

27 January 2012

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

Email: [NFPReform@treasury.gov.au](mailto:NFPReform@treasury.gov.au)

Dear Sir/Madam,

***Re: Consultation Paper – Review of not-for-profit governance arrangements***

Thank you once again for providing Surf Life Saving Australia (SLSA) with the opportunity to provide input into the Government's not-for-profit (NFP) reform agenda, and particularly for the opportunity to respond to this consultation paper.

SLSA is a registered charity, as are our affiliated surf lifesaving clubs and other entities that are our members and whom we represent nationally. SLSA is Australia's major coastal water safety, drowning prevention and rescue authority. We are the largest volunteer organisation of our kind in the country. SLSA's core activities are:

- Coastal safety and lifesaving
- Education and Training
- Fitness and sport
- Junior, youth and member development
- Organisational development

SLSA is the peak body for over 330 surf life saving clubs, regional and State centres and operational support units (including helicopter rescue services) throughout the country. It operates across all local, state and national jurisdictions. These clubs and entities are all separately incorporated organisations and as noted above all are registered charities (including SLSA). The continued operational viability of all of these entities is essential to providing a seamless high quality lifesaving operation around the country.

Effective governance is essential to the ongoing, sustainable operations of all organisations, including not-for-profit organisations. Surf life saving organisations around Australia operate under various organisational models, incorporated under state based incorporated associations and companies limited by guarantee being the structures that predominate. As such, SLSA is acutely aware of the varying obligations placed on organisations under the different regulatory regimes. We are also aware of the undue administrative burden that overly bureaucratic schemes can place on organisations, particularly smaller clubs. As such, we believe that any approach adopted by the Government must be flexible enough to allow organisations to manage their own operations and to be able to cater for organisations of varying size, capacity and turnover, within an open and accountable governance framework.

**Australian for life.** 

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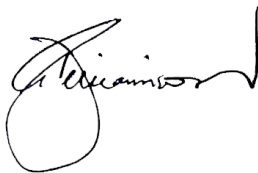
In the enclosed paper, we have responded to each of the 33 questions posed in the Consultation Paper. In summary, SLSA considers that a standardised governance framework for-not-for profit organisations is preferable, as it provides the community and other relevant stakeholders with a consistent, transparent view of the operations of all not-for-profit organisations. In saying this, the Government's discussion paper intimates that not-for-profit organisations should have high levels of responsibility for accountability and transparency due to the degree of public support (government and philanthropic). The paper also intimates that not-for-profit organisations are not held to account as strictly as for profit and government organisations as there is a less direct interaction between not-for-profits and their stakeholders.

While it is reasonable to suggest that there should be a high onus of accountability and transparency placed on not-for-profit organisations, it is important to note the following when determining an appropriate treatment across the entire sector:

- While it may be true that a number of not-for-profit organisations have little accountability to their stakeholders and are run/managed by their board and staff, there are also a large number of member based not-for-profit organisations, including Surf Life Saving. Member based organisations such as SLSA are held to account by our members (via general meetings) on a regular basis, ensuring we remain relevant, viable and focussed on our mission. Any attempt to regulate the sector should be mindful of member based organisations, and should not add additional accountability measures on such organisations, nor should it take away the ability for members to hold such organisations to account.
- In recent times, it has become apparent that a driver for added transparency measures has been concerns raised in the media and by the public regarding administration and fundraising costs of not-for-profit organisations. If this is to be the basis for the Government's approach, it must consider both the variability of the sector in terms of the size, type and operations of organisations. Administering an organisation effectively is essential to maintain good governance, and the costs for achieving this can be quite high, especially for larger not for profit's. The costs of fundraising efforts can be equally high. Some of these costs may be administrative but many are to service the fundraising schemes (eg. the purchase of lottery prizes). The Government must consider this in determining appropriate governance arrangements, particularly if information will be made public and used to compare and judge the performance of varying not-for-profit organisations.

I trust that our feedback to the consultation paper will assist you in determining the best approach to implementing modified governance requirements for not-for-profit organisations. If you have any questions in relation to our submission, please feel free to contact me on 02 9215 8050 or via email at [bwilliamson@slsa.asn.au](mailto:bwilliamson@slsa.asn.au).

