

16 December 2011

Mr Chris Leggett
The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: NFPreform@treasury.gov.au

Dear Mr Leggett

Consultation Paper entitled “A Definition of Charity”

The Australian Institute of Company Directors (Company Directors) welcomes the opportunity to comment on the Consultation Paper “A Definition of Charity” (the Consultation Paper), released by the Federal Government on 28 October 2011. We are grateful for the one week extension of time in which to lodge our submission. Through providing our views we hope to assist Treasury and the Federal Government with their deliberations.

About Company Directors

Company Directors is the second largest member-based director association worldwide, with over 30,000 individual members from a wide range of corporations: publicly-listed companies, private companies, not-for-profit organizations (NFPs), charities, and government and semi-government bodies. As the principal professional body representing a diverse membership of directors, we offer world class education services and provide a broad-based director perspective to current director issues in policy debates.

Please find enclosed a document titled “Not-for-Profit Governance: Benefiting individuals and communities”, which sets out some of Company Directors’ activities and areas of focus in the NFP governance sphere. We also provide a copy of our Directors Social Impact Study 2011, which offers insights concerning NFP governance and the contribution of directors.

NFP Sector

Company Directors is mindful that the NFP sector comprises a large number of organisations, with a variety of structures and missions. We note there are approximately 600,000 NFPs, many of which are small in scale and relatively “fragile” when it comes to coping with regulatory change. There are approximately 59,000 economically significant NFPs, contributing some \$43 billion to Australia’s GDP and 8% of employment (representing some almost 890,000 staff) in 2006-07.¹

¹ Productivity Commission, *Contribution of the Not-for-Profit Sector*, Research Report, January 2010, Canberra, page xxvi.

The NFP sector today spans a diverse range of activities including those related to culture and recreation, education and research, health, social services, the environment, religion, associations - to name some examples. Governments continue to increase their reliance on the NFP sector to fulfil a range of essential community services and support, and as a consequence the sector in turn has become important to the fabric of our society. In some cases, “if the NFP sector does not do it, it will not be done”.

It follows from the existence of approximately 600,000 NFPs, that there are currently some hundreds of thousands of NFP directors in Australia. These directors range from experienced non-executive directors to individuals with relatively little or no other experience as a director. Regardless of their experience or backgrounds, many NFP directors serve on a voluntary basis.

Our Director Social Impact 2011 suggests that over half of our members currently hold at least one NFP directorship, in addition to other members who are or have been directly involved in the governance of one or more NFP entities.² Issues potentially impacting on the governance, financial viability and organizational certainty of the NFP sector are therefore of keen interest to Company Directors and its membership.

Our approach to the current consultation has been to set out some guiding principles

Company Directors have not sought to answer each question contained in the Consultation Paper in detail. Rather the comments below represent some of our general thoughts on the introduction of a statutory definition of charity.

While we are supportive of the current initiatives being taken to support, grow and strengthen the NFP sector, we believe the consultation process could have been more effective by providing greater clarity around what are the specific policy objectives of the proposed statutory definition of a charity. Without clear objectives it is difficult to provide comprehensive and holistic comments. We also feel that many of the issues that will come under consideration for NFP reform are related, and it would have been beneficial to undertake consultations in a less piecemeal way and by reference to an overarching set of guiding principles.

Having said that Company Directors have attempted to provide meaningful feedback. We believe the comments made in this submission can be used as a guide to determining the appropriateness of various policy responses that may be under consideration.

Company Directors provide in-principle support for the introduction of a statutory definition of charity

We refer to the various Inquiries listed in the Consultation Paper that have examined the desirability of, and recommended in favour of, a statutory definition of charity. While there is now a substantial wealth of common law authority pertaining to the definition of a charity in Australia and substantial certainty surrounding the current law in Australia, Company Directors, on balance, supports the introduction of a statutory

² Company Directors, *Directors Social Impact Study 2011*, at page 5.

definition as a matter of principle. We would caution, however, that there is a need to be very careful in the formulation of a statutory definition of charity, including having regard to the consequences of any proposed formulation on NFPs and the activities they undertake.

The Consultation Paper proposes (paragraph 41) that the legislative definition of “charity” be based on the definition contained in the Charities Bill 2003. Under the latter definition a charity must have the following broad elements:

- is a not-for-profit entity;
- has a dominant purpose that is charitable;
- is for the public benefit;
- does not engage in activities that do not further, or are not in aid of, its dominant purpose;
- does not have a disqualifying purpose;
- does not engage in, and has not engaged in, conduct that constitutes a serious offence; and
- is not an individual, partnership, a political party, a superannuation fund or government body.

Company Directors submit that the following elements are also essential to any definition of “charity”:

- there is recognition of possible multiple purposes when determining “dominant purpose”;
- the current presumption that charities falling within particular categories of charitable purpose meet the “public benefit” test should not be altered;
- the definition of charity should not impose an “unduly restrictive” test for the consideration of whether a charity is of public benefit if it recovers its costs through fees, charges, levies or memberships;
- depending on the approach adopted for defining a charity, there needs to be either refinement of the meaning of “government body” or greater clarity around what constitute “government purposes”;
- a degree of flexibility needs to be incorporated into the definition, while recognising the need for those establishing and governing charities to have a high level of certainty as to their organisation’s charity status;
- an equitable outcome for all is required, including for commercial organisations; and
- appropriate transitional provisions are required and a “grandfather” clause should be considered.

When determining a charity’s “dominant purpose” there should be recognition of the need to for charities to sometimes have multiple purposes

Charities and other NFPs need financial security if they are to perform their valuable work with assurance. Therefore they need some flexibility to diversify their revenue streams to ancillary activities which may not of themselves be charitable, but the proceeds from which are applied to the dominant charitable cause(s) of the organisation.

Company Directors submit that any future law should recognize that charities might have multiple purposes relevant to determining “dominant purposes”.

