



Submission Treasury Not for Profit Governance Arrangements Jan 2012

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Submission: Review of Not-for-Profit Governance Arrangements

Southern Youth and Family Services welcomes this opportunity to provide input to the Review of Not-for-Profit Governance Arrangements. SYFS supports the overriding principles in the Consultation Paper that in implementing governance requirements, the ACNC will take into account flexibility and proportionality, particularly in regard to smaller NFPs. We support the measures outlined that will impact on reducing red tape for NFPs and particularly the move to consistency across Government Requirements.

In this submission we provide comments only on those consultation questions where we have identified additional considerations need to be made by the ACNC.

Background to Southern Youth and Family Services (SYFS):

Southern Youth and Family Services (SYFS) is an independent community based organisation which is Incorporated as an Association and a Registered Charity. The principle aims of SYFS are:

- To provide support and assistance to young people who are disadvantaged, homeless, or at risk of becoming homeless, and their families,
- To act as an advocate for, and facilitator of, structural change that achieves improved living situations for young people and their families.

We work to increase access for young people and families to:

- Secure and affordable, individual housing
- Employment, education and training
- Secure and adequate income
- Health supports and services
- Appropriate support services
- Clothing, food and other practical assistance.



Response to Consultation Questions:

1. Responsible Individuals' Duties

Consultation Q.5 Should responsible individuals be required to hold particular qualifications or have particular experience or skills?

Responsible Individuals are responsible for ensuring that the NFP complies with legislation and exercises duty of care and fiduciary responsibilities. The selection process for directors and any other Responsible Individuals should be included in the Constitution and Rules of the NFP entity. Ability to exercise these responsibilities as a whole (the Board, Management Committee) comes from experience and skills as well as any qualifications. Many NFP Community Services Agencies purposefully recruit one or two inexperienced Board / Committee members each Annual General Meeting, with the objective of training new people and offering personal and professional developmental opportunities.

Many Community Service NFPs also recruit client member positions to their Boards / Committees. Southern Youth and Family Services (SYFS) for example, as a service provider to disadvantaged, homeless or at risk young people and their families, recruits two ex-officio young people positions to the Board. These young people give valuable input and learn governance skills. They participate in Board training opportunities and some go on as young adults, to be full members of the Board in following years.

These practices are examples of Good Practice. They enhance the service user input into decisions affecting the organisation and service delivery and they enhance the member's skills, training and add to their Resumes, which assists when they are applying for employment in any field.

Community Service NFPs in our region, as an example, are predominantly community based organisations recruiting Board / Committee members from the local community, people from other community service organisations and occasionally professionals or business people with particular skills. Community based and community led organisations benefit from the local knowledge and networks of these members and contribute to the social fabric and cohesion of communities. Sharing a common vision for the organisation and a commitment to improving the lives of the people the organisation serves are key, essential attributes that are required on the Governance structures.

Developing skills in Governance amongst Board / Committee members is one of the contributions that community based NFPs make to their local communities. Mandating pre-existing skills or qualifications would have the unintended consequence of undermining the benefits and outcomes achieved by community management models and indeed, could lead to the erosion of community managed, community based organisations. The suggestion of minimum qualifications for Board / Committee members is unrealistic and potentially would apply unnecessary restrictions on the Entity's ability to recruit suitable members to its Governance Structure. It is the Entity's responsibility to ensure that Responsible Persons have and develop the skills necessary for effective governance through a variety of processes including induction, Board training, provision of information needed for decision-making etc. Skills can be learnt equally well through experience and on-the-job training as through formal education and we do not support formal qualifications as a pre-requisite to becoming a Responsible Individual.

Consultation Q 6: Should these minimum standards (of care) be applied to a portion of the responsible individuals of a registered entity?

The Minimum Standards of Care are high level and are requirements of legislation. These standards should be applied to all Responsible Individuals as they are the collective responsibility of the Board / Committee. Roles and Delegations vary between Board Committee / Members dependent on the position held. This variation allows for certain more complex responsibilities to be fulfilled by people with the skills to do so. Such arrangements are part of an Entity's Constitution, Rules and Policies and Procedures. Mandating duty of care to only certain Responsible Individuals would be counter-productive, again causing difficulty in recruiting to those positions and undermining the nature of community management. It is neither necessary or constructive for the ACNC to regulate on this.

Disclosure Requirements and Managing Conflicts of Interest

Consultation Q 12: Should the remuneration (if any) of responsible individuals be required to be disclosed?

If the definition of a Responsible Individual includes “an individual who makes, or participates in making, decisions that affect the whole or a substantial part, or the registered entity's activities” then this question may apply to CEOs, EOs, Managers and Co-ordinators. Many Community Services NFPs are small entities and the pay of senior staff is limited by the relevant Award. These are not high income earners. It would be an unnecessary invasion of their privacy to disclose their wages to the ACNC and have these published in any way that is publicly accessible.

NSW legislation does not preclude a Board or Management Committee member receiving payments from the Entity. An emerging practice in Community Service NFPs is to have a staff representative on the Board / Committee. This requires disclosure of Conflict of Interest by the staff member on any decisions that could affect their employment. Records of payments made to the Board / Committee do need to be recorded by the NFP, but this may be a matter more for the financial management of the organisation and an item in Audits, rather than a mandatory reporting / disclosure to the ACNC.

2. Risk Management

Consultation Q 17: Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?

For the majority of Community Service NFPs an investment strategy is an unrealistic expectation. Those organisations relying primarily on Government funding are subject to changing Government priorities, short term funding contracts that can be annual and major reviews and changes in Government Programs. It is not possible for these organisations to develop long-term plans for investment of their resources or even allocations to specific service delivery areas.