Regards,



**Brett Williamson OAM**  
Chief Executive Officer  
Surf Life Saving Australia

**Q1 Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?**

At first consideration of this question, it would appear that the duties owed by responsible persons are self evident and need not be included formally in the legislation. Upon further consideration however, these duties are central to the governance requirements of not-for-profit organisations. If the core focus of the reform agenda and subsequent legislation is to improve efficiency, transparency and accountability of not-for-profit organisations via strong governance, then clear guidance as to the duties owed, by whom and to whom will provide clarity and consistency. This will further enable the ACNC to appropriately regulate the sector and allow for greater comparison across the sector.

As such, we believe it to be appropriate that the legislation be clear on who responsible individuals must consider when exercising their duties and to whom they owe duties.

**Q2 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?**

As stated throughout the discussion paper, not-for-profit organisations are generally established for the broad public benefit, play a unique role in Australia and as such are funded by governments and the general public. It is for this reason that appropriate governance arrangements for these entities are being considered.

As such, the following is SLSA's view of the considerations, in order of importance, that responsible individuals need to consider when exercising their duties:

*The entity's mission and purpose:* This is the most important thing that responsible individuals need to consider. It is for this reason that the entity exists and it is for this reason that the entity receives support from Government and for the public. If responsible individuals focussed primarily on their duty to deliver the entity's mission and purpose, the entity would more readily meet the expectations of its stakeholders, particularly government and the public.

*The entity:* The operational health of an organisation must be the next consideration for directors. Without a financially secure organisation that is managing its risks effectively and maintaining a strong workforce (whether paid or volunteer), it would not have the capacity to meet the demands of other stakeholders.

*Members:* Members are the backbone of many not-for-profit organisations. Responsible individuals must recognise the importance of members in the management of the organisation. A key element of this is often the external independent audit of financial accounts to provide assurance that financial governance is effective. Members have rights and obligations and are able to exercise these.

*Community:* NFP's are established for the benefit of the community. Therefore, responsible individuals must consider the needs of their 'clients' in managing the organisation. In the case of Surf Life Saving for example, our primary stakeholders are the people who use Australia's beaches.

*Financial supporters (including donors, corporate sponsors, supporters, etc):* Without financial support, many not-for-profits would be unable to operate. As such, responsible individuals must always consider these supporters when exercising their duties. This consideration will generally however only extend to the donor's wishes in making a donation, bequest, etc. to an organisation. That said, the needs of such supporters must never compromise a responsible individuals focus on the entity's mission and purpose. Adherence to the entity's mission and purpose should satisfy the needs of most supporters.

In making this statement, SLSA would like to make a clear distinction between donors and supporters. SLSA receives tax deductible gifts from individuals each year to support its operations. Those that provide such gifts are donors. SLSA also conducts a range of other fundraising ventures, such as lotteries and receive sponsorship from corporate organisations. In these instances, individuals might buy a lottery ticket and would hence be classified as supporters. Such supporters do not receive tax deductible receipts.

**Q3 What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation?**

The primary duties of responsible individuals which should be reflected in the ACNC legislation are those captured as directors' duties under the *Corporations Act*. The following is an overview of the duties.

Responsible individuals of not-for-profit entities must:

- demonstrate care and diligence
- not improperly use their position for personal gain
- not improperly use information obtained
- act in good faith in the best interests of the entity
- notify other responsible individuals of a material personal interest when real or perceived conflict of interest/s arises
- ensure the entity is meeting its statutory obligations under the Act (e.g. is meeting its reporting obligations, is maintaining its NFP status and respective charity or industry status, etc).

**Q4 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 minimum standard of care required to comply with the duty should be the standard of care expected of a reasonable person in carrying out their own personal affairs. The standard of care will be somewhat dictated by the roles and responsibilities of the particular person.

Demanding different standards of care, may lead to unintended negative consequences of having different standards, eg. people refusing to take on volunteer leadership/governing roles and/or difficulties in attracting competent staff.

