

**Submission to the review of not-for-profit governance  
arrangements**

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## Introduction

### Australia's not-for-profit medical research sector

The Association of Australian Medical Research Institutes (AAMRI) welcomes the opportunity to make a submission to the *Review of not-for-profit governance arrangements*.

AAMRI is the peak body for Australia's independent medical research institutes. Our 41 members are internationally recognised leaders in health and medical research, and include the vast majority of Australia's not-for-profit (NFP) medical research institutes (i.e. medical research institutes that are not part of a university or hospital).

Of AAMRI's 41 members, 36 are NFP organisations. Together, they employ over 7,800 full time researchers, support staff and students. Member organisations vary in size from 26 to over 700 staff and students. Volunteers also play a significant role in the activities of most of AAMRI's members, including in positions of governance, such as the Boards of Directors.

The combined annual research income of AAMRI's members is over \$350 million, around half of which is derived from the National Health and Medical Research Council (NHMRC). Other sources of income include other Federal Government agencies (i.e. the Australian Research Council, the Department of Industry, Innovation, Science, Research and Tertiary Education, and the Department of Health and Ageing), State Governments, foundations and trusts, industry, and community donations and bequests.

AAMRI's NFP members are primarily companies limited by guarantee, with the remainder being incorporated associations. They are all registered charities. As such, they already have stringent governance arrangements in place, as set out by the Corporations Act, Acts of State Parliaments, individual constitutions, and state-specific legislation for charities. Additional governance requirements are imposed on our members by research and funding partners, including the NHMRC, the Australian Research Council (ARC), State Governments, and trusts and foundations. These include performing due diligence and reporting information on the use of funds and the outputs of research. Because of the important nature of medical research and the highly professional standard required, those individuals responsible for governance arrangements are highly experienced professionals.

### General comments on NFP governance reforms

AAMRI commends the Government on its endeavour to standardise NFP governance arrangements across Australia. We support a principles-based approach to governance arrangements that encompasses the diversity of the NFP sector.

As companies limited by guarantee or incorporated associations, AAMRI's NFP members already have comprehensive governance arrangements in place, and we do not envisage any substantive increase in our governance arrangements as a result of NFP governance reforms.

AAMRI considers the governance requirements set out in the Corporations Act to be comprehensive and effective, but acknowledges that NFPs in receipt of public monies might have some additional responsibilities in transparency to the public not covered by this Act.

AAMRI supports the centralising of NFP governance arrangements through the Australian Charities and Not-for-Profit Commission (ACNC), including the transfer of governance responsibilities for NFP companies from the Australian Securities and Investments Commission (ASIC) to the ACNC. However, we recommend that NFP company registration also be delegated to the ACNC.

A major challenge for the ACNC will be to avoid simply adding a layer of reporting requirements for NFPs. To achieve its aim of reducing red tape, ACNC reporting will need to be recognised by other Government agencies. AAMRI recommends that there be a review of the ACNC's operations at a fixed time interval after inception (e.g. 2 years) to critically examine its success in reducing red tape.

Finally, it will be imperative that the transition to the ACNC is as seamless as possible. AAMRI members are concerned that there is an unspecified period of time where it is clearly admitted that there will be duplication of national and state regulations. Reaching agreement with State and Federal Government agencies will be no easy task, and potentially a lengthy one. We strongly recommend that no governance changes be introduced until agreement with the states has first been reached and a satisfactory changeover plan developed. Until the ACNC can provide a true 'one-stop shop', NFPs should be allowed to use existing ASIC and state reporting procedures alone.

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## Responses to consultation questions

### Responsible Individuals' duties

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

AAMRI does not support the inclusion in legislation of who responsible individuals must consider when exercising their duties, and to whom they owe duties. Instead, legislation could require NFPs to broadly identify to whom they are responsible and owes duties. We recommend that the ACNC assists NFPs in ensuring their governance arrangements are sufficient in this respect.