These organisations must comply with all relevant legislation including not trading in insolvency, compliance with Funding Contracts and having redundancy allocations as specified in Awards. For these organisations, it is not necessary for the ACNC to mandate further requirements.

Consultation Q 18: Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?

The aim of the ACNC is to simplify existing arrangements in order to reduce red tape and minimise compliance burdens for the sector. Various Government Program Funding Contracts contain obligations around insurance types and levels. There are inconsistencies between levels of Government and between Government Agencies in what they require as minimum insurance levels, particularly Public Liability Indemnity. Standardising these requirements in the ACNC and removing them from Government Funding Contracts would be a move to reduce unnecessary red tape and double reporting.

However the level set must be realistic. Government departments often mandate an extremely high level of insurance cover based on an exaggerated "risk" assessment, yet there is no case law or case precedent to support the overly high levels sometimes being required. The level set must be sensible, commensurate with the risks and safe. When Government agencies are contracting NFPs to provide services, the contract price or funding level must be realistic about meeting the true costs of providing services, including the true cost of insurances and complying with any regulation on minimum insurance coverage.

Whilst acknowledging these increased costs of insurances to NFPs, we would support NFPs that provide community services and have paid employees carrying Professional Indemnity, Public Liability, Volunteers Insurance (if applicable) and Directors Liability insurances as minimum requirements. It is essential that Voluntary Boards of Management are offered protection in their role and do not experience anxiety around risks to their personal assets should unforeseen circumstance arise for the organisation for which they are volunteering their skills and time. Again, we emphasise that it is essential that the specifics of the insurance cover levels be commensurate with the risks.

3. Minimum Requirements for an Entity's Governing Rules

Consultation Qs 21 – 25

If the aim of the ACNC is to eventually be the sole regulator for the Not for Profit sector, including those entities currently under State legislation, then a synthesis of the current minimum rule requirements in State as well as Federal Acts needs to be undertaken.

Minimum Model Rules that are generic and able to be adapted to facilitate the variety of purposes in the Not for Profit sector would be of benefit. Providing Model Rules assists many organisations in establishing their Constitutions and are thus useful documents. However, they should assist organisations meet their legal requirements, rather than be overly prescriptive in the operations of the organisation. When the ACNC develops its proposed Model of Rules, these need to be based on the common denominators currently in State, Territory and Federal Rules to ensure that organisations with current complying Constitutions are not forced in the transition phase to rewrite their Constitutions or alter their organisation's rules where these have already been guiding quality and effective practices.

Where an organisation breaches its Constitution, the members of the organisation do need an external body to turn to for assistance in rectifying the issues, or in serious cases, to lodge a complaint. This should only arise after the internal processes of disputes and complaints have been implemented. The ACNC role should be, in the first instance, to provide assistance and information when requested to assist the organisation resolve the issue. Only if the issue cannot be resolved through these processes would the ACNC's role progress to be more directive.

4. Summary

Consultation Q 30: How can we ensure that these standardised principles-based governance requirements being administered by the on-stop shop regulator will lead to a reduction in red tape for NFPs?

If the ACNC can become the one-stop NFP Regulator then major reforms to Government administration of grants at State and Federal level will be needed to ensure the reduction of red tape. If the ACNC is the regulator of governance of NFPs, then all requirements in tender documents and EOI documents to describe and prove governance ability and quality must be removed. Compliance with the ACNC regulations should suffice. Any compliance measures implemented by the ACNC must be streamlined, non-onerous and remove all repetition.

We support the move to outcomes based reporting to Government. Outcomes based reporting to Government would place more emphasis on the delivery of the service and achievement of outcomes for the 'purchase price' rather than reporting requirements that duplicate and complicate financial and governance reporting processes.

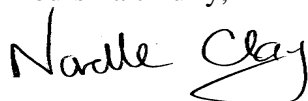
There is a need to trial true outcome reporting frameworks with organisations that receive funding from multiple sources. For example, SYFS operates 38 services with funding from 19 distinct Programs. The administrative burden of meeting inconsistent and onerous reporting requirements to each Funder is not only time-wasting but also mitigates against the ability to provide holistic services for 'whole individuals' and in a 'whole of government' manner. Organisations that operate multiple services have considerable expertise that needs to be further consulted in the specifics of reducing red tape and streamlining reporting requirements. SYFS, for example, has successfully trialled single reporting methods for multiple Projects with FAHCSIA and have useful learnings and methodologies that can be shared and applied more broadly.

Processes for financial reporting to Government need to be reformed. Currently, community service NFPs have a variety of financial reporting requirements imposed on them by Government funding contracts. Some require quarterly, some half yearly, some annual financial returns. The level of interference in an organisation's budgets and Chart of Accounts line items can be high and inconsistent. These processes need to be streamlined in order to reduce red tape. Please note, however, that we do not support the mandating of a Standard Chart of Accounts. The Standard Charts of Accounts that have been piloted have not worked for many community service NFPs. They do not align with all NFP's financial management policies and practices and rather than increasing transparency can create complexities and lack of clarity in budgeting and financial reporting.

We recommend that an organisation's annual Audited Accounts should suffice for financial reporting. An Audit complying with Australian Standards tests an organisation's financial systems and viability. Again, there is great duplication in tendering specifications and accountability reporting that requires organisations to provide details on their financial capability where that is more accurately reflected, and externally evaluated through the Audit process.

Thank you for considering these comments in your Review of Not for Profit Governance.

Yours Faithfully,

A handwritten signature in black ink that reads "Narelle Clay". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

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