The Consultation Paper (paragraph 51) does not propose to limit the number of purposes a charity could have. We caution that any codification of the definition of charity should not change (inadvertently or otherwise) the status quo in this respect. The capacity for any future law to continue to recognize the multiple purposes of charities will be important.

There should be no change to the current presumption that charities falling within particular categories of charitable purpose deliver a “public benefit”

The Consultation Paper contemplates (paragraph 83) that charities will be required to demonstrate their “public benefit” when seeking approval as a charity. Company Directors note this will remove the current presumption that entities are of public benefit and likely result in all charities reporting to the new Charities Commission via a tax return type form to justify that they deliver a public benefit.

This reporting regime will comprise a new and additional cost burden, even for those charities that will easily satisfy the public benefit test. For those charities that, say, charge a fee, or offer services that are not available to the entire public, there will be uncertainty as to whether all those who are “charitable” under the current law will remain so under the future test.

Company Directors submit that instead of removing the current presumption, the new law should retain it, as well as the current ability of the Australian Tax Office (ATO) to ask the courts to determine specific cases where an entity is found not to be true to the intent of public benefit. Indeed, we consider that retention of the current common law and Taxation Ruling 2011/4 precedents that enable a presumption of public benefit will be crucial to the stability of the NFP sector.

The Consultation Paper refers (paragraph 25) to the recommendation of the Productivity Commission that the law include a statutory definition of charity in accordance with the recommendations of the Charities Definition Inquiry (including overturning the presumption of public benefit) on the basis, amongst other things, that it would create clearer and more consistent principles and reduce confusion and costly legal disputes. The Consultation Paper also refers (paragraph 81) to the overturning of the presumption of public benefit in England and other jurisdictions.

We note that the removal of the centuries-old presumption of public benefit in various overseas jurisdictions has created significant uncertainty in the application of the law, where charities are being forced to have courts decide the meaning of the operation of public benefit. This has been particularly acute where cost recovery for services occurs³.

In contrast, there is currently a high level of certainty as to the definition of charity within Australia, illustrated by a wealth of past legal cases. It is important that the

³ Public benefit tests sometimes have an element relating to the fees or charges levied by an entity. The Consultation Paper, for instance, refers (paragraph 7) entity is considered unduly restrictive, such that the entity is not for the public benefit and does not fall within of the definition of a charity.

introduction of a new definition of charity does not overturn that certainty and herald in a new era of litigation and uncertainty, as is occurring overseas⁴.

Such uncertainty is likely to create governance problems for many charities and threaten their on-going viability. In this context, it is important to recognize that current funding support, including much government funding and corporate and individual donation, increasingly excludes the administrative and operational overheads that are inherent in service delivery. If charities are no longer able to recover costs or are unreasonably restricted in this regard, then the extent and level of services will inevitably need to be reduced, which will in turn have an immediate adverse impact on recipients and put greater pressure on the government and service providers.

Company Directors submit that an Australian definition of charity should retain the current presumption of public benefit. Retaining the presumption of public benefit would also avoid the tortuous and imprecise task of defining in legislation which services and charges can be subject to cost recovery and those services and charges that cannot.

The definition of charity should not impose an “unduly restrictive” test for the consideration of whether a charity delivers public benefit if it recovers its costs through fees, charges, levies or memberships

Following on from the points made above, we believe that charities should be able, as they do now, to continue recovering costs through fees, charges, levies or memberships. Company Directors make this submission for the following main reasons⁵:

- the principle of appropriate and reasonable cost recovery represents good public policy;
- a large number of charities would be detrimentally impacted if current cost recovery mechanisms are restricted, limited or prohibited, as many charities rely on private contributions such as fees and charges; and
- the application of an “unduly restrictive” test would be costly, difficult to administer and result in considerable uncertainty for charities, as the experience in the United Kingdom demonstrates.

Depending on the approach adopted for defining a charity, there needs to be either refinement of the meaning of “government body” or greater clarity around what constitute “government purposes”

Company Directors note that the Charities Bill 2003 referred to in the Consultation Paper (paragraph 41), as the foundation on which a future definition of charity would be based, would exclude “government bodies” from the definition of “charity”.⁶

⁴ Refer, for example, to *The Independent Schools Council v The Charity Commission of England and Wales [2011] UKUT 421 (TCC)*.

⁵ Catholic Health Australia elaborate on each of these points in their submission to the current Inquiry.

⁶ Refer to Clause 4(1) of the Charities Bill 2003 - “A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to an entity that.....(f) is not an individual, a partnership, a political party, a superannuation fund or a government body”. Clause 3 of the Charities Bill 2003 defines a “government body” as (a) the Commonwealth, a State or a Territory; or (b) a body controlled by the Commonwealth, a State or a Territory; or (c) the government of a foreign country; or (d) a body controlled by the government of a foreign country”.

The Consultation Paper asks (Question 15) whether the definition of “government body” in the Charities Bill is adequate following the decision of the High Court in *Central Bayside General Practice Association Limited formerly known as Central Bayside Division of General Practice Limited v Commissioner of State Revenue* [2006] HCA 43. That decision reversed a Victorian Court of Appeal decision that the Central Bayside Division was not a charitable body because it performed the work or functions of government and was a “creature or agent” of government.

Company Directors note that if the Charities Bill was adopted as currently proposed there would be significant immediate uncertainty about the status of entities receiving funding from, or providing various tendered or nominated services to government bodies, which would be significantly disruptive.

If the decision is made to adopt the approach in the Charities Bill 2003 and exclude government bodies from the definition of charities, care needs to be taken to ensure that this exclusion is not extended to the non-governmental organisation (NGO) sector. This risk arises if the definition of government bodies includes entities “controlled” by government. Many charities are subject to a degree of direction or control either as a term of funding or as a legislative requirement⁷ or a tendering/contractual service provision clause. Company Directors consider this risk could be mitigated by a employing a more precise definition of “government body”, which removes the proposed reference to control.

