

Review of not for profit governance arrangements

Consultation Paper 2011 – submitted by Nick Koerbin, Association Executive Services (AES)

Association Executive Services provides management support to not for profit associations within Australia. The organisation has significant experience dealing with governance and management issues within this area. After perusal of the consultation paper we would like to make the following comments.

Term “not for profit” sector:

The paper constantly refers to “**not for profits**” but makes comments and assumptions that the majority of the sector revenue is derived from fund raising, government grants and donations. Our main concern with the discussion paper is that the reference to the **not for profit** sector is not representative of all not for profit organisations.

Over recent years government rhetoric has referred to the not for profit sector as relating to charities and community based organisations. This is reinforced by the establishment and composition of the office of the Not For Profit Sector in 2010. We note that all the members of the reform council have knowledge and experience within the areas of charities and community based organisations but there is no representation from not for profit associations or others from this sector. Organisations who wish to regulate or represent all the not for profit sector must present themselves as inclusive rather than exclusive.

This position has caused confusion within the not for profit sector and also the general public. For example, a recent announcement was made by an American scholarship foundation offering education scholarships to executives from the “**not for profit sector**” Enquiries were made from executives from not for profit associations but they were told the places were for executives from charities. The foundation quite rightly thought the not for profit sector related only to charities and philanthropy. After receiving many enquiries from the not for profit sector who were not from charities, they had to revisit their criteria.

This example is a common occurrence where one sector of the not for profit sector is discriminated over another. There is a perception that not for profit associations are internally driven and well resourced. This is not the case as most rely on funding from membership subscriptions and are very much community driven. One organisation provides donated software to the “not for profit sector “ however when they receive enquiries from not for profit associations they are advised they are not eligible for those benefits. It could be argued that many not for profit associations would also benefit as many exist for their members who are part of the general community.

Knowledge and understanding of the not for profit sector

The consultative paper appears to follow the same theme and perception that the not for profit sector is mainly charities and community based organisations reliant on volunteers, government funding, public monies and fundraising to be sustainable. Poor governance practices places do place the future of these entities at risk but not all not for profits have the same governance problems.

In Section 4 of the paper the examples of risk issues facing the not for profit sector again appear to be more relevant to charities and community based organisations and not reflective of the total not for profit sector.

There are over 12,000 incorporated member based associations in Australia incorporated under the Corporations Act or under a state legislation. These organisations are not for profit and their purpose is for the good of the community. Many are industry or professional associations bringing together their members to improve business or industry standards. They rely on paid staff and volunteers (members) to add value to their organisation. The majority have limited resources or financial support but play an important part ensuring the sharing of knowledge and maintaining standards.

Added to this group are the number of sports bodies and special interest groups that form part of the not for profit sector.

The risk issues facing these associations are similar to those identified in Section 4, but not the same. Yet, some of the suggested solutions such as providing public information as to the amount of monies paid to overseas affiliates would not be in the interests of not for profit membership based associations or their members. Much of this information is **commercial in confidence** and money may be transferred because of legitimate business transactions between those entities. The paper suggests these type of transactions should be made public, because the public have a vested interest. It may be so in charities but not so with not for profit associations.

A broader representation of the NFP sector is needed.

The paper does not appear to address the important issues of governance and other matters facing various segments of the sector. The proposal outlined in the paper indicates **all the not for profit sector** will be governed by the new regulatory body. This will not be an easy task considering the diversity within the sector and differing needs and expectations.

Items for consideration :

The not for profit sector is too diverse to regulate as one sector.

The structure, management and issues facing a charity compared to an industry based association are totally different, yet they are both part of the not for profit sector. ACNC needs to be inclusive of this sector and demonstrate how well they know the issues facing the total sector rather than charities. How will the ACNC be able to legislate and act in the best interest of the total sector?

Term ‘Not for profit’

The term not for profit is confusing not only the NFP sector but also the public. The public perceive not for profit being charities but as mentioned before this is not the case. It would be a lot easier if government entities do not continue referring to the not for profit sector as charities or organisations who fundraise etc or rely on government funding and donations.

Not for Profit incorporated associations need not be regulated by the ACNC

To ensure proper representation for not for profit associations it is suggested that all not for profit associations be incorporated under the Corporation Act and not be regulated by the ACNC. The matter of associations be unincorporated should be removed and incorporated under the Corporation Act

This will enable this segment of the not for profit sector to manage within the boundaries of a normal organisation and ensure they escape unnecessary legislation which has been designed only for charities and community based organisations.

Summary

The paper presents a positive scenario of bringing together organisations with a loose governance and management framework within the not for profit sector. However it fails to fully identify how different NFP segments such as associations who are Not For Profit entities would operate under this proposed legislation. We recommend that the ACNC refrain from using the term “Not For Profit” when it in fact it is referring to only one part of the sector. If the ACNC wishes to represent the total sector, it should seek total representation and consultation from all the not for profit sector.

Author

Nick Koerbin
Executive Director
Association Executive Services
Melbourne

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