

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

Dear Sir/Madam

Re: Not for Profit Governance Arrangements

Activ has reviewed the *Review of Not for Profit Governance Arrangements – December 2011* paper and provide the following feedback and comments to the consultancy questions.

As requested a copy of this feedback has also been provided in Word format.

Yours sincerely



Danielle Newport
Chief Financial Officer

16 January 2012

FEEDBACK & COMMENTS

REVIEW OF NOT-FOR PROFIT GOVERNANCE ARRANGEMENTS

Review of Not-For-Profit Governance Arrangements - Consultation Questions	Activ - Feedback & Comments
1. Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?	Where the constitution of an organisation contains reference to duties within the Objects and Powers these should be the focus of responsible individuals.
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 mission and purpose of the organisation should always be the focus of responsible individuals.
3. What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation?	As per the Corporations Act (CA).
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?	As per the Corporations Act with no distinction between individuals on the basis of payment and/or qualification.
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)?	As per the Corporations Act.
6. Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?	No, to all.
7. Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC?	The perception of personal risk may discourage.
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?	No Comment

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<p>9. Is there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?</p>	<p>NFPs provide a range of services some, such as medical and professional therapy services are deemed to have a higher risk profile than is present in the provision of generalist services in community platforms.</p> <p>The responsibilities of these NFPs may extend beyond the mission and purpose of the organisation and require an additional tier of governance responsibilities.</p> <p>Having said that, all NFPs have a responsibility to ensure that they provide services that are appropriate to the individual circumstances of their service recipients and to monitor their on-going compliance with this.</p> <p>Every organisation has a duty to ensure that it can access the appropriate resources to effectively manage its operations, including its risks. To mandate <u>how</u> this is done should be an internal matter for any organisation, to mandate <u>that</u> it should be done, and provide models, is entirely appropriate.</p>
<p>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?</p>	<p>As per the Corporations Act.</p>
<p>11. What information should registered entities be required to disclose to ensure good governance procedures are in place?</p>	<p>Outcome information. Abridged financials (compliant with AASB on a tiered basis)</p>
<p>12. Should the remuneration (if any) of responsible individuals be required to be disclosed?</p>	<p>No</p>
<p>13. Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?</p>	<p>Yes – clause 126</p>
<p>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)?</p>	<p>As per clause 126</p>
<p>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’?</p>	<p>As per the Corporations Act.</p>

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16. Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?	None
17. Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?	No
18. Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?	The majority of public funded contracts already mandate minimum insurances. Principle based guidance on a tiered basis could be reflected in these contracts.
19. Should responsible individuals generally be required to have indemnity insurance?	Yes
20. What internal review procedures should be mandated?	Current provisions are adequate; rationalisation across states and territories is preferable.
21. What are the core minimum requirements that registered entities should be required to include in their governing rules?	They should be available, but similar to replaceable rules (CA) discretionary areas should be available and highlighted
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?	The provision of "model rules" would be more appropriate.
23. Who should be able to enforce the rules?	ACNC
24. Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?	Yes, through the provision of model rules
25. Should model rules be used?	They should be available, but similar to replaceable rules (CA) discretionary areas should be available and highlighted
26. What governance rules should be mandated relating to an entity's relationship with its members?	No Comment
27. Do any of the requirements for relationships with members need to apply to non-membership based entities?	The principle of the separation of Board membership from Board appointment should still apply.
28. Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?	No Comment

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29. Are there any types of NFPs where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFPs?	No Comment
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?	No Comment
31. What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?	No Comment
32. Are there any particular governance requirements which would be useful for Indigenous NFP entities?	No Comment
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?	No Comment