Other considerations include:

- We query how any proposed definition is intended to relate to government bodies that convert to NGOs, or vice versa.
- We note that there are various statutory entities/trusts which have charitable causes as part of their remit even though other elements of their remit are not. Such bodies would need to be considered carefully for the purposes of the definition of “government body”, and we would suggest in some cases there is a strong argument for their exclusion from the latter definition.

The Consultation Paper also queries (paragraph 132) “whether purposes that have been found not to be charitable should be listed as ‘disqualifying purposes’”, including “governmental” purposes.

While the Charities Bill 2003 did not specify “governmental” purposes as a “disqualifying purpose”, the Consultation Paper refers (paragraph 52) to Draft Tax Ruling 2011/D2, which states that “government purposes” have been found to not be charitable. While that ruling has now been finalised, we note that the ATO assertion that “government purposes” are not charitable would seem to significantly overstate the common law.

Company Directors submit that should, as an alternative to trying to define and exclude “government bodies”, an approach is adopted whereby the definition of charity lists

⁷ For example, the *Aged Care Act 1997* (Cth) requires providers of residential or community care to be approved and subject to operational standards.

“government purposes” as a “disqualifying purpose”, it needs to be made clear that NGOs contracted by government to provide NFP or charitable services are not, by virtue of that exclusion, themselves automatically excluded as charities.

Any definition of charity should have a degree of flexibility

We understand the need for clarity in the definition of charity, however, we maintain strongly that there is also a need to be flexible, and not too prescriptive, to allow the definition to remain appropriate as society continues to evolve (which we cannot accurately predict now for the future). An overly prescriptive definition will do untold damage at the margins, with consequential adverse impacts for our society.

An equitable outcome for all is required, including for commercial organisations

One of the major challenges associated with the introduction of a statutory definition of charity is, on the one hand, not unnecessarily impeding the activities of “bona fide” charities and NFPs, while on the other hand, ensuring there is equity in our taxation system. This equity should include that commercial organisations providing goods or services are not discriminated against in terms of taxation and other concessions, compared with organisations cloaked in a charitable mantle which compete in the commercial space (competitive neutrality).

Appropriate transitional provisions are required

Company Directors note that the introduction of a statutory definition of charity will necessitate transitional provisions to ensure that wherever possible there is continuity of “charitable” activities. In particular, those organisations that no longer fall within the statutory definition of a charity should be afforded an appropriate period to rearrange their activities to come within the charity definition. Such transitional provisions are critically important to reduce possible unintended consequences and reduce the cost impost on NFPs.

A “grandfather” clause should be considered

Company Directors believe that entities that are currently defined as charities should, in principle, continue to be classed as charities unless good cause can be shown by government or the charities regulator.

We trust these comments are of assistance. Company Directors would be happy to elaborate on any of the points made in this submission should this be required.

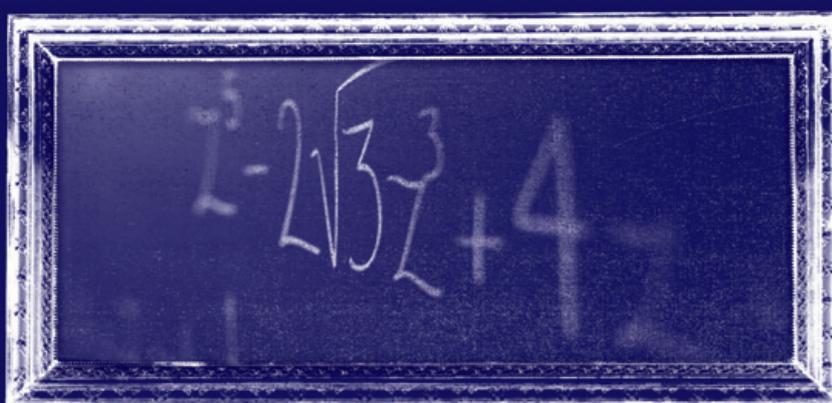
Yours sincerely



John H C Colvin
CEO & Managing Director

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector



Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

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The Directors Social Impact Study 2011 was conducted by the Centre for Social Impact (CSI) on behalf of the Australian Institute of Company Directors.

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Foreword – From John H C Colvin

Following the success of the inaugural *Directors Social Impact Study*, conducted across New South Wales and Victoria and released in 2010, this year's study has been expanded nationally and seeks to build on our understanding of the contribution made by directors to Australia's not-for-profit (NFP) sector.

I want to thank those members who participated in this year's study, and all our members who contribute to the Australian economy and society through their role as a director.

This year the study has been conducted on behalf of the Australian Institute of Company Directors by the Centre for Social Impact (CSI), whose core mission is to create beneficial social impact through teaching, research, measurement and the promotion of public debate. The centre has been heavily involved in research relating to the NFP sector and we are delighted to partner with them to present the results of this significant study.

With an estimated 600,000 NFPs in Australia, these organisations play a vital role in the Australian economy and society. Surplus funds are directed back into their core mission to benefit the lives of individuals and communities; the sector is growing substantially as governments continue to outsource critical services.

NFP directors surveyed dedicate on average almost seven working weeks per year to the NFP organisations they help govern, with the vast majority of those offering their services for little or no remuneration. This figure highlights the contribution directors are making to NFP organisations, which are crucial to the delivery of social services and enriching the fabric of Australian society.

A significant proportion of Company Directors' membership is involved in the NFP sector, and as part of our education services, we conduct tailored courses and events for directors and boards operating in this sector.

The study examines the current application of governance principles across the NFP sector compared to the for-profit (FP) sector. There is a view held by some policy makers that governance of the NFP sector has failed to keep pace with the FP sector. This view is not supported by the results of this study. To the contrary, the time that NFP directors spend in their roles, the duties they perform and their level of ongoing education is broadly comparable to their FP counterparts.

