



We build strong **PEOPLE**
strong **FAMILIES** strong **COMMUNITIES**

YMCA Australia

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Response to Consultation Paper: Development of Governance Standards

Feb 2013

1.0 Introduction

YMCA Australia welcomes the opportunity to present our views in response to the *Consultation Paper: Development of Governance Standards*.

As an important component of the current suite of reforms, The YMCA perceives this review of not-for-profit governance arrangements is a significant step forward in providing a greater level of transparency and accountability within the sector, generating greater confidence for beneficiaries, donors, governments and the general public.

YMCA Australia has been engaged in policy debate with regard to not-for-profit sector reform for many years and we have previously put forward our views through our:

- submission to the *2001 Inquiry into the Definition of Charities and Related Organisations*;
- response to the Exposure Draft of the *Charities Bill, 2003*
- submission to the *2008 Inquiry into Disclosure Regimes for Charities and Not-for-Profit Organisations*;
- submission in 2008 on the *Development of a National Compact* and our response to the *2009 National Compact Consultation Paper*;
- response to the *2009 Productivity Commission Inquiry into the Contribution of the Not-for-Profit Sector*;
- response to the *2011 Scoping Study for a National Not-for-Profit Regulator*;
- submission to the *2011 Inquiry into Mechanisms and Options for the Development of a Capital Market for Social Economy Organisations*;
- response to the *Consultation Paper: A Definition of Charity, 2011*; and our
- response to the *Consultation Paper: Review of Not-for-profit Governance Arrangements*.

YMCA has also participated in numerous not-for-profit sector forums and consultations regarding issues of sector reform.

As an active member of the Community Council of Australia (CCA) we would also like to express our support and endorsement of the CCA submission to this consultation.

2.0 YMCA in Australia

YMCA Australia is a national not-for-profit organisation working alongside local communities in metropolitan, regional, rural and remote areas. We work in partnership with government, non-profit groups and partners to provide programs and services to more than 500,000 Australians every week and deliver a broad and diverse range of services and programs.

Our mission is to work together to provide opportunities for all people to grow in body, mind and spirit. We believe this can best be achieved within a framework of preventative health, social inclusion and community-based localised solutions.

The profile of the YMCA in Australia is one of diversity – in terms of our programs and services, the communities we serve and our geographic reach. YMCA Australia also has a diversity of relationships with all levels of government and has a broad variety of revenue streams that support our programs.

In Australia, the YMCA:

- is a federated organisation comprising 28 independent Associations;
- employs over 8,000 staff;
- is supported by over 3,000 volunteers;
- works across more than 600 sites in every state and territory;
- derives 2% of revenue through contributions from the philanthropic sector and public donations;
- derives 4% of revenue from government sources; and
- derives the remaining 94% from the provision of programs and services that are operated on a cost-recovery basis.

YMCA Australia operates across all state and territory jurisdictions and we deliver on our mission in myriad ways. Our organisation, our partners and the communities we serve, have a significant interest in these developments towards not-for-profit sector reform.

3.0 Our Governance 'Playing Field'

The scope and diversity of the YMCA in Australia presents a unique set of challenges in relation to maintaining Governance standards across the organisation. This is best demonstrated through the variety of legal forms that constitute our organisation. The YMCA in Australia is a federated organisation with YMCA Australia as a Company Limited by Guarantee and our 28 Member Associations as a mix of Incorporated Associations (across each state and territory), Companies Limited by Guarantee, and Associations formed through an Act of Parliament. A number of our Member Associations also have within their structure a variety of sub-entities, some of which are Companies Limited by Guarantee, other Incorporated Associations and unincorporated bodies. Some YMCAs also have corporate sub-entities that are taxable while contributing to the benefit of the community. All YMCA Member Associations have charitable status, and some have separate benevolent arms.

4.0 YMCA Governance Structures, Principles and Policies

Given the diversity of the organisation and the national, state and local contexts in which YMCA delivers services to the community, it is critical that the highest quality governance policies are adhered to.