As such, there should be no difference in the standard of care required of paid employees, volunteers, professionals or lay people.

**Q5 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)?**

This concept initially appears to be a sensible approach as it would ensure that those individuals making decisions within not-for-profits, are appropriately skilled and qualified to meet the expectations of the community. That said, the concept is not supported as it raises a number of issues:

- A large proportion of the responsible individuals in not-for-profit organisations are volunteers including directors, secretaries and public officers. Any additional qualification/skill requirements placed on these individuals would likely act as a deterrent to individuals wishing to take on such roles. There may also be consequential effects on the benefits provided to volunteer directors under volunteer protection legislation.
- Many not-for-profit organisations provide learning and development opportunities for young people. As such, young people are often provided with decision making responsibilities within those organisations. Such practices ensure long term organisational sustainability and contribute to building social capital. Added skill requirements would prove difficult for a young person to attain.

As such, SLSA does not support the concept of a statutory requirement for responsible individuals to hold particular qualifications or have particular experience or skills. Any such requirements should be determined by the entity.

**Q6 Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?**

No. For consistency across an organisation and across the sector, minimum standards, as outlined in the response to Question 3, should be applied to all responsible persons of a registered entity. These are minimum requirements and it is important that all individuals responsible for the stewardship and decision making for the entire organisation are bound by the same requirements.

**Q7 Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC?**

No significant issues. Once again for consistency, the duties required of responsible individuals must be common across the entire NFP sector. The duties are a minimum standard and are all essential for the effective conduct of any entity, including a not-for-profit entity. This does not prevent other specialised duties being applied within individual sectors.

**Q8 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?**

The *Corporations Act* requires additional obligations/considerations with respect to Directors and to those that manage companies. These include that a Director must

be over 18 years of age (Section 201B(1)) and that a person must not act as a director (or manage a company) without court consent if they have been disqualified from doing so (Section 201B(2)) due to such things as bankruptcy, personal insolvency or various criminal offences (such as fraud, offences under company law or offences resulting in imprisonment). State associations incorporations legislation also provides for minimum ages of members of a management committee.

SLSA considers that the provisions in the *Corporations Act* described above, disqualifying an individual from acting as a director (or managing a company) should be included in the ACNC legislation. SLSA also considers that the legislation should define a minimum age for an individual serving as a director or a member of a management committee (in respect of some incorporated associations) as 16.

**Q9 Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?**

It would be too difficult to establish a sliding scale of standards approach. The focus should be on complying with a set of standard principles.

In a broad sense, it would appear that the minimum standards are sound across the entire sector. The parts of the sector that would appear to be higher risk (i.e. unincorporated associations) would (or should) be bound by the proposed legislation and hence the minimum standards would now be applied to responsible persons from those organisations, where no such obligations exist now. Requiring a NFP to be incorporated in order to be registered by the ACNC may be the most appropriate treatment to regulate this currently un-regulated part of the sector.

On a sector by sector basis, there will be additional obligations that will continually need to be applied and reviewed. For example, responsible individuals working with children will need to maintain appropriate approvals to work with children (working with children check, blue card, etc); not-for-profit entities responsible for implementing low cost housing development would require other standards/obligations of their directors, etc. These need not be clarified in the ACNC legislation. Entity specific details will still need to be managed on an entity by entity basis.

Equally, there will be a range of other legal requirements that will be placed onto responsible individuals such as the Workplace Health and Safety obligations as defined in the new harmonised laws. Again, other legal requirements such as these need not be reflected in the ACNC legislation.

**Q10 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?**

The *Corporations Act* governs the operations of a range of different not-for-profit entities that are structured as companies limited by guarantee. As this is a Commonwealth legislative scheme, it operates across state jurisdictions, is consistent throughout the country and would therefore appear to be most appropriate form to apply office holder requirements into a new Commonwealth Act (i.e. ACNC Act).