The study results also provide us with further insights into the governance of NFP organisations and help us better understand the challenges that directors operating in the NFP sector are facing. The results add further weight to the representations we have been making to Government and policy makers, and help us to continue to support the professional development of our members.

I highly recommend this research to you and welcome your feedback on the findings.



John H C Colvin FAICD

Chief Executive Officer and Managing Director

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The Australian Institute of Company Directors would like to thank the Commonwealth Bank for partnering the *Directors Social Impact Study 2011*.

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Introduction

The *Directors Social Impact Study 2011* was created to examine the role of directors in Australian society, with a particular emphasis on the NFP sector. The NFP sector encompasses a broad range of social institutions that are neither commercial nor governmental.

NFPs deliver services such as welfare, education, sports, arts, worship, culture and emergency services to their members, clients and the broader community. The study is the largest of its kind and seeks to understand the contribution made by directors to both the organisations they serve and the broader community.

Through the study we are aiming for a greater understanding of the ways in which directors contribute, how their role and contribution differs between the FP and NFP sectors, and the extent to which governance principles are applied between the two sectors.

Methodology

The Directors Social Impact Study 2011 has been based on:

- Quantitative research gathered via an online survey completed by 1,912 members.
- Qualitative research in the form of one-on-one interviews conducted with survey respondents who hold current directorships in the NFP and FP sectors.
- Publicly available data and commentary on the NFP sector from other sources.

About Australian Institute of Company Directors

The Australian Institute of Company Directors has more than 30,000 members from organisations of all types, sizes and industries.

Members come from listed and non-listed companies, as well as from NFP organisations and government enterprises; from large corporations and small family businesses; are non-executive directors, executive directors, managing directors or chief executive officers, and senior managers reporting to boards.

Levels of experience are extremely diverse, from directors of ASX 50 companies to those just starting out in directorship.

Our mission:

The Australian Institute of Company Directors is Australia's pre-eminent organisation for directors, dedicated to making a difference to the quality of governance and directorship.

Our vision:

Providing leadership on director issues and promoting excellence in governance to achieve a positive impact for the economy and society.

Our commitment to strong corporate governance underpins the requirement that Company Directors' members complete professional development as part of their membership obligations.

Our education philosophy

Our assurance to directors is that we will provide professional development programs that:

- Address directors' current needs
- Reflect contemporary thinking and practice
- Are developed for directors by directors
- Are facilitated and delivered by directors accredited by us
- Include practical examples
- Are easily accessible
- Are available in a variety of delivery modes
- Provide tools and take-aways that are immediately useful
- Promote high ethical standards.

The following abbreviations are used throughout the report: FP = for-profit NFP = not-for-profit.

Directors Social Impact Study 2011

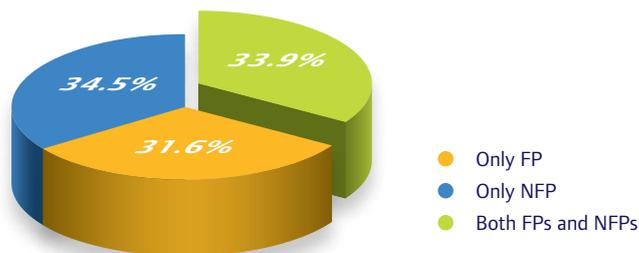
Examining the contribution of directors to Australia's not-for-profit sector

Profile of respondents

There are an estimated 2.1 million directors in Australia, and approximately 30,000¹ of them are members of the Australian Institute of Company Directors. Of the membership 1,912 members completed the survey:

- 85 per cent of the 1,912 respondents currently hold directorships with 58 per cent of all respondents serving on NFP boards.
- Of those respondents with current directorships, 31.6 per cent have FP directorships only, a further 34.5 per cent serve only on NFP boards and the final 33.9 per cent serve on both FP and NFP boards.
- Almost half (45 per cent of 1,104) of the respondents who hold an NFP board position hold multiple NFP directorships. In total, respondents hold 1,996 NFP directorships.
- More than a quarter (28 per cent) of respondents who currently only hold a FP directorship have previously held board positions with NFPs.
- More than a third (38.4 per cent) of the respondents without current board positions have previously held board positions with NFPs.

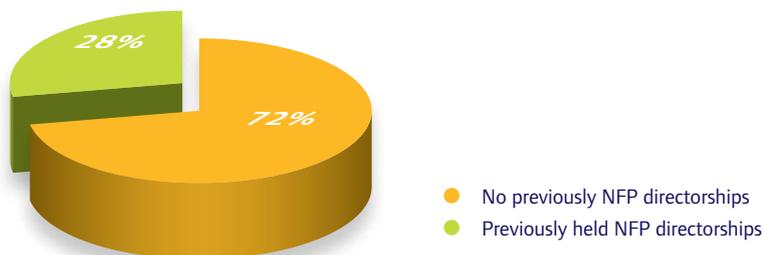
Current directorships



n = 1630

Chart 1: Current directorships

For-profit directors - previous NFP experience



n = 515

Chart 2: For-Profit directors - previous NFP experience

Currently not a director - previous director experience



n = 284

Chart 3: Currently not a director - previous director experience

¹ At the time of the survey, there were approximately 29,500 members of the Australian Institute of Company Directors. The survey was sent to approximately 27,000 members with active email addresses on record.

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Major findings

- Members of the Australian Institute of Company Directors have extensive engagement with NFP organisations.
- Company Directors' members are more likely to be involved with economically significant NFP organisations.
- NFP non-executive directors spend on average approximately seven working weeks per year serving as directors of NFP organisations.
- The vast majority of directors are fulfilling their role with NFPs on a voluntary basis.
- Skills used by NFP directors are comparable to those used by FP directors.
- Approximately half of the directors with experience across both NFP and FP organisations do not agree that NFP governance is less effective than FP governance.
- A majority of directors become involved in a NFP due to their passion for the organisation and/or its mission and purposes.
- A majority of directors join a NFP due to a desire to give back through their FP experience.
- A majority of directors that served on both NFP and FP boards cited the greatest governance influence on NFP boards is previous experience from FP directorships.

