

## **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?*

The clearer the guidelines provided to NFP organisations, the better chance they have of complying with their requirements. They currently operate under a set of rules, policies and processes and will be looking for similar direction under the new system.

*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?*

Any entity should, through the nature of their mission/ purpose or whatever it may be called, have a set of guiding principles. If followed appropriately, these should determine the processes/ behaviours undertaken by the entity and therefore should protect any donors, beneficiaries and/ or the public. Provided there is a mechanism to ensure the entity is complying with their own principles, the duties should be clear and undertaken.

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

The individual within a NFP group should be provided with a set of policies and procedures (at an induction) under which they must operate when they represent that group. It should include duties they perform in their role within the NFP but also behaviours which are seen as not complying with the group ethos so that they can determine if the boundaries set by the group are reasonable for their personal behaviour expectations.

*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 minimum standard of care should be the same for all individuals regardless of whether they are paid or not but this will also depend on the responsibilities placed on the person. Everyone has a duty of care to be responsible in their behaviour and to ensure the health of well being of others. However, volunteers may not have a duty or responsibility for any financial undertakings as this is given to the paid employee or professional depending on the context of the situation. All standards must be considered in terms of responsibilities within an organisation.

*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)?*

Difficulties within organisations often stem from a lack of knowledge or expertise on the part of a volunteer who is then given responsibility of a position within the group. For example, if someone is being appointed as a treasurer with financial responsibility for donated or government granted funds, there should be some mechanism by which the organisation ensures the person has a minimum level of skills to complete the required duties within that particular role. This is a safety mechanism as well as it protects the group from future problems due to lack of skills and knowledge in an area that can often have legal responsibilities and/ or consequences for incorrect completion of tasks.

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

Minimum standards are often more relevant for some positions within a NFP group. Those who must sign off on legal documents or complete reports which will be read/ acted upon by an external body will have more responsibility to ensure they are knowledgeable and skilled enough to complete the tasks correctly. It is probably these individuals who should have a minimum of identifiable skills.

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

The issue will not be with standardising the duties required but with determining if the responsible individual is able to hold positions in NFP organisations (and especially small entities) without complying with these needs. Will it be a requirement that the person proves their skill prior to being appointed? Who will follow up on every NFP across the nation? Who will provide upskilling in areas identified as needing some support?

*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?*

While there is a responsibility on an individual who volunteers to understand the commitment they are making in terms of skills, time and required behaviours expected, people do not always do so. As a result, they can experience barriers within the organisation which they had not expected. Many NFP do not have induction programs sometimes due to a lack of skills in understanding their value or in being able to develop them. The smaller the organisation, the less likely it is for some of the induction processes to take place. A general program/ checklist available for all NFP but especially smaller groups would benefit them in assisting new people to understand the group and its processes.

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

There are NFP groups which receive funding from external sources (including government grants) where there is a responsibility to be open and transparent with the use of these funds. There is also a reporting expectation linked to this funding requiring a higher degree of expertise. There are also groups who work with vulnerable groups and must therefore practice a higher level of performance in the way in which they carry out their roles/ work. These groups will need to have skills and expertise in some areas and be able to demonstrate these.

*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?*

There is no one size fits all set of core duties as each group has a different level of service they are providing. Where there is a large financial responsibility, the expectations of the office holders should be similarly skilled. It is not easy to determine the minimum level of experience/ qualification that individuals in NFP require as some groups survive because individuals with little or no experience are prepared to take on responsible roles. Perhaps what is required is the opportunity for groups to seek assistance with developing the skills of new office holders. Maybe there is a requirement for a tiered set of core duties based on some level of financial responsibilities for the organisation ie groups with larger incomes and expenditures require more core duties for office holders.

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

The registered entity should provide basic details about their place of business including address and contact details. It is important for the names, residential addresses and some basic information about the office holders of registered entities to be provided. It is also important to update this information as soon as there is any change in it and particularly the changed circumstances of the office holders (ie they move out of state, become bankrupt).

Where relevant, the entities constitution and any policies should be available. There should be some information on the mission/ purpose of the entity. The names and relevant details of any members should also be available where relevant.

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

To allow for the transparent operation of all financial aspects of the entity, any expenditure on behalf of the entity should be disclosed to the relevant authority. In some cases, this does not mean disclosure to a group membership of personal details but a general reporting of the financial status of the entity and reporting on the solvency of the group.

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

Conflict of interest is a difficult area to define as individuals do not always perceive the conflict of their membership or aligning to certain groups as being in conflict with others. The provision of a set of guidelines should at least provide a basis upon which people may be able to consider the conflict.

*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)?*

It is always important to identify a conflict even where there is a relationship between individuals. A common cause may draw people together but it may also be the means by which they later become adversarial and this must be acknowledged even if it does not eventuate.

*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'?*

It is difficult to stipulate the conflicts as they vary with groups and individuals. Provided there is a basis upon which groups can start the process, it will then be up to the person/ persons involved to work through the individual situations.

