and appeals.*

*Governance rules should detail meeting requirements including calling of and notice of meetings, proceedings, meeting quorums, adjournment of meetings, minutes, proxies, vacancies, voting and polls.*

*Governance rules should include a disputes and mediation process to resolve member grievances.*

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

*Yes. The governance rules detailing general or AGM meeting requirements are applicable to non-membership based entities as are the dispute and mediation processes (e.g. entity/client/service provider dispute).*



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

*Yes. Meetings form a historical record of the business of the entity and compulsory requirements such as minute taking are appropriate.*

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

*Yes. Small NFPs with limited resources will benefit from specific governance arrangements and the support that the ACNC will be able to provide once established.*

30. How can we ensure that these standardized principles-based governance requirements being administered by the one-stop shop regulator will lead to a reduction in red tape for NFPs?

*It will need to be ensured that the standardized principles-based governance requirements administered by the ACNC replace any existing governance requirements under Commonwealth laws or contracts so that additional requirements are not imposed on NFPs. Standard templates for model rules will also assist in simplifying processes and reducing red tape for NFPs.*

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

*The principles should include the responsibility of the Board (entity) to provide good governance and leadership including understanding of legal duties and the entity structure, ensuring that the entity achieves its purpose, ensuring that the Board and entity work effectively, exercising effective control of the entity and ensuring it complies with all legal and regulatory requirements, behaving with integrity and being open and accountable both internally and externally.*

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

*This question is best addressed by those entities to whom it applies.*

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?

*ACNC must continue to consult with the NFP sector on proposed reforms and future operating arrangements.*