
Response to the Consultation Paper on a Review of not-for-profit governance arrangements

Prepared by BoysTown



Authorised By:

Ms Tracy Adams
Chief Executive Officer
BoysTown

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About BoysTown

BoysTown is a national organisation and registered charity which specialises in helping disadvantaged young people and families who are at risk of social exclusion. Established in 1961, BoysTown's mission *is to enable young people, especially those who are marginalised and without voice, to improve their quality of life*. BoysTown believes that all young people in Australia should be able to lead hope-filled lives, and have the capacity to participate fully in the society in which they live.

BoysTown currently provides a range of services to young people and families seeking one-off and more intensive support including:

- Kids Helpline, a national 24/7 telephone and on-line counselling and support service for five to 25 year olds with special capacity for young people with mental health issues;
- Accommodation responses to homeless families and women and children seeking refuge from Domestic/Family Violence;
- Parenting programs offering case work, individual and group work support and child development programs for young parents and their children;
- Parentline, a telephone counselling service for parents and carers in Queensland and the Northern Territory;
- Paid employment to more than 400 young people each year in supported social enterprises to assist their transition to mainstream work;
- Training and employment programs that skill approximately 6,000 young people each year, allowing them to re-engage with education and/or employment, and
- Response to the needs of the peoples of the remote Indigenous communities of the Tjurabalan in Western Australia.

BoysTown is constituted as a Company Limited by Guarantee. Our organisation has its own independent income derived from an active and national fundraising program including the BoysTown Art Union, corporate sponsorships, work-place giving programs, donations and bequests. Approximately 60% of BoysTown's income is derived from this fundraising program with the remainder being comprised of Commonwealth and State grants and fee for service activities. We place great importance on our independent fundraising capability as it allows the organisation to deliver high impact services by supplementing Government funding as well as initiating innovative services in response to the needs of young people and their families in areas where Government funding has been traditionally limited. Such services include BoysTown's Domestic Violence Program and the national telephone and online counselling services for children and young people (Kids Helpline).

BoysTown is a member of Catholic Social Services Australia and subsequently fully supports the submission by the Australian Catholic Bishops Conference in response to the Consultation Paper. However we also wish to make further specific comment on issues raised by the Consultation paper from our own organisational perspective.

General Response

BoysTown supports the development and implementation of transparent and robust corporate governance processes across the not-for-profit sector. We also endorse the identified five (5) core components of governance arrangements for Not-for-profit organisations outlined in the Consultation Paper. However it is our view that these five components are adequately covered in existing

Commonwealth, State and Common law particularly for companies limited by guarantee which are regulated by the Corporations Act and the Australian Securities and Investments Commission (ASIC). It is our concern that the introduction of a new set of guidelines may simply confuse or duplicate existing reporting requirements particularly when negotiations with State jurisdictions concerning the operations of the Australian Charities and Not-for-profits Commission (ACNC) are still in their infancy.

If the purpose of the Not-for-profit reforms is to reduce 'red tape' to enable more effective service delivery then the ACNC would be better placed to focus on leading national legislative reform to harmonise or standardise existing Commonwealth and State legislation, regulation and reporting standards rather than the development of a duplicative set of standards relating to corporate governance. BoysTown argued in its response to the Consultation Paper on the establishment of a National Not-for-profit Regulator that:

The following legislative, policy and evaluation frameworks will need to be harmonised before an effective National regulator of NFP organisations can be established:

- a) Commonwealth and State Incorporation Acts*
- b) Fundraising legislation – see discussion above*
- c) Financial Reporting Standards*
- d) Contractual reporting standards across Commonwealth and State funding bodies. It should be noted that these standards may vary between Departments within the same jurisdictions*
- e) Standards relating to governance and service delivery. State Governments are introducing standards which organisations are required to meet to be eligible for funding. For example NFPs in Queensland will need to be compliant with the Standards for Community Services to be eligible for continued and new funding from the Department of Communities and other Queensland Government Departments funding social and educational services. Unless these types of standards are harmonised across Australia there is a risk that the introduction of a National regulator may lead to the introduction of another set of new and/or contradictory standards in relation to governance and service delivery.*
- f) A common framework for measuring the impact and contribution of NFPs to the Australian community. The Productivity Commission found that there was no common measurement system for assessing the impact of NFP services and activities. If the National regulator and the Australian community are to measure the public benefit of NFPs across diverse sectors a common measurement framework is essential.*

As stated in the Introduction unless these fundamental and systemic reforms are undertaken the objectives for a National regulator outlined in the discussion paper can not be achieved and furthermore duplicative reporting for NFP will most likely be increased.

This Consultation Paper now acknowledges that during the transition period in which it is anticipated that negotiation by the ACNC with the States and Territories on transfer of powers will take place, that there will be duplication in reporting requirements. It is assumed without noting any collaborative evidence

for this view that this will only have a minor impact on Not-for-profit organisations. BoysTown supports the call by the Australian Catholic Bishops Conference for the Commonwealth Government to prepare a Regulatory Impact Statement in relation to the impact of the ACNC on not-for-profit organisations to determine the extent of duplicative reporting during this transition period. This will provide evidence as to the extent of compensation that the Commonwealth Government will need to provide Not-for-profit organisations.