AAMRI acknowledges that NFPs may be accountable to entities other than their members, and that this is not provided for in the Corporations Act. However, due to the breadth of NFP organisations, with various structures, funding sources, beneficiaries and stakeholders, there is not a common set of entities to whom all organisations are responsible or owe duties.

For example, some NFPs (such as AAMRI Ltd itself) do not receive public monies and/or do not provide services directly to the public. As such, they would not be expected to be accountable to such entities. In the case of medical research institutes, it is not clear how responsible individuals might consider beneficiaries, as the relationship between medical research and the ultimate beneficiaries of research is complex, with discoveries traveling through many hands before reaching the community.

#### **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?**

As noted in Question 1, the entities to be considered by responsible individuals varies across organisations. However, AAMRI reasons that all responsible individuals should consider the mission of their organisation when exercising their duties, and should act in the best interests of the organisation, as well as any funders, beneficiaries and other stakeholders. Where a conflict arises, the interests of the organisation and its beneficiaries should take precedence.

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

AAMRI recommends that the duties of responsible individuals should be no more or less onerous than those of directors and officers under the Corporations Act. We support the duties listed in clause 91 of the consultation paper. These duties should be defined under 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?**

AAMRI supports a principles-based approach, where responsible individuals of all NFPs would act with a minimum level of care and diligence, and additional standards/duties would be applied based on a set of parameters, including an organisation's size, turnover, sector, and/or the risk and importance of an organisation's activities.

AAMRI does not advocate different standards for responsible persons based on their employment status or profession. Volunteers may be in positions of significant responsibility and so should have a standard of care equivalent to paid employees. AAMRI also contends that a 'professional' person already has an additional standard of care imposed by their profession, and does not require further standards enforced by the ACNC. Any layering of different standards of care based on the 'type' of individual risks duplication of standards with potentially variable outcomes.

It is difficult to prescribe a measurable minimum standard of care of responsible individuals other than to act with integrity and in good faith using reasonable care and caution to meet the organisation's mission. Given the reliance of many NFPs, including AAMRI members, on volunteers, unduly onerous obligations that discourage the continued participation of volunteers should be avoided.

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**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)?**

While certain knowledge and skills are required within an entity for it to meet its governance obligations, AAMRI does not support a requirement for responsible individuals to have specific qualifications, experience or skills. Rather, we recommend that the ACNC provide guidance and training materials to ensure that each NFP has the necessary knowledge amongst its responsible individuals to meet its obligations.

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

AAMRI recommends that minimum standards be applied to the NFP entity and that the onus be on it to demonstrate that the minimum standards have been met.

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

A minimum standard of duties of responsible individuals is achievable across all NFPs as long as a high level approach is taken, based on the principles mentioned in earlier questions. Highly specific standards are unlikely to be applicable, appropriate or manageable across the breadth of NFP entities, and should be avoided.

**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?**

AAMRI has no comment.

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

As outlined in Question 4, AAMRI supports a principles-based approach where responsible individuals of all NFPs would act with a minimum level of care and diligence, and additional standards/duties would be applied based on a set of parameters such as an organisation's size, turnover, sector, and/or the risk and importance of an organisation's activities.

**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?**

Currently, the duties of responsible individuals of most AAMRI members are regulated by the Corporations Act and individual constitutions. AAMRI considers regulations under the Corporations Act to be comprehensive and sufficient, and recommends that ACNC regulations be no more or less onerous than these.

## **Disclosure requirements and managing conflicts of interest**

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

AAMRI considers the financial and activity disclosures required by the Corporations Act, together with the disclosure of fundraising income and expenditure required by certain state legislation, to be adequate to ensure good governance procedures are in place. We recommend that ACNC requirements be no more onerous than these.

AAMRI also supports a tiered reporting system for NFPs, based on the size, turnover, sector, and/or the risk and importance of an organisation's activities.