That said, the Corporations Act has been written to cater for for-profit and not-for-profit entities. As such, some of the requirements, and the way the Act is worded may not capture the operations of all not-for-profits (eg. reference to directors, etc). An appropriate alternative may be to adopt a hybrid of the Corporations Act and a sample association's incorporations act from a state. By using the Corporations Act as a base and modifying the language using the associations legislation, the resultant legislation should be easier to draft (as you aren't trying to combine several different pieces of state legislation) but still be able to reflect the specific requirements of Incorporated associations.

**Q11 What information should registered entities be required to disclose to ensure good governance procedures are in place?**

SLSA agrees that the disclosure requirements for not-for-profit entities should be based on tiered/proportional reporting requirements based on the size of the organisation, its interaction with the public and the level of public/government support (i.e. grants, tax concessions, etc).

In previous submissions, we have endorsed the introduction of a standardised Chart of Accounts for NFP. We would again encourage the enforcement of the Standard Chart of Accounts. This would greatly assist uniformity and transparency of reporting. Financial questionnaire data can then be reported once and used many times. Such data interrogation also allows for peer assessment and could trigger watching briefs.

All organisations should be required to disclose/submit an annual report. The content and requirements for this annual report could vary based on the size of the organisation. The minimum requirement of all organisations might be a reviewed financial statement and an operational statement identifying how the entity has worked towards/met its mission and objectives. Requirements might then increase based on the organisations size, turnover, asset base and interaction with the public with a large not-for-profit required to provide an audited financial statement and a detailed analysis of performance against its organisational strategy.

Fundraising disclosure will continue to be important. It appears that the disclosure requirements set by ASIC and the various State regulators aim to achieve similar outcomes of protecting the consumer based on enhanced disclosure. To enhance disclosure and reduce bureaucracy, these disclosure regimes could be consolidated and apply to all fundraising efforts throughout Australia.

Income and expenditure on fundraising will continue to be an important disclosure item for not-for-profit entities. The manner of disclosure should however be reviewed. In order to ensure consistency across organisations (that raise funds in various ways), improving the way that not-for-profits can show their fundraising costs (eg. admin, prizes, communications, etc) would be ideal.

There are a range of other disclosure requirements currently placed on companies limited by guarantee, such as disclosing details of their directors, inter-group transactions, etc. These are important and should be retained for large not-for-profit entities. Some of these requirements (eg. director/committee member details) may also be an appropriate disclosure for medium size not-for-profits.

SLSA also believes that there should be a provision in the registration and reporting framework for entities which do not solicit or receive public donations to request that the names of their directors' are not made publicly available via the ACNC public information portal. Indeed, SLSA also believes that the contact details of responsible individuals, including directors for all NFPs should not be disclosed on the public information portal.

**Q12 Should the remuneration (if any) of responsible individuals be required to be disclosed?**

Not-for-profit organisations operate in a number of different ways. Many are led and managed by volunteers. As such, the remuneration of their responsible individuals is quite low, usually zero. Many other organisations rely on volunteers and a paid workforce. Whilst it is true that most not-for-profit employees are paid less than their counterparts in the for-profit sector, not-for-profit organisations are still required to compete with for-profit organisations to attract quality staff. As such, the remuneration of staff may represent a significant portion of the operating budget of a number of organisations.

If such information was disclosed and published comparisons between organisations that provide their services primarily through volunteers and those who utilise paid staff would be misleading. As such, SLSA considers this information should not be disclosed.

**Q13 Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?**

Conflict of interest requirements are essential in not-for-profit governance. SLSA considers that the suggested conflict of interest policy is sound. Conflict of interest requirements must be built first and foremost on protecting the interests of the organisation in executing its mission, over the interests of the individuals.

**Q14 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)?**

This may be an appropriate measure to recognise the needs of such organisations. As stated above, conflict of interest requirements are essential and should focus on protecting the interests of the organisation in executing its mission. If its mission is somehow linked to the interests of a range of responsible individuals, this should be taken into consideration. That said, if the requirements are altered for such organisations, they must be written in such a way that a single individual, family or special interest group can't be allowed to exert their interests above all other stakeholders. This may be accommodated by specifying that members of same family cannot represent more than 1/3 of the board and signatories, that members of the same family cannot countersign cheques/ electronic transfers etc.