Furthermore, BoysTown has concerns regarding the stated purpose for both the introduction of new governance procedures and the broader Not-for-profit reform agenda. The Consultation Paper and the accompanying Fact Sheet both indicate that the purpose of this reform is *to 'improve public trust and confidence in the sector, through promoting good governance, accountability and transparency'*. This stated agenda implicitly implies the existence of significant issues in the management of not-for-profit organisations which the Government needs to immediately rectify. As stated in our response to the Consultation Paper on the *Better targeting of not-for-profit tax concessions* at no time has Treasury or the Government detailed any evidence suggesting that the current operations of the not-for-profit sector are not being conducted in accordance with the public interest. It could also be challenged as to whether Government is best placed to promote public trust and confidence in the not-for-profit sector given the current lack of public trust in Commonwealth and State Governments and their Departments. Consequently it is suggested that this reform process that will lead to the establishment of the ACNC adopt a more positive purpose for the reform which would be to create a more robust operational environment supportive of the work undertaken by not-for-profit organisations. Negative aspersions about not-for-profit organisations should be withdrawn from all Government literature concerning the reform process, particularly if Government is not prepared to substantiate its claims.

A further issue in relation to the management of this consultation process refers to its timing. Just prior to the Christmas and the New Year holiday period the Commonwealth Government issued three significant Consultation Papers relating to the reform of the not-for-profit sector with short feedback deadlines. All not-for-profit organisations are challenged at this time of year due to increased client demand and staff availability. Although extensions have been provided by the new Minister in relation to the receipt of feedback on these documents, it is unreasonable for this to have occurred and is not in keeping with maintaining an effective consultative dialogue with the not-for-profit sector.

Comment on Specific Provisions:

As noted, BoysTown supports the submission by the Australian Bishops Conference. In addition we would like to specifically comment on Sections 6.1-3:

6.1 Responsible Individual Duties

Consultation Questions 1-4

It is our view that the duties of responsible individuals' for incorporated entities are already adequately outlined in the Corporations and CATSI Acts and do not require further elaboration or codification.

In relation to unincorporated entities the ACNC may consider introducing the broad duty of responsible individuals to act in good faith and in a way which

would be most likely to achieve the purposes of the entity as is prescribed in the Companies Act 2006 (UK).

The standard of care for the enactment of these duties should be consistent across all organisational entities and for paid employees and volunteers otherwise there is a risk that misinterpretation and noncompliance will result from inconsistent interpretation of the standards.

6.2 Disclosure Requirements and Managing Conflicts of Interest

Consultation Question 11:

The key issue for BoysTown in relation to public disclosure is that a well defined set of procedures and standards needs to be in place to ensure uniform reporting. Otherwise a fair comparison between organisations operating in diverse fields of work in relation to their financial returns, overheads and other matters can not be made and in fact may lead to misleading judgements in the public arena. The suggested reporting requirements to the ACNC outlined in paragraph 111 of the Consultation paper appear to be reasonable.

Consultation Question 12:

BoysTown supports the suggestion made by the Australian Bishops Conference that the disclosure of Board and Executive Officer remuneration be by way of a return to the ACNC that describes the number of Directors' and Executives within prescribed bands of remuneration. This would best protect the individual privacy of employees. Furthermore this information should not be placed in the public realm due to the risk of unfair comparisons being made between organisations performing very different services with diverse risk profiles.

Consultation Questions 13-15:

BoysTown supports the principles outlined in paragraph 126 in relation to a conflict of interest policy. However as with other issues we believe that this matter is adequately covered in the existing Corporations Act and see no need for a replication of existing statute in respect to Not-for-profit legislation.

6.3 Risk Management

It is not possible to proscribe the risk management requirements of Not-for-profits given their incredible diversity in relation to function and service provision. In these circumstances it would only be possible in legislation to recognise the importance for an organisation of having adequate risk management provisions. The actual codification of risk management procedures need to be undertaken on a sector basis by the ACNC involving consultations with service user advocacy groups, Not-for-profit organisations and funding bodies.

Conclusion

BoysTown supports the need for through governance procedures across Not-for-profit organisations. These procedures and processes need to be based on common principles and standards particularly if it is the intention of the ACNC to introduce public reporting of matters relating to the operation of Not-for-profit organisations. However overall it is our view that current law adequately deals with governance matters. The development of another set of governance procedures and reporting arrangements will add little value to the existing

situation and may hinder the operations of Not-for-profit organisations by duplicating existing reporting arrangements. If this reform in relation to governance is to proceed then BoysTown's supports the call by the Australian Catholic Bishops Conference for the completion of a Regulatory Impact Statement to quantify the burden of additional 'red tape' for Not-for-profit organisations from the operations of the ACNC. It is our belief that the ACNC would be better placed to complete its mandate of reducing 'red tape' by focusing on leading a change process to harmonise Commonwealth and State legislation and reporting rather than introducing new governance standards and additional reporting.