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January 2012

ECCV RESPONSE TO THE REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS CONSULTATION PAPER

Introduction / Context

1. The Ethnic Communities' Council of Victoria (ECCV) welcomes this review of not-for-profit (NFP) governance arrangements and we appreciate the opportunity to raise relevant issues on behalf of small ethnic NFPs and seniors' clubs.
2. The ECCV is a peak advocacy body representing almost 200 ethnic, multicultural and multi-faith NFPs. These organisations, though often very small, carry out extensive work in the areas of poverty relief, community education, spiritual and religious guidance and welfare work for Victorians with culturally and linguistically diverse backgrounds.
3. At the outset, the ECCV wishes to point out that we have chosen, in this submission, to concentrate specifically on the governance arrangements that we feel are most appropriate for small, incorporated, ethnic organisations and seniors' clubs. In the main, these entities have a very small turnover (for many this is under \$1000 per annum), are maintained by volunteers and operate without DGR status.
4. Organisations such as these proliferate across the state of Victoria and indeed across the country, offering settlement support, community connectedness, language and cultural maintenance, as well as social and welfare opportunities to CALD community members. The work that is undertaken by small ethnic organisations is essential to providing multicultural Victorians with a sense of belonging, security, continuity and friendship. They are essential to community harmony.
5. Small ethnic NFPs and seniors' clubs need particular support around governance, financial management and income maintenance. Smaller organisations often struggle to keep abreast of regulatory arrangements and complex issues like public liability insurance and compliance with various laws.
6. The ECCV believes that the particular circumstances of these small, ethnic NFPs and seniors' clubs are worthy of special attention during this review of NFP governance arrangements. Due to this specific focus, not all questions posed by the Consultation Paper are relevant to this submission, as such the ECCV has used the questions as a guide and has made broader comments, in relation to the below governance principles (as identified in the Consultation Paper).

- Responsible Individuals' Duties

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- Disclosure Requirements and Managing Conflicts of Interest.
- Risk Management
- Minimum requirements for an Entity's Governance Rules
- Relationships with Members

Recommendations

7. In the interests of small ethnic NFPs and seniors' clubs, whose members have varying levels of English, the ECCV make the following key recommendations.

The ECCV recommend that:

1. The Federal Government seek to ensure that any changes made to NFP governance arrangements do not increase administrative burdens and compliance requirements for small NFPs.
2. That the Federal Government seek, where possible, to improve the flexibility of compliance requirements for small NFPs
3. That the Federal Government support small ethnic NFPs and seniors' clubs to comply with governance requirements and to manage any changes that may take place. This can be achieved via the provision of practice models, in-language education resources and ongoing, language accessible, assistance and advice regarding the governance of NFP entities.

General Comments on the Consultation Paper

8. Before responding in more detail to the consultation questions, ECCV would like to make some broad comments on the Consultation Paper and the NFP governance arrangements review in general
9. The ECCV support this review and are pleased with the focus on creating greater clarity, transparency and increasing public confidence in the NFP sector.
10. The ECCV is pleased that the Consultation Paper has acknowledged the importance of keeping compliance requirements proportional to entity size, turnover, risk of activities and amount of government funding received.
11. In line with respondents representing small NFPs in the Final Report, the ECCV are cautious regarding overly prescriptive approaches to the governance of small NFPs.
12. We agree that flexibility in governance requirements is important; indeed we believe that, if many small ethnic organisations and seniors' clubs with non-English speaking members are to remain in operation, flexibility is essential.

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13. We agree that appropriate governance arrangements are required in order to ensure that NFP entities operate in accordance with the law, that organisational funds are being put to appropriate uses and that the entity is operating in the interests of those affected by its activities.

Responsible Individuals' Duties

14. The ECCV believe that responsible individuals in small ethnic NFPs and seniors' clubs should be required to act responsibly towards donors, beneficiaries, volunteers and stakeholders; they must act with diligence and good faith and not misuse their position. That said, the level to which responsible individuals should be answerable to government in this regard should depend on the size of the entity concerned, the risk undertaken by its activities and the public money received by the entity.
15. The ECCV feel that it is important for these responsibilities to be clear in the legislation, so that responsible individuals know who they need to consider when exercising their duties.
16. The ECCV advocate for enhanced community education regarding role of responsible individuals in NFPs, so as to remove ambiguity and limit the likelihood of misconduct or mismanagement.
17. The ECCV advocate for in-language advice and resources and language accessible training opportunities for small ethnic organisations and seniors' clubs. In many cases the members and office bearers of these entities are from non-English speaking backgrounds, or may be unfamiliar with what is expected of responsible individuals in NFPs.
18. The ECCV do not believe that certain qualifications should be made compulsory for those in roles of responsibility. The question of qualifications in ethnic communities is complex, as many qualifications obtained abroad are not recognised in this country. In addition to this, many of those who are suitable for, and keen to take up, posts in small ethnic NFPs and seniors' clubs have not had opportunities to gain formal qualifications.
19. The ECCV believe that if an individual is deemed suitable and trustworthy by others in the entity and those who are affected by the activities of the entity, then he/she should have the opportunity to take on a role of responsibility, regardless of formal qualifications.

Disclosure Requirements and Managing Conflicts of Interest

20. The ECCV believe that small ethnic NFPs and seniors' clubs require simple and clear disclosure requirements and codes of conduct for managing conflicts of interest.

