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QUEENSLAND JUSTICES ASSOCIATION
ESTABLISHED 1918

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**RE: REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS – CONSULTATION PAPER
DECEMBER 2011**

Thank you for considering Queensland Justices Association's (QJA) submission in response to the review of governance arrangements of not-for-profits ("the discussion paper"). QJA has been serving Queensland's Justices of the Peace and Commissioners for Declarations (honorary justices) since 1918. We are the largest community-based body representing honorary justices in Australia with over 5,200 members. We are also a member of the Australasian Council of Justices Associations, an unincorporated peak body of JP associations in Australian and New Zealand. QJA is a public company limited by guarantee.

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

No, because of the diversity of the not-for-profit sector. Some entities are majority Government-funded, whilst others are majority member-funded. Yet other entities do not have members, because their cause is a condition of some description, e.g. addressing poverty, cruelty to animals or gender equity. The Constitution of the entity should determine the stakeholders. Entities need to have autonomy and flexibility to make good decisions in the interests of their cause or members and this should not be so rigid as to be mandated in legislation. The size of entities and their ability to generate funds may prohibit them from being able to meet the needs of everyone the legislation compels them to "owe duties to", which unfairly disadvantages causes which may not be popular or have a high profile, but still serve a public good. QJA engages in lobbying and advocacy to advance the education and interests of honorary justices. Legislation that prescribes to whom our duties are owed may compromise our ability to do this effectively.

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?



All of the above and once again this is for the entity's Constitution to determine, not for Government to mandate in legislation.

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

Certainly, the current standards in the *Corporations Act 2001* should be retained: -

- to act in good faith
- to act in the best interests of the company
- to avoid conflicts between the interests of the company and the director's interests
- to act honestly
- to exercise care and diligence
- to prevent the company trading while it is unable to pay its debts

Perhaps another point should be added, as per s. 93 of the discussion paper: -

- to avoid improperly using information and position

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?

Standards of care should apply equally to all.

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)?

Governing bodies as a whole (rather than individuals) should be able to satisfy the regulator that they are able to comply with governance principles, as per s. 102 and 103 of the discussion paper.

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

No, they should apply to all to the governing body as a whole, rather than individuals.

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

No, there is nothing controversial about the standards currently set by the *Corporations Act 2001*. They could easily be applied to all entities.

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?

Appointed or elected officials (remunerated or not) should have higher standards of care than non-officials. The requirements of volunteers who are not officials should simply be that they are required to be dedicated and reliable for whichever task they have committed to volunteering.



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

All NFPs could be susceptible to misappropriation of funds or improper actions. All should be required to comply with minimum financially prudent standards.

Perhaps higher minimum standards could apply to entities with large turnovers or large numbers of members. QJA was originally incorporated as a company under State legislation in 1948 and has retained the Company structure for all these years because of the confidence it gives our members and stakeholders.

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?

We are most familiar with the *Corporations Act 2001*, being a company limited by guarantee and we have no problems with the current standards. We believe the different methods of incorporation should be retained to meet the needs of different entities.

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

We agree with all the suggestions outlined in the discussion paper.

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

Yes, we have no problems with the remuneration of the CEO, (or equivalent position) and the senior management being disclosed for the benefit of members or the public.

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

Yes, they are appropriate and good measures.

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)?

Not in a position to comment.

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 current requirements in the *Corporations Act 2001* are sufficient, however the point about material personal interest might be a worthwhile addition.

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

We agree with the ideas suggested in the discussion paper.



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

A broad requirement would suffice.

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

No, because different entities require different levels of insurance depending on their activities. This should be left to the market to determine (e.g. the not-for-profits and the insurance companies).

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

The entity should be compelled to provide that insurance for the individuals. Individuals should not have to seek out their own insurance.

20. What internal review procedures should be mandated?

We agree with the proposals outlined in the discussion paper.

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

There should be model rules for each type of entity that covers this.

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?

It might be useful for entities to be required to submit their Annual Report (or equivalent) to the ACNC and to keep a public register for accountability, but also for historical purposes.

23. Who should be able to enforce the rules?

The Board or management committee should enforce the rules. They should update them as they see fit also.

The regulator may conduct random audits on entities. We imagine it would be too resource-intensive to check that each and every organisation is complying with their Rules every year.

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

Yes, on wind-up or deregistration.

25. Should model rules be used?

Yes, absolutely necessary for entities that do not have access to or funds for lawyers to draft Constitutions for them.



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

We agree with all suggestions in the discussion paper.

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

No comment; we are a membership-based entity.

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

Yes, we agree with all the suggestions in the discussion paper relating to membership-based entities.

Other comments

We note the Government is considering changing the authority that regulates companies limited by guarantee from the Australian Securities & Investments Commission (ASIC) to the Australian Charities and Not-for-Profits Commission (ACNC). We presume this also means a change in the *Corporations Act 2001* relating to non-profit public companies limited by guarantee. We have no problems with this, and we hope that it opens opportunities for us to access concessions and market QJA for sponsorship and donations in ways that we have been unable to in the past.

Thank you once again for giving us the opportunity to respond to your discussion paper. We look forward to the outcome in due course.

Yours sincerely

Queensland Justices Association

Ray Burrows
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