The NFP sector in Australia

The Australian NFP sector is a large, diverse and growing sector. The Productivity Commission² estimated that there are more than 600,000 Australian NFP organisations, with one in 10 being considered as economically significant by the Australian Bureau of Statistics.

The economic scale of the NFP sector is considerable and comparable to many of Australia's key industries. The NFP sector

contributes \$43 billion to Australia's GDP and in 2006/7 employed eight per cent of the Australian workforce. NFP organisations mobilise 4.6 million volunteers with a wage equivalent value of \$15 billion.³ The scale of economic activity highlights the importance of the governance role of directors of NFP organisations – especially those that are economically significant.



² Productivity Commission – *Contribution of the not-for-profit Sector Research Report*, February 2010

³ Ibid ⁴ Ibid ⁵ Ibid

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

The average annual rate of growth of the NFP sector in the last decade has been estimated to be eight per cent - outstripping the performance of other parts of the Australian economy. NFP organisations are increasingly delivering services funded by governments and are expanding their social enterprise activities to increase revenues.⁴



Directors of NFP organisations play a key role in overseeing growth and contractual relationships with government.

Despite this scale and impressive growth, the NFP sector is often ignored by economic analysis and until recently, rarely featured in public debate. The Productivity Commission considered the regulatory framework for NFPs to be too complex, lacking in coherence, and providing insufficient transparency.⁵

However, in the last year key steps have been taken to address these issues, with the Government adopting almost all of the Productivity Commission's recommendations and initiating other policies that will serve to modernise the legal, regulatory, policy and funding frameworks for the NFP sector.

In May 2011, the Australian Charities and Not-for-Profit Commission (ACNC) was established and from July 2012, will provide regulatory oversight for the sector, including determining the legal status of charities, public benefit institutions and NFP organisations that receive tax benefits. The ACNC will also develop an online single reporting hub which will streamline the relationships between NFP organisations and all government agencies.⁶

In July 2011, the Government released the Final Report on the Scoping Study for a National NFP Regulator. The Final Report provides analysis of the design options for a national NFP regulator and makes recommendations on the direction of reforms to strengthen the NFP sector. Among other things, the report sets out the Government's view on the state of governance in the NFP sector.

In August 2011, the Government launched the Social Enterprise Development and Investment Fund (SEDIF), which will channel \$36 million of debt finance to social enterprises and thus address one of the constraints on the development of the social enterprise sector.⁷ The Government is also actively looking at the potential for mobilising private capital. A Senate Economics Reference Committee is currently considering evidence relating to the establishment of a capital market for social investment.⁸ These initiatives are aligned with those in the United Kingdom and North America, where Social Impact Bonds and other "payment for success" mechanisms are transforming how government funds and supports NFP organisations. In September 2011, a pilot of two 'Social Benefit Bonds' was announced by the NSW Government in the 2011 Budget.⁹

The increasing emphasis on social investment is also reflected in the changing nature of the relationship between NFP organisations and their major donors. High net worth individuals and philanthropic foundations are increasingly using an investment framework to channel their funding and support.

The increasing use of debt finance and innovative financial mechanisms, as well as the increasing sophistication of donor investment decision-making frameworks, will provide a new challenge for those that govern NFP organisations.¹⁰

⁶ <http://www.dpm.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/077.htm&pageID=003&min=brs&Year=&DocType=0>

⁷ <http://www.deewr.gov.au/Employment/Programs/SocialInnovation/SocialEnterprise/Pages/SEDIF.aspx>

⁸ http://www.aph.gov.au/senate/committee/economics_ctte/capital_market_2011/index.htm

⁹ http://www.csi.edu.au/news/Peter_Shergold_talks_to_Fran_Kelly_about_NSW_Government_social_impact_bond_pilot.aspx

¹⁰ Centre for Social Impact, September 2011, Submission to the Senate Economics Reference Committee

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

The role of a director

The roles that boards perform within an organisation are well documented, particularly those that operate on a FP basis. By contrast, relatively little has been written on the contribution that boards and directors make to broader society. Effective governance enhances the value of an organisation and entails both performance and conformance elements.

Creating shared value¹¹ brings a multitude of positive benefits to society, including higher employment for the community and increased tax revenue for the government.

Increased employment and government revenue flowing from increased business activity are, in turn, likely to result in increased economic activity, and so can be said to result in a virtuous cycle of growth in key economic variables. The reverse can also be true.

