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for Global Health

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## Re: Response to Consultation Paper - Review of Not-for-Profit Governance Arrangements

On behalf of the George Institute for Global Health we are pleased to have the opportunity to respond to the above Consultation paper.

Our submission supports the principles-based approach to legislation and provides responses to each of the discussion section of the paper. Should an opportunity arise we would be pleased to participate in further discussion on this or future legislation arising from the reform of the NFP sector.

By way of background The George Institute for Global Health is dedicated to transforming healthcare to address the world's leading causes of death and disability. Our research delivers smart healthcare solutions that are safe, accessible, affordable, and deliverable on a global scale.

Our solutions extend knowledge from the laboratory into clinical practice in the hospitals, clinics and medical facilities serving millions of people who are vulnerable and disadvantaged around the world.

In just 12 years we have invested over \$250 million in 70 research projects across 50 countries. We work with some of the world's leading universities, health professionals, hospitals and governments. We are currently ranked number one in the world for research impact by the SCImago Institutions World Rankings report.

The George Institute welcomes the establishment of the ACNC as a "one-stop-shop". It is imperative that the new legislation reflects the promises made by Government to minimise the regulatory burden on NFP organisations avoiding duplication of paperwork and reporting as much as possible.

Yours faithfully

Professor Vlado Perkovic  
Executive Director

Affiliated with



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## General comments

The George Institute agrees with a principles based approach to reform. In accord with government not-for-profit reform process the core principles should aim to:

1. Reduce red tape
2. Reinforce public confidence in the sector
3. Facilitate report once, use often
4. Be reasonable and proportionate to the size and scope of the reporting entity

A principles-based approach will provide guidance, rather than being prescriptive.

The NFP sector comprises more than 600,000 different organisations with many and varied governance models developed through considerable investment of both time and energy. This varying depth and diversity of the sector does not lend itself to a “one size fits all” model and much of the already existing effective governance models may well be undone if the reform process seeks to be too prescriptive.

The George Institute supports Philanthropy Australia view that the legislation:

“...establish high level principles but not mandate the details of how individual directors respond to that framework. Compliance guidance and checklists should be encouraged for all entities but not required. It is essential that directors seriously read and consider the governance principles according to their own entity.”

An organisation must make decisions about the best approach for its own particular circumstances taking into account the fiduciary responsibility of directors and the need to maintain a focus on the mission and community expectations.

It is vital to sector confidence that there be a reduction in the regulatory burden, in line with the principles underpinning the entire reform process. It requires harmonisation of fundraising and reporting to ensure the above aims can be delivered in a manner that is beneficial to the sector generally and the communities it serves.

## Answers to specific consultation questions

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

No. The wide range of entities and purposes in the not-for-profit sector will make it very difficult to enact legislation capable of covering them all succinctly.

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?*

This will vary depending on the nature and purpose of the entity. The legislation should require the governing rules of an entity to identify its responsible persons and to whom they are accountable. It should also require directors to review this list regularly.



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

The primary duty of responsible individuals should be to make decisions in a manner that is consistent with the mission and purpose of the entity. Responsible persons should be required to comply with the governing rules of the entity.

In line with Philanthropy Australia we support the *Investment Management Code of Conduct for Endowments, Foundations, and Charitable Organisations*, which provides a sound basis for the duties of all directors and can be adapted for use by NFPs:

- A. Act with loyalty and proper purpose.
  - B. Act with skill, competence, prudence, and reasonable care.
  - C. Abide by all laws, rules, regulations, and founding documents.
  - D. Show respect for all stakeholders.
  - E. Review investment strategy and practices regularly
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 must apply across the board irrespective of whether the individual is paid or a volunteer.

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)?*

In general there should not be a requirement for responsible individuals to hold particular qualifications with the exception of the chairman and treasurer who should have a minimum standard of financial literacy either through qualifications or experience.

Governance requirements should include the need for an organisation to review the skills and expertise of the responsible persons to determine they are in line with the size and nature of the organisation.

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

As above, the Chair and Treasurer or equivalent, should have financial literacy.

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

If the governance requirements are high level principles, standardisation may be useful. However, given the diversity of the sector, if there are very specific mandated duties, this could impose limitations that lead to inefficient and burdensome governance practices which in turn may detract from good governance.



8. *Are there any other responsible individuals obligations or considerations or other issues that need to be covered which are specific to NFPs?*

Maintaining a focus on mission and purpose and a commitment to stakeholder and community engagement is a key accountability for directors and other responsible persons in the NFP sector.