Our 28 Member Associations are licensed by the National Board to use the YMCA's name and trademarks within designated territories. The holding of such a licence is predicated on the Member Association's satisfaction of mutually agreed standards. The agreed standards in relation to governance, to which YMCA Australia holds all Australian YMCAs accountable are as follows:

- The Board is Mission focused.
- The Board is acting in accordance with its constitution. This includes:
 - a focus on achievement of objects and purposes
- The Board is fulfilling all its legal requirements & responsibilities. This includes:
 - All Board members are fully aware of all their duties under law:
 - Duty to act in good faith, and in the best interests of the Y
 - Duty to avoid conflict of interest
 - Duty not to misuse information/position (Inc. confidentiality)
 - Duty not to abuse a corporate opportunity
 - Duty to avoid fraud
 - Duty to act with care and diligence (including not trading whilst insolvent)
- Board members receive sufficient information to be able to make informed decisions. This includes:
 - an expectation that all YMCA boards will have a budget, strategic plan and business plan
- Board members accept responsibility for the Association's actions. This includes:
 - assurances that the YMCA is fulfilling its responsibilities to the ATO, funding bodies, and regulatory bodies.
- Board members have clearly defined roles and responsibilities.
- The Board completes a formal self review at least annually.
- The Board completes a formal performance appraisal of the CEO at least annually
- The Board is up-to-date in all areas of the YMCA Reporting Compliance Requirements.
- The Association is operating is using the YMCA name and logos in accordance with YMCA policies and licence requirements.
- All Board Members have access to a copy of all relevant documents. This includes:
 - Titles
 - Leases
 - Contracts
 - Funding agreements
 - Memorandums of understanding
- The Association is operating within its licensed territory.

The strength of our governance structures guarantees strict compliance with all commonwealth, state and territory legislative and regulatory requirements pertinent to the operations of the YMCA.

5.0 Consultation questions

5.1 Overview

YMCA agrees with the broad principles which have been used to develop the draft governance standards detailed in the Consultation Paper, namely:

- The principle of transparency – that potential donors or service users should have access to information which can help them decide whether an organisation meets minimum governance standards;
- The setting of principles-based standards – as opposed to a prescriptive ‘black letter’ approach to setting governance standards for the sector;
- The principle of gradation – that the standards expected of governance is scaled to the size and complexity of the organisation; and
- The principle of continuous improvement – that the regulatory process seeks first to educate, rather than punish.

YMCA also agrees with the six broad headings under which the standards are grouped; namely:

- Purposes and NFP character of a charity
- Accountability to members
- Compliance with Australian laws
- Responsible management of financial affairs
- Suitability of responsible entities
- Duties of responsible entities

5.2 Responses to specific questions

5.2.1 Standard 2 – accountability to members

YMCA remains concerned about the diminution of accountability of governance bodies to voting membership. Our organisation has experienced a gradual decline of people seeking to be voting members of their local YMCA. This is reflected in the parallel changes to volunteering behaviour, where people are seeking different ways to achieve a sense of belonging within their communities and organisations.

In circumstances where there is a decline in membership, or where the voting members and responsible entities are the same people, clear lines of accountability are reduced. NFP entities faced with this situation need to develop a broader framework of accountability. YMCA encourages the ACNC to think more broadly about the role it might play in providing an alternative, contemporary accountability mechanism in such circumstances.

5.2.2 Standard 5 – suitability of responsible entities

YMCA believes that the terminology “responsible entity” may be problematic. Whilst we recognise that the term enjoys popular usage in parallel legislation, it may be confusing to some volunteers charged with the responsibility for ensuring that their charity is meeting ACNC standards. YMCA encourages ACNC to seek a more ‘user friendly’ term to describe those in governance roles.

YMCA has no concerns with allowing the ACNC to disqualify persons from being in governance roles, or establishing a register of disqualified persons.

5.2.3 Protections for volunteer responsible entities.

YMCA believes that volunteers working with NFP entities should have access to a level of protection through legislation and regulation by the ACNC. Many other considerations and obligations of governing volunteers are already contained in existing legislation. As noted in the ACNC Implementation Design consultation paper, many of these obligations are subject to State and Territory legislative and regulatory requirements and working towards harmonisation of these will be an important step. Current insurance protections for volunteers and directors (voluntary) differ and in the future there could be benefits in bringing these into greater alignment.

6.0 Conclusion

YMCA Australia welcomes this consultation in the context of the current suite of reforms to matters which will fall under the jurisdiction of the Australian Charities and Not-for-profits Commission. Establishing broad standards of governance for the NFP sector will be a critical step forward in elevating the status of the sector and ensuring greater public confidence in the essential services provided by NFP organisations. Much of this work will be dependent on commitment and agreement by the Council of Australian Governments that will lead to the harmonisation of state and territory legislation and regulation affecting NFP entities and governance requirements.

We would welcome the opportunity to discuss any aspect of this submission, if requested.



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