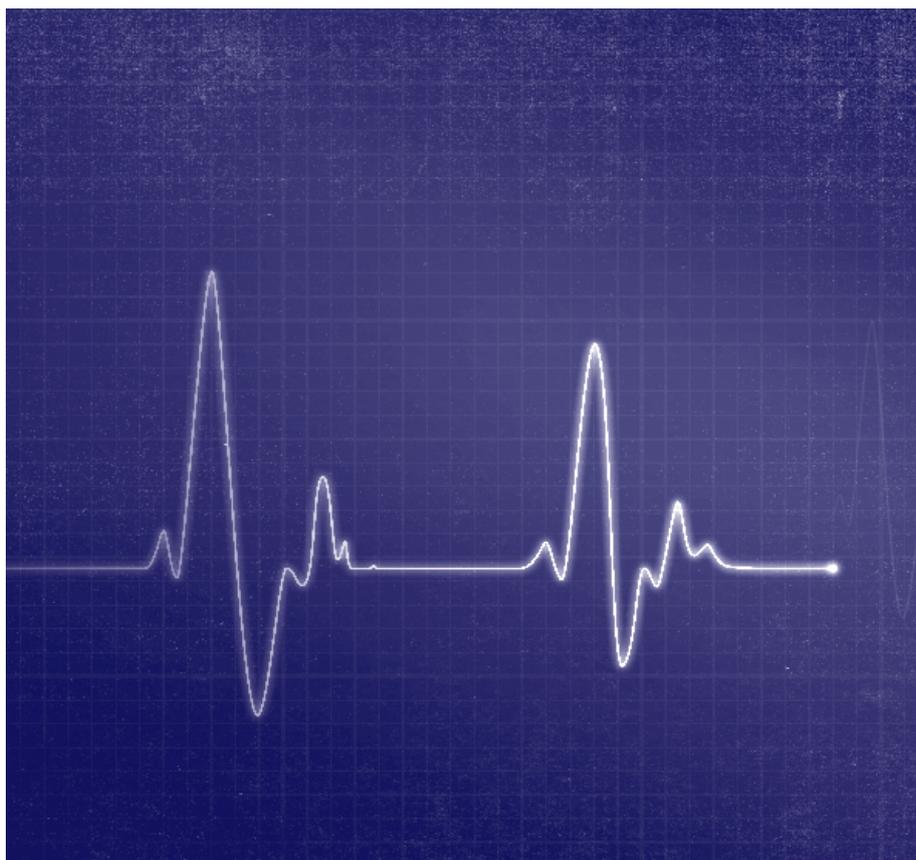
Increased economic activity directly impacts on community expectations and aspirations and contributes to the development and growth of society. This growth typically brings with it the development of important infrastructure and a more diverse array of goods and services being made available within the community. It can also help foster the ongoing viability of organisations such as clubs and associations that offer an avenue for members to interact and unite on a variety of social activities.

Indeed, the importance of a vibrant and growing economy is essential for government as it ensures the taxation revenue base to

prosper, therefore allowing the public sector to meet its commitments in crucial areas such as health, welfare, education, transport, defence and civil order. Given that the funds available to Government are directly related to the growth of profitable businesses, so too is the sustained livelihood of many NFP organisations. In this regard, governments are also increasingly outsourcing service delivery to both FP and NFP organisations highlighting the interdependency of these sectors.

The expansion and growth of organisations within the community also allows societies to avoid a myriad of social welfare issues connected with unemployment.

The lasting impact that viable FP and NFP organisations have on living standards cannot be underestimated. At the forefront of these organisations are directors instilled with the responsibility to oversee and help grow the activity they are governing.



¹¹ Porter.M.E and Kramer.M.R, The Big Idea: Creating Shared Value, 2011

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Director contribution to the NFP sector

As state and federal governments are increasingly looking to outsource social services, it is essential that governments put in place a legislative and regulatory framework for the NFP sector that fosters good governance. This will ensure the sector continues to contribute significantly to the personal and social well-being of people and communities across Australia.

Understandably, Government wants to be confident that NFP enterprises have appropriate governance standards and this study explores the extent to which experienced directors are contributing to this. The *Directors Social Impact Study 2011* reveals extensive engagement of Company Directors' members with NFP organisations.

The role that boards and directors perform across the NFP sector to maintain its vibrancy and effectiveness is critical. The impact of good governance in ensuring the NFP sector delivers effective and more efficient outcomes should not be underestimated.

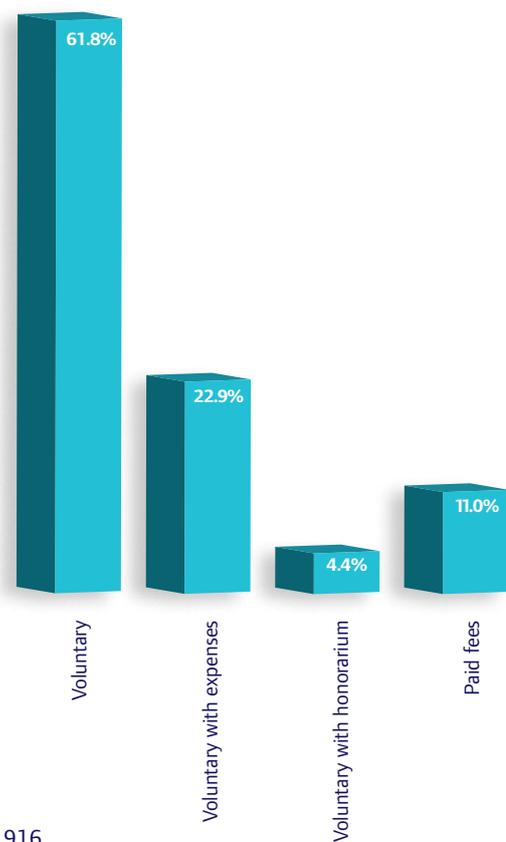
The survey found that:

Respondents currently hold 1,996 NFP directorships with 89 per cent of non-executive directors performing their role on a voluntary basis.

The total value of the time directors responding to this study spend in their role is almost \$100 million per annum¹², if you impute and apply a value that is commensurate with a director of a similarly sized public FP company.

This figure only takes into account the monetary value for their directorship duties and not the substantial value they are adding to the outcomes and delivery of services by these NFPs that are crucial to the Australian community.

Remuneration for NFP non-executive directors



● NFP Executive Directors

Chart 4: Remuneration for NFP non-executive directors



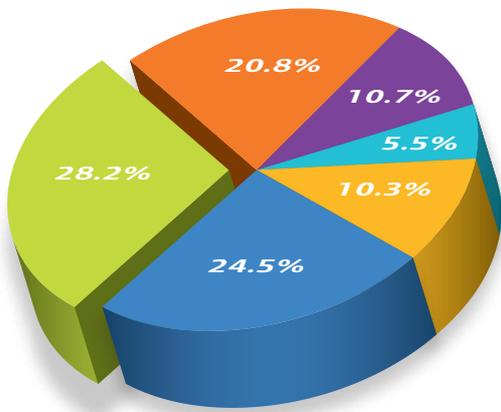
Approximately 89 per cent of non-executive NFP directors are performing their role on a voluntary basis, with only 11 per cent receiving director's fees.