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

In adopting a principles-based approach the principles should apply to all NFPs. Governance standards imposed by legislation should not be higher for different entities.

There will be entities whose own structure will impose higher governance standard. There will also be entities whose size and activities require a higher level of financial and other reporting.

ACNC should assist NFPs by developing national protocols that streamline reporting requirements for entities receiving Federal and State Government funding.

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?*

Core duties should be based on the Corporations Act, which is more regularly considered by the courts and therefore has a higher base of common law. It also strengthens consistency for directors in exercising the responsibilities given the increasing number of for-profit directors taking office in the NFP sector.

## Disclosure requirements and managing conflicts of interest:

### Responses to specific consultation questions

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

The directors should be required to sign a statement which acknowledges either that the entity agrees to adopt the principles stated in legislation or that its internal code of conduct complies with the principles stated in legislation.

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

One of the ACNC's primary purposes is to reinforce public confidence in the sector. Given the levels of difficulty faced by many charities in justifying to the public their spending on administration or staff, it is likely that the public will not appreciate the complexities involved in remuneration of responsible individuals, nor will they seek to understand them. Disclosure will therefore cause confusion without increasing public confidence in the sector, or increasing the amount of funding available to it (in fact, it may well cause a backlash against what the public regards as exorbitant remunerations, and a drop in donations).

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

The criteria suggested to address conflict of interest are reasonable and should provide suitable guidance to directors in exercising their duties.



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)?*
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'?*

The significant cross-over of responsible persons which is now occurring between the for-profit and NFP sectors suggests that adopting the Corporations Act understanding of 'material personal interest' will bring greater consistency to interpreting what is a COI.

However individual organisations are best equipped to address this according to their own needs and resources. Being too prescriptive in the legislation may cause unintended negative consequences for the sector.

## Risk management: responses to specific consultation questions

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

All NFPs should be required to adopt a risk management approach to their business and responsible persons should demonstrate regular review of the guidelines. The depth and breadth of an entity's guidelines will be governed by the size of the organisation, the level of public exposure and donations received.

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

Broad requirements are preferable to particular requirements. Investment strategies should not be necessary across the board.

For NFPs receiving high levels of public exposure and public donations producing an investment strategy is a natural consequence of a responsible director applying a duty of care. The legislative framework should require directors to have in place appropriate strategies for managing the financial and other assets of the organisation, and to review those strategies regularly.

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

Mandating minimum insurance requirements is not desirable.

Directors in developing and monitoring the entity's risk policy will take into account the requirements for insurance based on the operations and the perceived risks faced in delivering on its mission.

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

As above, these matters are best left to the directors of each individual organisation.



## Minimum requirements for an entity's governing rules: general comments

Protecting the mission of the entity is the job of the directors/board/office bearers. The ACNC should provide good governance principles and require entities to report against them using the "if not, why not" reporting approach recommended by the ASX Corporate Governance Council.

Being prescriptive rather than using principles-based approach may inhibit the ability of an entity to attract high calibre responsible persons as the role may appear to onerous. Similarly for staff and other officers a prescriptive approach is likely to translate into more rather than less red tape.

### *20. What internal review processes should be mandated?*

Reviews of procedures in NFP entities allows for increased transparency and a level of oversight that increases public confidence.

All entities should be required to conduct regular reviews, but due to the diversity in size and type of entities mandating processes will not be beneficial as "one size will not fit all".

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

As stated previously synergy with existing legislations will reduce likelihood of misinterpretation. Therefore adopting a similar approach as in the Corporations Act with some mandatory rules coupled with flexibility to adapt rules based on specific needs of an organisation and its mission would be most effective.

### *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 there is a place for mandating minimum requirements and these should mirror elements of existing legislation to reduce potential for differences in interpretation.

### *23. Who should be able to enforce the rules?*

If there is sufficient similarity between the for-profit and NFP legislation then most efficient regulator will be ASIC

### *24. Should the ACNC have a role in the enforcement and alteration of governing rules, such as windup of deregulation?*

Given the supporting role the ACNC is intended to provide to the NFP sector taking a role in enforcement has potential to create conflict of interest. This in turn may diminish the sector's willingness to work with the ACNC, undoing the potential benefits we currently anticipate coming from its formation.

### *25. Should model rules be used?*

Having model rules in place with ability to tailor according to organisational needs will be beneficial for all entities within the sector.