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

There needs to be some mechanism by which NFP can be monitored to make sure they have adequate processes in place to protect the funds they are using. Many organisations try to make sure they are doing the right thing but do not always understand some of the factors which may impact on their operation. There are external forces over which the organisation has no control such as global financial situations. The supply of a template which explains a range of risk management factors may assist these organisations to look at their own situation and mark the identified factors against their own. This could assist to identify risks

they may not have considered but which they are able to address in their policies or processes.

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

It is very hard to mandate specific requirements as NFP organisations have different purposes, structures and internal processes. A set of recommended options may provide suggestions for them to consider.

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

As insurance is an important component of all operations even for NFP, minimum insurance requirements may be in order to protect the entity but also the individuals involved in its operation, both remunerated and non-remunerated workers.

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

In most cases, NFP organisations recognise the value in protecting all people involved in their operation through the provision of insurance. It is important to make sure that this occurs provided the NFP is in a position to afford the necessary insurance.

*20. What internal review procedures should be mandated?*

Any internal review should be determined based on the size of the NFP and their capacity to carry out the required review. There needs to be a template of the minimum requirements to make sure the organisation can review itself on an annual basis without the expense of external personnel having to do it. At times, a simple form which provides some guidance to an organisation can allow them to identify areas for improvement while celebrating the strengths of the group. This can then be either retained for future comparison or sent to a central place. Allowing someone independent to look at an annual review may pick up some points that need to be addressed by the NFP.

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

Registered entities should have a constitution, terms of reference or comparable set of rules which indicate their purpose and the governance structure of the group. Some policies/procedures covering Work Health and Safety, Code of conduct and similar legislation/statutory regulations are also reasonable to expect an organisation to have.

*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?*

ACNC needs to ensure that registered entities have some governing rules and that there is a mechanism by which this information is provided to the people who work (either remunerated or non-remunerated) for the organisation. ACNC may have a role in providing support to groups to develop or refine their current documents.

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

If the ACNC is to be the one stop shop for NFP and other registered entities, there should be some capacity for them to be part of the rule enforcement.

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

Again, to be a one stop shop, the ACNC will need to have a level of power that means groups do not have to go to a number of agencies in order to comply with their documentation requirements.

*25. Should model rules be used?*

There may be a place for a set of suggested model rules but as not every organisation will fit these rules, it is difficult to mandate a set of rules that will cover all groups.

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

In relation to members, registered entities will have a set of rules about their processes which should include their obligations towards the members (as identified by them) and the responsibilities of those members in their relationship with the organisation. This may include criteria for membership, voting rights, conflict of interest, insurance, reimbursement, WHS obligations, training and development of members (where relevant).

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

These requirements will be dependent upon the nature and purposes of the organisation. Where there is a non-membership group, the requirements for public liability insurance to cover their activities, WHS requirements would be relevant.

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

While it may be difficult to mandate a specific number or type of meetings, there would be an expectation that the organisation will have some form of meeting to ensure the correct governance procedures of the group in informing people of the functioning/ finances on an ongoing basis.

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

It is difficult to point to any organisation as requiring assistance as many organisation, no matter how large or well organised, can require some form of assistance at some stage in their functioning. Smaller groups usually struggle with governance and other requirements as they are not funded to allow this to happen and are more dependent upon volunteer (non-remunerated workers). They will miss training that has a cost associated with it as they are not in a financial position to participate. They do not always have access to the technology or necessarily the skills to access and complete online forms, training or access to documentation. These groups also have less reporting requirements at times and therefore it is easier for them to have problems which are not identified until it is at a crisis stage.

*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?*

Consideration should be given to providing templates which address the needs of small, medium and larger entities and that they are easy to complete. There may be the opportunity to identify if an organisation would like a person from the one-stop shop regulator to visit them (and possibly others in the same area) to provide training or just a check on the governance 'health' of the group.

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

Principles for best practice in governance, including support material on what this may look like, will assist groups to ensure they are complying with requirements. It will also give them ideas about ways in which they can improve their practice to incorporate some of the ideas which work for their specific organisation. Not everything works for everyone but taking parts of suggested things which have worked for others may give them direction on what may be available to help them change to more consistent and practical practices.

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

Governance requirements for any entity will work better if there is support for those who struggle, mentoring and ongoing checks to ensure a minor difficulty does not escalate to a major crisis. It is difficult at times for an organisation to admit they are having problems so some regular checks on groups and informal discussions can assist them to see the benefits in being open about their needs.

*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?*

The work done by many NFP organisations involves volunteers. These people learn a range of skills in performing their activities which needs to be recognised in a formal certification process. The provision of these training opportunities will then provide an incentive for these people to continue to refine and improve their practices which will improve the practices of the organisation. This will mean there is less concerns and requirements for the regulator to intercede in the organisations governance. This is a 'win-win' situation for all involved.