¹² Calculated by multiplying the total number of NFP directorships held by respondents (1,996) by the average annual director fee for a public listed company with a turnover between \$16 – \$50 million (\$53,082). Refer the 2011 *ProNed Non-Executive Directors' Fees and CEO Remuneration Combined Report* p.24

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

NFP directors - giving their time



- 1 - 4 hours – A morning or afternoon a month
- 5 - 8 hours – A day a month
- 9 - 16 hours – 2 days a month
- 17 - 38 hours – 4 days a month
- 39 - 76 hours – 5 to 8 days a month
- Over 76 hours – more than 8 days a month

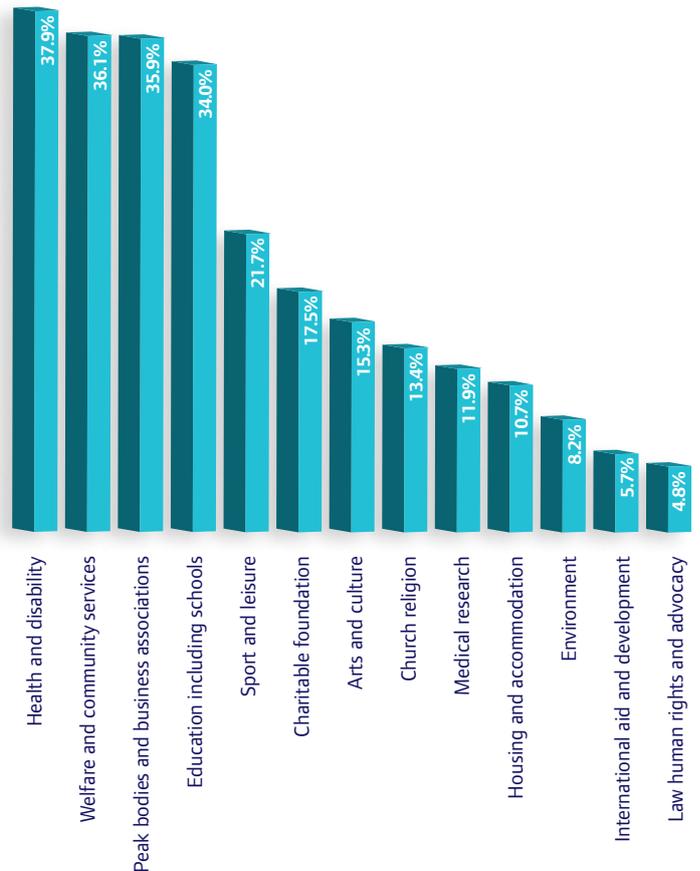
n = 916

Chart 5: NFP directors - giving their time



Non-executive directors of NFPs spend on average almost seven working weeks annually on directorship duties (89 per cent on a voluntary basis).

Mission of all NFPs



n = 1104¹³

Chart 6: Mission of all NFPs



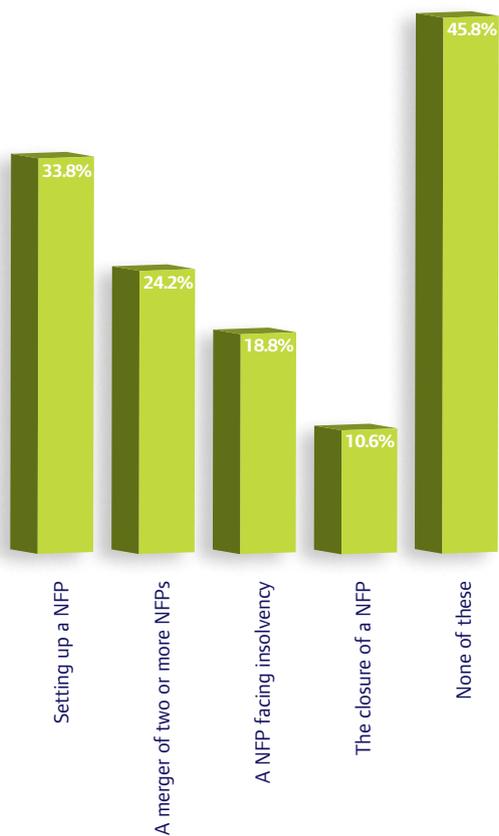
Director respondents are most likely to work in NFP organisations that are involved in health and disability (37.9 per cent), welfare and community (36.1 per cent), peak bodies and associations (35.9 per cent) and education (34 per cent).

¹³ Respondents were able to select multiple categories

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

NFP directors involvement in organisation life cycle



n = 1104¹⁴

Chart 7: NFP directors involvement in organisational life cycle

▲ Directors are working with NFPs during critical stages. More than half of directors have been involved in critical life cycle events including setting up a NFP, mergers, insolvency and closures.

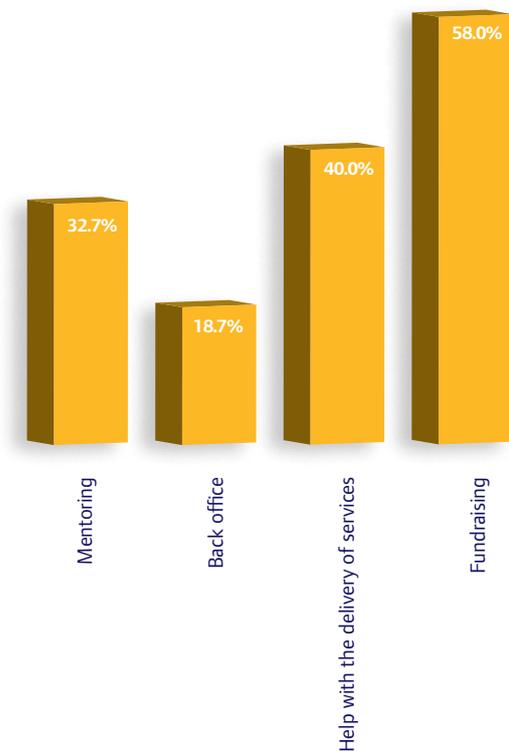
“Funding is an ongoing issue and you have to be aware of the risk of insolvency. I have been able to use my commercial experience to provide guidance and support the management in taking actions to avoid insolvency. I am not sure if the organisation would have survived if they had not had such commercial and financial expertise on the board.” - survey participant

