

Good Beginnings Australia:

Context

The consultation paper provides a context that recognises the varying governance arrangements required of NFP's at the moment which are driven by the structure of the NFP, its sector and the existence of any peak body. The paper recognises that NFP's exist to provide benefits to the community, and current accountability arrangements don't adequately recognise the responsibilities NFP's have to those who don't have a contractual financial interest in the NFP (e.g. donors, beneficiaries). The consultation is also seeking to identify a structure that reduces red tape and compliance burdens for NFP's, allowing focus on delivery of mission.

In this context, it is of note that the majority of the questions raised in the consultation paper focus on the financial and fiduciary responsibilities of the NFP. Without intending to trivialize or reduce these responsibilities, they are not the full extent of duties of an NFP, which is also responsible to contributors and beneficiaries for the delivery of outcomes related to its mission or cause. In many instances this may include factors such as quality service standards that are also measured on an ad hoc and inconsistent basis across Australia.

Responsible Individual Duties (Consultation questions 1 -10)

1 & 2. For a practitioner, principles based legislation provides a more easily understood framework for implementation of any legislated duties. This includes issues such as who has that duty and to whom they own duties. Ideally the legislation should be broad to not unintentionally exclude duty holders who should be included. Given that the ACNC intends to clearly define charitable purpose, it may be easy to define the duty as a Person conducting an organisation for charitable purpose (or similar), therefore capturing any duty holders effectively. Similarly, the legislation should recognise that an NFP holds duties to those who provide its funds and those who benefit from its undertakings. This should capture government (if it is a funder) and the public (if the public benefits from the activities of the NFP).

3. The principles based framework from the UK seems to capture the key components of duties. (*Your experience may identify where there are any particular gaps in this framework*). Another example is the *ASX Governance Principles*. With the exception of the reference to shareholders (Principle 6) these could also apply:

1. Lay solid foundations for management and oversight
2. structure the board to add value
3. promote ethical and responsible decision making
4. safeguard integrity in financial reporting (This could be in all reporting)
5. make timely and balanced disclosure
6. respect the rights of shareholders (this could be replaced with respect the rights of beneficiaries)
7. recognise and manage risk
8. encourage enhanced performance
9. remunerate fairly and responsibly
10. recognise the legitimate interest of stakeholders

These principles could be scaled according to the size of the organisation

4. Standard of care should not be defined by nature of remuneration or qualification, but by the role in which a person is engaged. For example, a volunteer director has duties to the organisation that he/she

needs to fulfill, regardless of their remuneration. However, the NFP (through its management / board structure) should define the expectations of each role and expect a standard of care that is relevant to that role.

Financial turnover tends to be used as a measure of the scale of an organisation, with requirements (e.g. for audits) reflected by a dollar figure. However, this fails to reflect the true impact of some organisations. It may be optimal (although complex – perhaps a matrix measure) to also recognise impact. Another measure may be number of employees and volunteers. A matrix could provide a tiering structure that would then determine reporting requirements but still be relatively simple for practitioners to interpret.

e.g.

	\$ turnover	\$\$ turnover	\$\$\$ turnover	\$\$\$\$ turnover	\$\$\$\$\$ turnover
XXXX employees/ volunteers	Tier 3	Tier 3	Tier 4	Tier 4	Tier 4
XXX employees/ volunteers	Tier 3	Tier 3	Tier 3	Tier 4	Tier 4
XX employees/ volunteers	Tier 2	Tier 2	Tier 3	Tier 3	Tier 4
X employees/ volunteers	Tier 1	Tier 2	Tier 2	Tier 3	Tier 4
Volunteers only	Tier 1	Tier 1	Tier 2	Tier 3	Tier 4

Disclosure Requirements (Consultation questions 11 – 15)

11. Registered entities should be required to provide disclosure according to a tiered structure. Of most significant impact at the moment is not the requirement for disclosure per se, but the varying levels and alternate structures required to disclosure. For example, as a company limited by guarantee Good Beginnings must lodge its annual accounts (after audit) with ASIC and provide these accounts to funding bodies and issuers of fundraising licences. However varying contractual and state requirements add in additional audit or declaration requirements. One example is that Good Beginnings was required to submit to the Dept of Commerce WA a copy of its Audited Annual Accounts AND an additional signed document from the auditor declaring that they had audited the financial report for the financial year. The capacity to issue inclusive statements would significantly reduce this type of duplication.

Risk Management (Consultation questions 16 – 19)

Mandating specific insurance or investment requirements can have the unintended consequence of mandating something that does not fit the need of the organisation.

An approach more consistent with an intention of principles based governance would be to require NFP's to implement a risk management framework consistent with ISO31000 or other internationally recognised standards. This avoids some of the pitfalls of legislation such as Sarbanes-Oxley, which has arguably failed to address black swan and other risks due to its compliance based approach.

It is simplistic to consider insurance as a primary risk management activity; however the ACNC could provide advice in the form of a Code of Practice or advice sheets that recommend certain insurances depending on the type and size of organisation.

As a general comment, as a small – medium sized NFP, Good Beginnings' experience is that it is difficult to procure specialized insurance that is tailored to its needs. Even when dealing with a large and reputable 'NFP specialist broker' feedback has been received that tailoring of insurances is not available at any reasonable cost. Given the diversity of NFP's (and therefore their needs) the ACNC may be able to play a role with the Insurance Council and other relevant stakeholders in order to address these concerns in the long term.

Internal and external reviews (Consultation question 20)

It would be optimal to develop a set of consistent governance standards that can be applied across the sector. Varying state authorities have developed governance standards for community organisations, some of which incorporate governance as part of a quality framework, others which have stand-alone governance standards.

It is recommended that the ACNC does not set a specific set of standards initially, but instigates a plan to work with various states and government bodies to establish a set of governance standards that incorporate strategy setting, planning and monitoring of financial and non-financial objectives.

Minimum requirements for governing rules (Consultation questions 21 – 25)

No specific comments with regards to what the rules are, except that many regulators and other bodies have already developed standard templates.

Some conflict has potential to arise for NFP's who are companies limited by guarantee (with a relevant constitution) if there is a standard set of rules that is inconsistent with ASIC requirements.

Relationships with members (Consultation questions 26 – 28)

As Good Beginnings does not have members this is not directly relevant to Good Beginnings, however it is anticipated that the governing rules could also address relationships with members and beneficiaries.

Summary (Consultation questions 29 – 33)

As has been stated in numerous reports before, if requirements are implemented by a one-stop-shop regulator without recognition by existing regulators the regulator will add rather than reduce red tape burden. This issue is not so much the content of the requirements, but the process by which implementation is achieved.

The ACNC must consider engagement with various contracting bodies, which also impose governance and other standards on NFP's. These bodies significantly add to the red tape burden of NFP's. In Good Beginnings' experience these contracting bodies are generally state and federal government departments, in both service delivery and fundraising spheres.

In addition, governance needs to incorporate not only the strategic, management and financial responsibilities of the NFP, but the ability of the NFP to deliver the outcomes that it committed to achieve. At the end of the day, this is what funders and donors are giving their money to achieve.