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Women on Boards (WOB) is pleased to provide feedback on the consultation paper 'review of not for profit governance arrangements'.

The basis of our capacity for providing comment is that the principles of WOB are experienced directors in the nfp and other sectors but more relevantly perhaps WOB has extensive experience with the sector.

WOB regularly advises directors and potential directors about governance and other issues facing a nfp director as well as providing a comprehensive recruitment service (at no cost) to the sector.

This gives WOB a good understanding of the key trends facing the sector; the rise of the social enterprise, the need for increased professionalism with financial management and reporting, the need to raise the quality and depth of management in the sector, the need to improve the appreciation of regulatory requirements and most importantly from WOB's remit the issues around gendered employment in the sector.

The consultation paper repeatedly refers to the sector's access to taxpayer and individual donor funding and the consequent need for transparency and accountability to maintain confidence in the sector. In WOB's view this is absolutely essential when considering regulatory tradeoffs.

WOB observes an increasing public availability of annual reports (most readily on websites) and a gradual improvement in the public availability and standard of financial reporting; as well as an increasing trend for bodies to spring up who on the face of it duplicate existing activities; albeit with a 'personal' touch. WOB has a membership base of near 13,000 well credentialed women of which at least 40% are involved in the sector at the governance level.

As a general point WOB considers that rigorous governance standards should be applied to the sector. The Context section sets out a principled based regime which WOB supports. The entities listed at 5.1 to 5.7 seem intended to fall under the CNCPC, which would be the preferred starting point. However, WOB's experience is that the quality of information as to who comprises some of these entities may be less than complete; particularly when the transparency test is applied.

Below are comments against some of the specific questions asked plus some general comments on the final page.

Yours sincerely



Ruth Medd  
Chair

Comments against the Consultation paper topics

## 1. CONTEXT

### 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?
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. What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation?
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?
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)?
6. Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?
7. Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC?
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?
9. Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?
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?

### WOB response

There have been arguments in the public arena for some time that nfp's should not be held to the same standard as public listed companies.

WOB is of the view that this is not the path to follow and the requirements of the Corporations Law should be the standard applied to bodies regulated by CNCP.

## 6.2 DISCLOSURE REQUIREMENTS AND MANAGING CONFLICTS OF INTEREST

### Consultation questions

11. What information should registered entities be required to disclose to ensure good governance procedures are in place?
12. Should the remuneration (if any) of responsible individuals be required to be disclosed?
13. Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?
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'?

### WOB response

See reply above. As a general rule stakeholders have a right to know something of the remuneration of employees.

## 6.3 RISK MANAGEMENT

### Consultation questions

16. Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?
17. Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?
18. Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?
19. Should responsible individuals generally be required to have indemnity insurance?

### WOB response

This is an area where a regulator can assist informed practice. Many nfp directors and management are weak in the area of risk management. Suitable guidelines about insurance and investment strategies (and in fact financial matters) would be a positive contribution to better governance.

### 6.3.1 Internal and external reviews

#### Consultation questions

20. What internal review procedures should be mandated?

### 6.4 MINIMUM REQUIREMENTS FOR AN ENTITY'S GOVERNING RULES

#### Consultation questions

21. What are the core minimum requirements that registered entities should be required to include in their 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?
23. Who should be able to enforce the rules?
24. Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?

#### WOB response

WOB supports a standard constitution being provided by the Regulator; as per Company registration.

### 6.5 RELATIONSHIPS WITH MEMBERS

#### Consultation questions

26. What governance rules should be mandated relating to an entity's relationship with its members?
27. Do any of the requirements for relationships with members need to apply to non-membership based entities?
28. Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?

## 7. SUMMARY

### Consultation questions

29. Are there any types of NFPs where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFPs?
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?
31. What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?
32. Are there any particular governance requirements which would be useful for Indigenous NFP entities?
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?

### WOB response

Some red tape is the cost of doing business – in this case access to tax benefits. A good regulator will monitor the impact of its regulatory impost on a regular basis.

34. 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?

### WOB response

#### Evolution of nfp sector.

Currently WOB estimates that 10% of nfps pay their directors and that this trend is likely to continue with the movement to a social enterprise focus.

In other cases WOB sees no reason why nfps operating commercial operations should not move to pay their directors and to pay tax. Paying directors is in part a gender issue with many directors being women but it is also a matter of improved governance.

#### A Principled based regulatory environment

In relation to principled based regulation, it is useful to note that APRA has a risk based approach to categorizing entities. This then directs the amount of oversight devoted to a given entity. This could be adopted by CNCP; which appears to be in mind in the consultation paper; thus delivering tiered regulatory oversight and not needing to dilute the requirements for transparency and reporting which in WOB's view would be a mistake.

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An issue 'plaguing' those nfps who are required to be audited, mainly companies limited by guarantee, is that this is currently difficult to achieve within the timeframe specified in the current environment when they are on the same timeline as public companies limited by shares. So one benefit of the CNCPC should be that CNCPC regulated bodies can be afforded a reporting timetable that is appropriate.

## **Data collection**

Publicly available data about the nfp sector is less than complete. Sporadic exercises have been undertaken over the years but there is little comprehensive and current data available. For example the size of the sector is often quoted in the media by 'recognised experts' as 700,000. This data goes back to at least 2006 and includes Strata Plans. Hardly a useful way of describing the sector in WOB's view.

CNCPC as the single regulator has a good opportunity to remedy this situation in the context of increasing information and transparency. It may be something that is progressed in stages but recent initiatives by the ABS with their Gender Indicators series is a potential model -

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4125.0>

Hopefully the CNCPC will as a matter of priority provide online registration and information systems to the public; in one fell swoop increasing information about the sector.