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Mr Christopher Leggett
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Dear Mr Leggett

REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS

I respond to the invitation to provide a submission to the Review and offer the following comments in relation to the Consultation Questions.

Responsible Individuals' Duties

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

Yes.

2. Who do the responsible individuals of NFPs need to consider when exercising their duties? Donors? Beneficiaries? The public? The entity, or mission and purpose of the entity?

Responsible individuals have a responsibility to those they serve and those who fund the registered entity. They should spend wisely and appropriately, however, and not become agents of donors.

3. What should the duties of responsible individuals be, and what core duties should be outlined in the Australian Charities and Not-for-profits Commission (ACNC) legislation?

Responsible individuals should be accountable and transparent.

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 standard of care should apply to all, as set down on pages 16 and 17 of the Consultation Paper, plus my two additional recommendations:

- **A duty of care and diligence;**
- **A duty to act in good faith in the best interests of the entity;**
- **A duty to not misuse their position;**
- **A duty to not misuse information;**
- **A duty to disclose material personal interests;**

AND

- **A duty to act in the best interests of the public and donors;**
- **A duty of financial and public accountability and disclosure.**

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)?

The qualifications and skills should match the standards and skills level of the job.

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

No. All responsible individuals should possess the qualifications and skills to match the responsibilities of the job.

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

Responsible individuals should be required to assume the same responsibilities across all entity structures and sectors, but not the same 'duties'.

10. Is there a preference for the core duties to be based on the Corporations Act, the Corporations (Aboriginal and Torres Strait Islander) Act (CATSI Act), the office holder requirements applying to incorporated associations, the requirements applying to trustees of charitable trusts, or another model?

The core duties should be dealt with in the ACNC legislation.

Disclosure Requirements and Managing Conflicts of Interest

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

Registered entities should disclose sufficient information so as to ensure transparency and accountability. Financial records and details

of donated and public funds should be openly available each year for public examination and scrutiny for each fund.

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

Yes. Remuneration should be disclosed, especially if government/ taxpayers' money is involved.

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

The suggested principles should meet 'standard' conflict of interest criteria in that transparency and accountability will discourage personal benefit.

Risk Management

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

Yes. Certainly an investment strategy should be mandated.

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

Yes.

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

Yes.

Internal and External Reviews

20. What internal review procedures should be mandated?

Internal review processes and practices should be required to be undertaken from time to time.

Minimum Requirements for an Entity's Governing Rules

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 mandate minimum requirements.

Relationships with Members

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

Governance rules are needed so that members can participate regularly and effectively in the workings of these organisations.

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

Yes. Meetings allow members to raise issues.

Summary

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?

Rules should be kept simple and concise, especially since non-professionals and volunteers may take on some of the responsibilities and roles in registered entities. Straightforward and succinct regulations will promote participation.

Yours sincerely

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