**Q15 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'?**

Material personal interest is the measure by which responsible individuals should use to determine conflicts of interest that should be disclosed. As such, the Corporations Act understanding is sufficient. It may be appropriate to provide examples of material personal interests for not-for-profit directors as this can sometimes be seen to be a subjective measure.

**Q16 Given that NFP's control funds from the public, what additional risk management requirements should be required by NFPs?**

Risk management should be a priority for all organisations regardless of whether they operate for profit or are not-for-profit. The fact that many not-for-profit organisations receive and control funds from the public should not add a higher burden of risk management on a not-for-profit organisation. Equally, for profit organisations manage the funds of a range of stakeholders including the public who invest in such companies for financial gain (including via superannuation funds). Indeed all organisations including NFP's are subject to the same legal obligations to manage their affairs properly and minimise risk including workplace health and safety laws, common law liability, etc.

It is also worth noting that not all not-for-profit organisations control funds from the public. Even some organisations that are registered as a DGRs do not control public funds as many do not actively solicit nor receive donations.

As such, SLISA does not consider that additional risk management requirements should be required of NFPs. Existing arrangements regarding fundraising (i.e. fundraising disclosures, etc) could be extended and enforced federally to provide consistent safeguards around the country in this area. Equally, measures already discussed around managing conflicts of interest should be mandated as they are for other for profit entities.

Beyond this, not-for-profit organisations should be assisted in managing their risk. Such organisations are set up for the good of the community, and they should be assisted (via tools and resources) to minimise their risks. This should not be mandated.

**Q17 Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?**

As previously stated, requirements for risk management, such as investment strategies should not be mandated for not-for-profit organisations. NFPs should be assisted in managing their risks. A broad list of requirements (such as investment policies, insurance) may be suggested and some tools may be provided to assist, however these should not be mandated. Organisations should be empowered to make their own governance decisions.

In making this recommendation to not-for-profit organisations, there is an existing risk management standard, AS/NZS ISO 31000-2009 Risk Management – Principles and Guidelines<sup>10</sup>. Not-for-profit organisations should be supported in meeting the requirements of this standard.

**Q18 Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?**

It would be extremely difficult, if not impossible, to mandate a set of minimum insurance requirements that would be appropriate across the tens of thousands of NFP entities.

Insurance is one measure to manage the consequences of risk. That said, insurance is often an expensive exercise and may be unaffordable for many small not-for-profit organisations.

As such, appropriate forms of insurance for not-for-profits should be highlighted, along with advice on how best to source insurance (i.e. directly with insurance companies, via a broker, etc). Again, not-for-profits should be empowered to make decisions about appropriate insurance levels. A not-for profit organisation's insurance requirements will be dictated by its risk profile thus again demonstrating the importance of risk management.

**Q19 Should responsible individuals generally be required to have indemnity insurance?**

Responsible individuals should be encouraged to have indemnity insurance. They should not be required to have indemnity insurance. Once again, an organisation's risk profile will dictate this requirement.

**Q20 What internal review procedures should be mandated?**

The annual preparation and publishing of an organisation's accounts should be an essential requirement of all not-for-profit organisations. Where possible, these should be prepared by a qualified accountant. Dependent upon the size of the organisation, these accounts should be independently audited.

We note that the explanatory materials to the draft ACNC legislation have suggested the criteria that would determine the reporting requirements (including financial reporting and audit) for organisations. This document defines the tiers as follows:

**Small entity:** Annual revenue of less than \$250,000  
Is not a deductible gift recipient

**Medium entity:** Annual revenue of less than \$1m and is not a medium entity.

**Large entity:** Annual revenue of \$1 million or more.

While we agree that the revenue bands identified above are appropriate, SLSA considers the second criterion for a small entity to be inappropriate. This asserts that the reporting obligations of a deductible gift recipient regardless of their turnover

should be higher than that of an organisation of the same size that is not a DGR. All such organisations may be involved in community fundraising. We believe that this is not appropriate and should be modified.

The resources available to small not-for-profit organisations are scarce regardless of their status. We believe that the reporting requirements for small organisations should be the same regardless of their DGR status.