AAMRI does not support the mandatory public disclosure of audited accounts. While AAMRI supports transparency in financial disclosure, we are also cognisant of the potential for misinterpretation or misunderstanding of financial information without supplementary information or specialised knowledge

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on the part of the reader. This is a particular concern with regard to the release of financial information to the general public.

We also urge the ACNC to implement a reporting framework that supports consistency in reporting across the sector, and safeguards against the misinterpretation or inequitable evaluation of information by the general public. We recommend that the ACNC financial reporting framework (and any publications of NFP information by the ACNC) support the provision by NFPs of information considered necessary for fair interpretation of their data. And we urge the ACNC to avoid the publication of overly simplistic and potentially misleading information (e.g. tables of fundraising expenses as a percentage of fundraising income).

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

AAMRI does not support the public disclosure of remuneration of responsible individuals on an individual basis. If the ACNC determines that the remuneration of responsible individuals should be publicly disclosed, AAMRI recommends that this be disclosed in aggregate form.

There are several reasons why the public disclosure of the remuneration of responsible individuals is potentially harmful. Publication of remuneration levels alone (without supporting information on activities, responsibilities and qualifications) is not sufficient for the general public to make an informed decision on whether these levels are justified. Depending on the nature, size and turnover of organisations, the requirements (and thus remuneration levels) of responsible individuals are likely to vary significantly across the NFP sector. This could lead to the unfair withdrawal of NFP funding by the general public and other sectors. It should also be considered that, in some cases, public funds might not necessarily be channeled into remuneration of responsible individuals, but that other sources of funds might be used for this purpose.

The requirement to publicly disclose remuneration levels also has the potential to adversely affect NFP behaviour. The desire to create a reputation of financial prudence might result in a compromise of the best interests of the organisation. Alternatively, public disclosure of the remuneration of responsible individuals (e.g. CEOs) could lead to an escalation of pay increases, as has occurred for publicly-listed Australian companies over the last decade.

Another consideration with respect to the disclosure of remuneration levels is the privacy of responsible individuals, and the potential to discourage people from accepting positions as responsible individuals in NFPs.

We note that current ASIC reporting requirements provide similar flexibility where remuneration reporting is optional, and may also be reported in aggregate form.

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

AAMRI supports the suggested criteria in clause 126 of the consultation paper.

## **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)?**

AAMRI contends that specific conflict of interest requirements should not be required if the criteria in clause 126 of the consultation paper are implemented.

## **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'?**

AAMRI supports the requirement for responsible individuals of NFPs to declare conflicts of interest, and recommends that these requirements be based on the Corporations Act understanding of 'material personal interest'. This principle-based approach is more appropriate than attempting to prescribe circumstances that are likely to vary markedly across the NFP sector. AAMRI recommends that the ACNC provide guidance materials so that responsible individuals are aware what conflicts of 'material personal interest' include.

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## Risk management

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

AAMRI does not support any additional risk management requirements being imposed on NFPs relative to for-profit organisations. The risk management requirements for NFPs should ensure that they are fit for their purpose, and thus are no different from for-profit organisations. The ACNC should also consider that not all NFPs (such as AAMRI Ltd itself) receive funds from the public.

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

AAMRI supports a set of broad requirements for NFPs to ensure they have adequate risk management procedures in place. These should provide for the likely variation in risk management requirements of different NFPs based on a range of factors, including entity size, turnover, sector, and risks presented by virtue of their activities.

AAMRI does not support mandating investment strategies for NFPs. This will add a layer of cost and burden on NFPs. Regulations for the duties of responsible individuals (e.g. make decisions in the best interests of the organisation; use reasonable care and diligence; act in good faith) should sufficiently provide for sensible investment of public funds.

