

**Submission to the
Review of not-for-profit governance arrangements
Consultation paper December 2011**

It is pleasing to see that Australian Government is undertaking a process to clarify and strengthen the governance of not-for-profit organisations. The not-for-profit sector provides many valuable services to the citizens of this country, with the individuals responsible for operating the organisations often doing so on a voluntary basis. Under these circumstances, it is unfortunately possible for individuals to abuse the positions they occupy; and so the move by the Government to strengthen the underlying governance requirements of not-for-profit organisations is welcome and will undoubtedly lead to an increase in the greater good provided by the sector.

My experience is in the community broadcasting sector, both in radio and television, over a period of some twenty years. Community broadcasters are required to be not-for-profit organisations under the terms of the broadcasting licences issued to them under the provisions of the Broadcasting Services Act 1992. They are an excellent example of the observation in paragraph 89 of the consultation paper, as the corporate entity operating the broadcasting service has a duty not only to act in the best interests of its members, but also in the interests of the community which the broadcaster is licensed to serve: the viewers and listeners. At the extreme, this community of interest can, as is the case with community television services, encompass the entire population of a metropolitan capital such as Sydney or Melbourne. Serving the interests of such a broad range of people, numbering into the millions, is a challenging task.

The provisions of the Broadcasting Services Act 1992 make it a condition of holding a community broadcasting licence that the licensee must encourage the participation of members of the community in both the provision and selection of programming content, and in the operations of the licensee organisation (*Schedule 2, clause 9(2)(c) of the Act*). There is a certain amount of latitude available to licensees in the way this may be interpreted. However, it does provide for the possibility that a licensee organisation may end up with a committee of management or board of directors where few if any of the people involved have the necessary expertise, experience or skill to operate a broadcasting service.

The situation also often arises where the immediate beneficiaries of the operations of the organisation - the people who are given the privilege of being able to broadcast - are also the people on the boards and committees of the organisations making decisions about who the people will be who are given the privilege of being able to broadcast. The scope then for conflict of interest arising, both directly and indirectly, is considerable.

To address directly some of the questions raised by the consultation paper:

1. *Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?*

Yes, it should be clear; in particular ensuring that, where the purposes of the organisation make it relevant, that the responsible individuals of an organisation not just themselves or even the members of the organisation, but the broader body of people for whom the organisation has been created to benefit.

2. *Who do the responsible individuals of NFPs need to consider when exercising their duties? Donors? Beneficiaries? The public? The entity, or mission and purpose of the entity?*

This will, of course, vary depending on the nature of the organisation and the purposes for which it is founded. In the case of an organisation such as a community broadcaster, which will have a very clearly defined community of service, the responsible individuals need to consider the needs of the whole community, not just the members of the organisation which will usually comprise a very limited subset of the community of interest. It would be advisable to have some level of safeguards built into the required governance arrangements of the not-for-profit organisation to ensure that the responsible individuals are pro-actively considering the needs of their community of service, rather than the organisation's membership; and that there are reporting requirements so that the responsible individuals can transparently demonstrate that they have done so.

5. *Should responsible individuals be required to hold particular qualifications or have particular experience or skills (tiered depending on size of the NFP entity or amount of funding it administers)?*

There should definitely be a requirement to ensure that the responsible individuals operating a not-for-profit organisation have the skills, expertise and experience to competently operate the organisation and achieve its aims. The individuals involved need to understand that in many cases their success or failure in operating the organisation will not just impact on themselves or the members of the organisation, but upon a much broader range of people. In an area such as broadcasting, the responsible individuals need not just the skills needed to run the organisation, but to encompass the regulatory requirements to comply with the Broadcasting Services Act, the Radiocommunications Act, other relevant areas of state and federal legislation, and the sector's codes of practice. These are areas which require knowledge and ability; the requirements for community broadcasters under the Broadcasting Services Act are particularly complex and nuanced. It cannot be in the best interests of the broader community if inexperienced amateurs are able to take the reins of the organisation and, through their inexperience, have a deleterious effect on the organisation.

6. *Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?*

There is a place for allowing some inexperienced individuals to have a voice at a governance level. It allows for the views of the ordinary member to be heard on a board or a committee of management; and at the same time provides an avenue for people to gain experience in working

with the governance structures of a not-for-profit organisation. However, to ensure good governance and that the organisation is operated competently in the best interests of fulfilling its purposes, at all times a majority of the responsible individuals of an organisation should need the minimum standards of experience and expertise.

14. *Are specific conflict of interest requirements required for entities where the beneficiaries and responsible individuals may be related?*

Yes. This is a situation which can often arise in community broadcasting. It is not uncommon for many or most of the responsible individuals on a board or a committee of management to also be program providers or presenters on the service. Access to and control over a section of broadcast airtime is understandably a keenly sought after privilege. Timeslots are limited by the number of hours in a day; and there can be fierce competition for those times which are perceived as being more popular (breakfast or drive-time programs in radio, or prime-time slots on television). The allocation of timeslots to program makers is thus an area which is very vulnerable to conflict of interest when the responsible individuals are also the people who can benefit by receiving a favourable time allocation. Conflict can also arise in situations where, for example, a program presenter for some reason has difficulty in meeting the technical or presentation standards that the station has set for broadcast, or has a program which may be drifting towards the self-indulgent rather than catering to an audience. The organisation will have difficulties in imposing measures to improve that program when the presenter is also a responsible individual of the organisation and therefore has some sway over the decision making process. This may not fall under conventional conflict of interest guidelines: for example, the presenter who has difficulty meeting technical competency levels may try to influence the decision making process which sets the levels so that they are sufficiently lowered to the extent that the presenter is no longer in breach. As the matter has not discussed that presenter or their program specifically, there has not been the need to proclaim a conflict of interest in the usual manner; and yet clearly there is a conflict of interest and the outcome has been to diminish the listening experience of the wider audience.

I hope that this submission has shed light on some of the issues which affect the community broadcasting sector. Whilst the examples given here are specific to broadcasting, I am sure that the underlying issues raised are transferable to a broad range of not-for-profit enterprises.

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