If the Government wishes to add a higher onus of proof on organisations that receive government support, this could also be provided on a tiered basis. For example, an organisation that is a small DGR and receives over \$100,000 of its revenue from Government grants or donations (i.e. benefiting from Government concessions), then it could be classed as a medium sized entity. All other small DGRs could still be classed as small sized entities.

In respect of an organisations audit requirements, SLSA believes that the tiered reporting requirements as described above, irrespective of an organisation's DGR status should stand. In making this statement, SLSA acknowledges however that it is good governance and financial management practice for an organisation to have a formal audit undertaken. Indeed, national organisations such as SLSA may set policies for its subsidiaries to have audited accounts to ensure good organisational governance. In fact, most of SLSA's State Centre subsidiaries mandate that all of its member surf life saving clubs be properly audited.

The requirement for 2 people to sign and/or authorise any financial transaction within a not-for-profit is also an essential measure to ensure the integrity of the financial transactions.

#### **Q21 What are the core minimum requirements that registered entities should be required to include in their governing rules?**

We believe that the minimum requirements for a registered entity's governing rules are as follows:

- Objects
- Rules regarding amendments (i.e. should only be by Special Resolution)
- Distribution of property upon winding up (i.e. maintaining not-for-profit status of funds)
- The board/committee/trustees (i.e. composition, election/appointment, filling vacancies, powers of the board/committee, etc).
- Roles/obligations of directors/officers.
- Rules defining how the board operates at meetings (i.e. calling meetings, voting, quorum, etc)
- Appointment of staff (including Chief Executive Officer)
- Appointment of a company secretary/public officer, etc
- Managing conflicts of interest
- Define any audit requirements (including the requirement to present financial statements).

Finally the rules must have a requirement showing the clear division of poers between the "members" and the governors.

**Q22 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?**

The ACNC should have a role in registering the governing rules of not-for-profit organisations, which should include ensuring that they meet the minimum requirements. This should include approval/endorsement of the rules when an organisation is first registered. It should also include approval of any changes to the rules following endorsement by the members.

**Q23 Who should be able to enforce the rules?**

The members of the entity should be able to enforce the rules. The ACNC should also have the authority to issue warnings and ensure the rules are enforced.

**Q24 Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?**

As stated above, SLSA considers that the ACNC should be involved in registering the governing rules of all not-for-profit organisations. This should particularly include a role to ensure that the rules meet the obligations of not-for-profits such as the provisions around winding up or deregistration. The ACNC should not have the power to alter an organisation's governing rules, this should rest with the members. It should however be able to issue warnings and deregister an organisation as a not-for-profit if it continually fails to meet the expectations/requirements.

**Q25 Should model rules be used?**

Yes. Model rules are currently used in many states to assist incorporated associations establish rules that meet the minimum requirements of such associations legislation. These are a good tool to assist organisations and should reduce the number of non-compliant rules submitted to the ACNC for approval, however organisations using and relying on such models should be clearly notified that these are models only and should not be slavishly followed. The model should be varied to meet the organisations' structure and requirements not the other way round.

**Q26 What governance rules should be mandated relating to an entity's relationship with its members?**

SLSA considers that the following rules should also be mandated relating to an entity's relationship with its members:

- define the members (i.e. who are the members, how are they appointed and what are their voting and/or other rights).
- liability of members.
- conduct of General Meetings (including notice requirements, notices of motion, proceedings, voting, etc.)
- stipulate the requirement to hold an Annual General Meeting.

**Q27 Do any of the requirements for relationships with members need to apply to non-membership based entities?**

No. The requirements we have listed above are very specific to member based organisations. These would not be applicable to non member based organisations.

**Q28 Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?**

Yes. As stated above, SLSA considers that all member based not-for-profit organisations registered with the ACNC should include in their rules a requirement to conduct an annual general meeting, and rules around convening special general meetings. Meetings of the board/committee and the procedures governing such meetings should also be clearly defined in the rules of all not-for-profit organisations irrespective of whether they are member based or not.