While the ACNC can regulate a broad standard of risk management, it is likely that additional risk management requirements will be imposed on NFPs by partner organisations, sector/professional standards and funding bodies (e.g. trusts, industry, Government). In the case of medical research institutes, additional requirements are imposed by various research partners and funding entities, and by regulations compulsory for the medical research sector. These include providing additional information on the use of funds, annual reporting on the outputs of research grants to prevent 'mission drift', auditing by the NHMRC, and requirements by funding agencies to adhere to a range of policies relevant to research (e.g. OH&S, ethical conduct in research, etc.). These requirements are likely to differ markedly from those of other NFP organisations, and so it is most appropriate for these additional requirements to be dealt with in individual funding agreements and contracts, not by the ACNC.

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

AAMRI supports mandating minimum insurance requirements for NFP entities. Good governance and risk mitigation mean certain levels of insurance are required. Some NFP organisations may not be aware of the level and extent of their risks, and the range of insurance required to cover these. Others may argue that they are unable to afford the cost of insurance or wish to forgo basic levels of insurance to maximise the levels of funds going to beneficiaries. Both reflect poor business practice and would lead to an unacceptable level of risk for professional organisations.

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

AAMRI supports the requirement for responsible individuals to have indemnity insurance.

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

The level of internal review for NFPs should be based on the level of transparency and prudence required. AAMRI recommends that internal review requirements be no more extensive than those in the Corporations Act.

## Minimum requirements for an entity's governing rules

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

AAMRI recommends that the governing rules for NFPs should consider the variety of organisations and sizes within the sector. The ACNC could establish best practice governing rules based on the

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Corporation and CATSI Acts and templates from other organisations such as Consumer Affairs Victoria.

**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?**

AAMRI members do not have a consensus view on the role of the ACNC in mandating requirements of the governing rules. Some members agree that the ACNC should mandate requirements of the governing rules to ensure best practice. However, many members favour guidance over mandating rules, arguing that mandating rules (even if tiered) across a wide variety of NFP entities risks inequitable and unintended outcomes, and unnecessary costs. They suggest providing guidance on best practice and possibly mandating that NFPs publicly disclose to which principles they adhere. This would allow NFPs to choose their own path, and donors and others to assess whether they wish to contribute.

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

Should a minimum level of governing rules be mandated, AAMRI supports their enforcement by the ACNC.

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

Should a minimum level of governing rules be mandated, AAMRI supports the role of the ACNC in enforcing and altering them.

**25. Should model rules be used?**

Yes, AAMRI strongly supports the use of model rules to assist NFPs in developing governance documents.

## Relationships with members

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

AAMRI considers the governance rules set out in the Corporations Act with respect to an entity's relationship with its members to be sufficient.

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

AAMRI has no comment.

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

AAMRI considers the meeting requirements set out in the Corporations Act to be appropriate.

## Summary

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

AAMRI has no comment.

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### **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?**

AAMRI welcomes the objective of the ACNC to streamline NFP governance requirements and centralise reporting through a single body. This has the potential to improve consistency and efficiency across the sector.

AAMRI's members would not envisage any substantive changes in their governance procedures in complying with new standardised ACNC requirements.

One area where the ACNC could have a significant impact on our members, though, with regard to red tape reduction (although acknowledged as being the most problematic) is with a standard national approach to registration and reporting requirements for charities. Currently, individual state legislations have different formats and reporting requirements, leading to an unnecessary burden on our members.

It will be imperative, however, that the ACNC does not simply add a layer of additional reporting requirements for NFPs. Wherever possible, NFP reports provided to the ACNC should be recognised or used by other Government agencies (Federal and State) to avoid overlapping or duplicative reporting.

Also, while it is a laudable goal to remove or reduce the need for governance requirements to be imposed by other instruments such as Government contracts, it is unlikely that this will be achieved in full. Different Federal and State Government agencies have tailored requirements with respect to governance. For example, in the case of medical research institutes, the NHMRC (the primary source of Federal Government funding) requests a range of governance and reporting requirements that are specific to the medical research sector. As such, contracts with the NHMRC (and other funding agencies) will always contain additional governance requirements.

