

## Feedback form: role of officers

If you wish, you may use this form to provide your comments on the questions.

**Name / organisation:** Ram Subramanian, CPA Australia

### Definition of officer

**Option 1:** no change to the definition of officer (status quo)

**Option 2:** broaden the definition of officer by removing the reference to trustees of trusts

Question	Comment
1. If your charity is a trust, or you work with charities that are trusts, what would option 2 mean for you?	<p>Whilst we are not a charity, CPA Australia has obtained the following feedback from our members involved with the charities sector:</p> <ul style="list-style-type: none"><li>- The officers of a charity should be those charged with the governance of the charity, i.e. trustees, directors or equivalent.</li><li>- S4(1)(b)(ii) of the Charities Act 2005 sets out a definition that is sufficiently broad to capture a number of roles under the definition of “officer” including a treasurer or chief executive as noted in the definition.</li></ul> <p>Feedback we have received from our members indicates that it is important to identify trustees as officers explicitly. We therefore suggest refining the proposed definition of officers under option 2 to explicitly include trustees of a trust as well. In addition, further clarification and guidance should be developed and provided to assist in a better understanding of who can be considered an “officer” of a charity.</p>
2. Do you see any implications with the options?	<p>Broadening the definition could give rise to the risk of having to consider a broader pool of individuals for regulatory compliance and good-governance purposes. It could also result in the broadening of roles and responsibilities beyond the historical common-law and statutory legal framework.</p>
3. Are there any alternative options that would better address the problem?	No further comment

### Governance duties of officers

**Option 1:** no change to officer duties (status quo)

**Option 2:** add four explicit duties for officers of charities into the Charities Act 2005

- Duty to act in good faith and the charity’s best interests
- Duty to act with reasonable care and diligence
- Duty to ensure the charity’s financial affairs are managed responsibly
- Duty to manage any perceived conflict of interest

**Option 3:** more comprehensive guidance and support for existing duties (duties are not explicitly set out in the Charities Act)

Question	Comment
<p>4. In your experience, what are the key governance challenges for charities, if any?</p>	<p>Feedback we have received from our members highlights the following challenges:</p> <ul style="list-style-type: none"> <li>- Officers who are very committed to the mission/purpose but not necessarily experienced in governance and/or financial management, which should be seen as essential</li> <li>- Identifying individuals who place the charity's needs above their own personal needs</li> <li>- Officers who are unpaid volunteers may not be as committed/experienced as those who are paid for their services</li> <li>- Dominant individuals can bring about an imbalance to the governance of a charity and risk undermining its effective operation</li> </ul>
<p>5. Which of the options would best address the problem? Why?</p>	<p>Feedback we have received from our members expressed support for option 2.</p> <p>In our previous <a href="#">submission</a> in response to the consultation on "Modernising the Charities Act 2005" we expressed support to the adoption of governance standards similar to those adopted by Australian Charities. We believe the four duties set out under option 2 have similar features to those in the Australian charity governance standards.</p> <p>The four duties are likely to enhance the accountability of officers to the charity and its stakeholders. It was also suggested that a further duty be added for officers to establish and maintain effective internal controls.</p>
<p>6. Are there any alternative options that would best address the problem?</p>	<p>In addition to the review of compliance with annual reporting requirements, it may be beneficial for Charities Services to extend such review to encompass compliance with the governance requirements, including any additional officer duties that are introduced.</p>
<p>7. Are the proposed duties practical and feasible for charities?</p>	<p>No further comment</p>

8. Should duties fall on the officers of charities, or the entity itself?	<p>The rationale for introducing such duties is to ensure good governance of charities that will benefit the sector and its stakeholders. Any proposed introduction of duties should be developed with the ultimate objective that such overall good governance is achieved.</p> <p>We note that in Australia, for some not-for-profits such as companies limited by guarantee, the duties fall on the directors under corporate law whilst for other not-for-profits such as charities, the governance standards incorporating such duties fall on the entity.</p> <p>On balance, it may be appropriate to place such duties on the officers to ensure there is a heightened sense of responsibility and accountability.</p>
9. Should officer duties be in legislation, a code or in guidance?	No further comment
10. Does the wording of the duties create any issues with other legislation?	No further comment

### Disqualifying factor – criminal convictions

**Option 1:** no change to the criminal convictions that are disqualifying factors for officers (status quo)

**Option 2:** disqualifying factors includes serious criminal offences

**Option 3:** all criminal convictions to be disclosed to the regulator who has the discretion to disqualify an officer when there is a significant risk to the charity or its beneficiaries

Question	Comment
11. Which option would best address the problem? Why?	Feedback we have received from our members expressed support for the inclusion of serious criminal offences to the current disqualifying factors.
12. Are there any alternative options that would better address the problem?	No comment

### Disqualifying factor – minimum age of officers

**Option 1:** no change – keep the qualifying age to hold an officer position at 16

**Option 2:** raise the qualifying age to hold an officer position to 18

Question	Comment
13. Are there any alternative options that would better address the problem?	Feedback we have received from our members expressed support for increasing the qualifying age of officers to 18.

14. Why might we want to have officers who are under 18? Are there any implications of this?	No further comment
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