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21. The ECCV submit that, when dealing with small organisations, with small turnovers, detailed expenditure disclosure are not always necessary.
22. Generally speaking, the funds managed by small, ethnic NFPs and seniors' clubs are not substantial, in many cases an entity may be operating with a budget of only a few hundred dollars. With this in mind, the ECCV suggest that disclosure requirements be proportionate to the size of the funds in question.
23. The ECCV support tiered/proportional reporting requirements that take entity size and turnover into account and that take an interest in the broader context of the organisation and the services they provide.
24. The ECCV would like to see a narrative reporting option that provides greater scope to describe complex and varying activities of small ethnic agencies and seniors' clubs.
25. In the interests of ensuring transparency and protecting the standing of the NFP sector, the ECCV believe that responsible individuals in small ethnic NFPs should declare and avoid material conflicts of interest.
26. The ECCV agree with the assertion, made under point 121.2 of the Consultation Paper, that "the word 'material' implies that the interest needs to be of some substance or value, rather than merely a slight interest".
27. In principle, the ECCV feel that the sample conflict of interest policy provided under point 126 of the Consultation Paper is appropriate, but we caution that it is important that entity size, turnover and risk be taken into account by such policy, to ensure that compliance demands are reasonable and manageable for small NFPs.
28. The ECCV is concerned that overly burdensome compliance requirements, in this and other areas of governance, may act as a disincentive for new, established and aspiring ethnic NFPs to proceed with their vital operations.
29. The ECCV caution that small ethnic NFPs require flexibility and support regarding conflict of interest and disclosure requirements. As such, we advocate for language accessible training, which could be delivered in conjunction with in-language fact sheets, DVDs, or information packs, including examples of situations in which disclosure is called for, or in which conflicts of interest may arise and models for how this can be managed.

Risk Management

30. The ECCV believe that, with regard to risk management requirements, small ethnic organisations and seniors' clubs require flexibility and minimum administrative red tape, so that they may channel their, often limited, resources towards the fulfilment of their organisational mission.

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31. The ECCV are pleased that the Consultation Paper has acknowledged the need for risk management requirements to be dependant on the size of the entity, the entity's turnover and the nature of the activities undertaken.
32. In principle, the ECCV agree that indemnity insurance is important for responsible individuals in NFPs, for their own protection and the protection of the entity as a whole
33. In practice, the ECCV is aware that many small ethnic NFPs and seniors' clubs find the costs of this prohibitive, due to their small budget.
34. It is crucially important that indemnity insurance not consume an unreasonable amount of the entity's budget, for this may act as a disincentive for the continuation of these important organisations.
35. The ECCV support tiered or 'sliding-scale' mandatory requirements in terms of indemnity insurance, so that the cost of insurance is dependent on the turnover, size and activities undertaken by the entity.
36. The ECCV submit that small, ethnic NFPs and seniors' clubs should be provided with clear, simple and language accessible resources explaining the function and importance of indemnity insurance.

Internal and external reviews

37. The ECCV support tiered auditing requirements for incorporated associations.
38. This submission focuses on entities that can fit within the description of a small company (as provided under point 142 of the Consultation Paper). As such, that they should not be compelled to prepare a financial report or have it audited, or to prepare a directors report, or advise members of annual reports.
39. Though the above should not be mandated, the ECCV believe that, in the interests of transparency and accountability, small entities should take instruction from their membership and donors as to the level of review and reporting that should be undertaken.

Minimum Requirements for an Entity's Governing Rules

40. The ECCV submit that core minimum requirements for registered NFP entities need to be correlated to the size, risk and turnover of the entity.
41. The ECCV feel that it is appropriate that the body to which these entities will be registered (e.g. The ACNC) is able to enforce these rules, as a condition of registration.

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42. The ECCV submit that clear and simple, in-language guidelines, or governance models should be provided to small, ethnic NFPs and seniors' clubs, to inform them of current and evolving minimum requirements.

Relationships with Members

43. The ECCV agree that it is reasonable to include meeting requirements in the governance requirements of NFP entities. This encourages democracy, accountability and transparency.
44. The ECCV submit that the meeting requirements expected of NFPs should be dependent on the size of the entity and should take into consideration the fact that many NFPs operate due to the work of volunteers, who may be deterred if demands on their time become too great.
45. The ECCV believe that it is appropriate that small ethnic organisations and seniors' clubs be required to hold an annual general meeting and that the minutes of all general and committee meetings are made available to members and donors.
46. The ECCV would also encourage small ethnic NFPs and seniors' clubs to provide members with an annual report (with an option for narrative based reporting).

Summary Questions

47. The ECCV submit that small ethnic NFPs and seniors' clubs would benefit from additional support in order to achieve better governance outcomes.
48. The ECCV submit that language accessible, community based training and educational resources are essential to this task.
49. The ECCV believe that a multilingual NFP governance helpdesk/hotline facility would be extremely beneficial to small ethnic NFP and seniors' clubs.
50. Finally, the ECCV submit that compliance requirements need to be flexible. It is our concern that any increased administrative burdens, complexity, or cost, may deter emerging and established small ethnic NFPs and seniors' clubs from continuing their operations, which are vital to the quality of life and support available to thousands of Australians from culturally and linguistically diverse backgrounds.

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