However, the ACNC does have the potential to reduce the burden on NFPs by encouraging (or mandating) Government agencies to recognise information contained within ACNC reports and not requiring it to be additionally reported (often in a different format) in their contracts with NFPs. For example, Government contracts could include 'tick boxes' to indicate whether ACNC governance requirements have been met. Similar recognition of adherence to ACNC requirements would also be beneficial in contracts and agreements with other organisations (e.g. trusts, foundations and industry).

AAMRI is concerned with the suggestion that ASIC will retain responsibility for the incorporation of NFP companies, while the ACNC will take over governance requirements. This has the potential to lead to duplication and inefficiencies (e.g. filing the same information in two locations, creating the risk of inconsistencies, and paying for two sets of administration). While the ACNC might attempt to reduce duplication through back office partnerships with ASIC, we argue that this will still lead to inefficiencies, and strongly recommend that NFP company registration be fully delegated to the ACNC.

It will be imperative that the transition to the ACNC is as seamless as possible. AAMRI members are concerned that there is an unspecified period of time where it is clearly admitted that there will be duplication of national and state regulations during an open-ended 'transition' period. Good business practice should include a plan for defining and limiting duplication and for managing the risk of failure. This is particularly so when requiring consensus of various political entities (some of whom may change in the interim). We strongly recommend that no changes be introduced until agreement with the states has been reached and a satisfactory changeover plan developed. Any ACNC requirements should be matched by offsetting reductions in ASIC- and state-based requirements.

To ensure efficiency and to reduce reporting burdens on NFPs, we urge the ACNC to provide online tools, information and reporting systems, similar to those used by ASIC.

Finally, AAMRI suggests that the ACNC undertake a review at a fixed time interval after inception (e.g. 2 years) to critically examine its operations for unintended or adverse consequences, and to optimise red tape reduction.

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

AAMRI has no comment.

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

AAMRI has 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?**

Reference is made in the consultation paper to the intended introduction of a 'general purpose reporting framework' and some consultation taking place. AAMRI strongly recommends that any such introduction should only be made after extensive and very public consultation with all NFPs.

Regarding the description of 'joint ventures' in clause 75 of the consultation paper, AAMRI questions whether these necessarily have a commercially-based outcome. Some of AAMRI's members currently participate in joint ventures that are not commercial ventures.

Finally, AAMRI would like to reiterate that, while its member organisations are funded by public monies and exist for the public good (and, so it can be argued, are accountable to the public), not all NFPs (including AAMRI Ltd itself) receive public monies and/or exist for the benefit of the general public. This should be considered during development of the ACNC governance framework.

## AAMRI members

	ANZAC Research Institute		Menziess School of Health Research
	Baker IDI Heart and Diabetes Institute		Murdoch Childrens Research Institute
	Bionics Institute		National Ageing Research Institute
	Brien Holden Vision Institute		Neuroscience Research Australia
	Burnet Institute		O'Brien Institute
	Centenary Institute		Peter MacCallum Cancer Institute
	Centre for Eye Research Australia		Prince Henry's Institute of Medical Research
	Children's Cancer Institute Australia		Queensland Children's Medical Research Institute
	Children's Medical Research Institute		Queensland Eye Institute
	Florey Neurosciences Institute		Queensland Institute of Medical Research
	Garvan Institute of Medical Research		Schizophrenia Research Institute
	The George Institute for Global Health		St Vincent's Institute of Medical Research
	Hanson Institute		Telethon Institute for Child Health Research
	Heart Research Institute		Victor Chang Cardiac Research Institute
	Hunter Medical Research Institute		Walter and Eliza Hall Institute of Medical Research
	Kolling Institute of Medical Research		The Wesley Research Institute
	Lions Eye Institute		Western Australian Institute for Medical Research
	Ludwig Institute for Cancer Research		Westmead Millennium Institute
	Mater Medical Research Institute		Women's and Children's Health Research Institute
	Mental Health Research Institute		Woolcock Institute of Medical Research
	Menziess Research Institute		