**Q29 Are there any types of NFPs where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFPs?**

Smaller organisations will be the most vulnerable and will require the most support in implementing these governance arrangements. Many of these small organisations do not have the human or financial resources to commit to major change and regulatory reform will add a huge burden. Assistance at the front end in establishing effective model rules and processes will be essential.

Many of these smaller organisations (whilst not all) will be unincorporated associations. This group will be the part of the sector that will be hardest hit, as there has never been any regulatory oversight or requirement for these organisations. To achieve better outcomes, support should particularly be provided to such organisations.

**Q30 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?**

The following are the three key factors previously identified throughout this submission, that need to be addressed in order to reduce the red tape for NFP's.

Proportional reporting requirements

The governance requirements for not-for-profits should be proportionate to the size of the organisation and the amount of Government support it receives. Placing an unnecessary reporting burden on a small not-for-profit would add unnecessary red tape for that organisation for minimal community benefit.

State/National Reporting Duplication

As stated in the discussion paper, the governance and regulatory requirements being established are initially targeted at managing compliance of organisations registered at the Commonwealth level. Registration of charities for the purpose of tax concessions will be one thing that will be regulated by the ACNC and will affect all organisations regardless of their registration status. In the transitional period prior to

the ACNC replacing the reporting requirements for state based NFPs, it is essential that the reporting requirements for such organisations be limited to that required of their charities registration and should not include the governance burden that is discussed in this paper. That would simply replicate requirements that are currently being mandated by state agencies and increase the burden on organisations.

We also note from your discussion paper that the reporting requirement for Companies Limited by Guarantee and other NFPs regulated by the Commonwealth will be transferred from ASIC to the ACNC. We welcome this commitment, as it is essential to minimise duplication and red tape.

#### Federal Agency Reporting

The basis of the one-stop shop regulator must be on a report once, use often basis. For this to work, all agency reporting including that which is required for service funding arrangements and grant funding, must be based on the information provided to the Regulator. If a set of financial statements, organisational outcomes, etc are provided in a general reporting format to the regulator, these should be used by other government agencies rather than grant specific reporting formats being required. This will require many government agencies to vary their grant reporting requirements to focus on outcomes rather than inputs, and organisations will need to ensure that their annual reports/returns report on key organisational outcomes including those required of the grant funding. If this is not the case, unnecessary reporting duplication will continue.

#### **Q31 What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?**

Throughout this submission, SLSA has supported most of the concepts presented by the government including minimum requirements for responsible persons, standard requirements for rules and for risk management. In many instances (eg mandating insurance requirements) SLSA has suggested that the Government should provide support to organisations to determine their own needs/requirements. It is in areas such as these, that legislation/regulation would not be helpful. Support/guidance by the ACNC would be more appropriate in these instances than formal regulation.

To ensure compliance measures can be put in place, the other requirements discussed throughout this submission should be included in legislation/regulation. Without this, the ACNC will have difficulty in carrying out its functions.

#### **Q32 Are there any particular governance requirements which would be useful for Indigenous NFP entities?**

Each of the requirements discussed throughout this paper are relevant to all NFPs including Indigenous NFPs. Those requirements stipulated of member based NFPs could also be useful for Indigenous NFPs where the key stakeholders may hold a similar relationship to the organisation as members do to organisations such as SLSA.

**Q33 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?**

This submission, including the opening preamble, provides SLSA's view of the important considerations for the government in respect to NFP governance. SLSA again wishes to highlight the importance of outcomes based reporting for all government agencies. Reducing the reporting duplication throughout government agencies will be the biggest reduction in burden for organisations.

In our preamble SLSA also urged the Government to consider the entire sector in its NFP reform agenda. The accountability measures in place in many NFPs around Australia are extremely high, particularly member based NFPs. Any reform must consider the existing transparency/accountability measures in place across the sector and not add greater burden than that which is already required.

We would also ask that the Government to consider establishing a set of KPI's over the first 5 years, to measure the success of the ACNC in achieving its objectives. The KPI's should measure success in terms of a harmonisation of laws affecting NFP's across Australia; resources produced, tools/systems developed, red tape reduction, etc.