¹⁴ Respondents were able to select multiple categories

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

FP only directors' volunteering activities in previous three months



● Director of a FP organisation

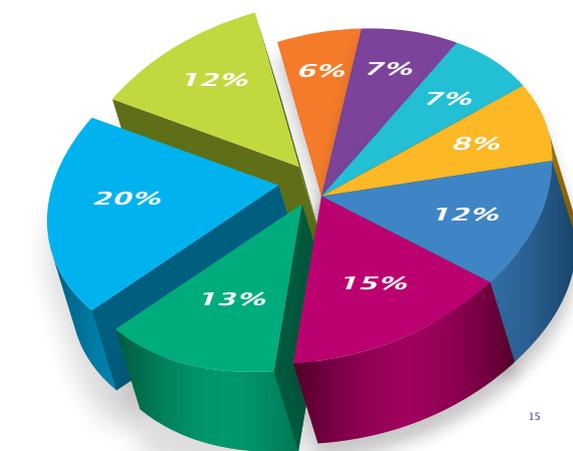
n = 150

Chart 8: FP only directors' volunteering activities



In addition to the 58 per cent who currently serve on NFP boards, more than a quarter (28 per cent) of FP-only directors have formerly held NFP board positions (see chart 2); and over a quarter of FP-only directors had undertaken volunteer activities with the NFP sector in the last three months, one third of which was mentoring staff.

Revenue of NFP organisations



- Less than \$100,000
- \$100,000 - \$250,000
- \$250,001 - \$500,000
- \$500,001 - \$1,000,000
- \$1,000,001 - \$2,000,000
- \$2,000,001 - \$5,000,000
- \$5,000,001 - \$10,000,000
- \$10,000,001 - \$50,000,000
- Over \$50,000,000

n = 1104

Chart 9: Revenue of NFP organisations



Respondents to the survey are involved in the board activities of larger NFPs – almost half of them (45 per cent) are involved with NFP organisations with annual turnovers in excess of \$5 million.

¹⁵ Results relate to the NFP organisation respondent selected as their primary role.

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

To what extent has NFP governance kept pace with FP governance?

The Federal Government's final report into the national NFP regulator noted that:

"Recent trends have seen higher levels of governance and accountability required of both the commercial and government sectors in Australia, however, the NFP sector has been largely ignored. The overall governance and accountability arrangements in the NFP sector have not kept pace with international trends to improve the governance of the sector."¹⁶

This current study examines the extent to which governance principles of the FP sector were being applied across the NFP sector. Survey respondents with current directorships across both sectors were asked to compare and contrast their experience.

The survey results indicate that the director community did not support the view that the governance of NFP organisations has failed to keep pace with their FP counterparts. Directors are evenly split in their views when comparing sector governance practices (see chart 11).

This might suggest responses on the relative effectiveness of a board have more to do with the skills of the chairman and the attributes of other board members, rather than the sector they operate in.

When asked to compare levels of relevant knowledge across FP and NFP boards, almost two out of three (61 per cent) directors on boards of both FP and NFP organisations, stated that they believed there was less relevant knowledge and experience on NFP boards.

In many areas the experience of directors was comparable across both sectors and the evidence suggests that, due to the sheer volume of directors who are now operating across both sectors, an improvement in governance has followed accordingly.

“ I have served on good for-profit and good not-for-profit boards and from my experience it is the quality of the people which makes a good board. You need a good balance of different skills and lots of experience. ”

- survey participant

¹⁶ Final Report – Scoping Study for a National Not-for-Profit regulator, p.57

Directors Social Impact Study 2011

Examining the contribution of directors to Australia’s not-for-profit sector

Activities performed by directors

Ranking	Not-For-Profit	For-Profit
1	strategy	strategy
2	reviewing performance	reviewing performance
3	funding	risk oversight
4	risk oversight	compliance
5	compliance	funding
6	succession planning	remuneration
7	remuneration	succession planning

17

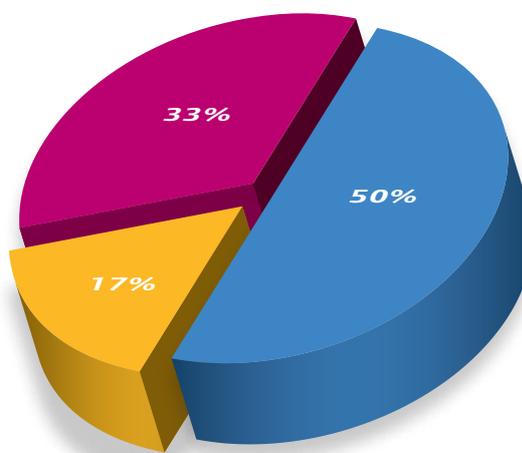
Chart 10: Activities performed by directors



The amount of time spent on board duties by NFP directors is broadly comparable to the time spent on such activities by directors of unlisted and listed companies.

¹⁷ Directors were asked to rank their activities in order of those they spend the most time on.

Quality of governance within NFPs compared to FPs



- More effective
- Same effectiveness
- Less effective

n = 552

Chart 11: Quality of governance within NFPs compared to FPs



Half of the respondents with experience in both NFP and FP organisations felt that the quality of governance in NFP organisations was equal to, or greater than, FP organisations.

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Skills directors bring to the board

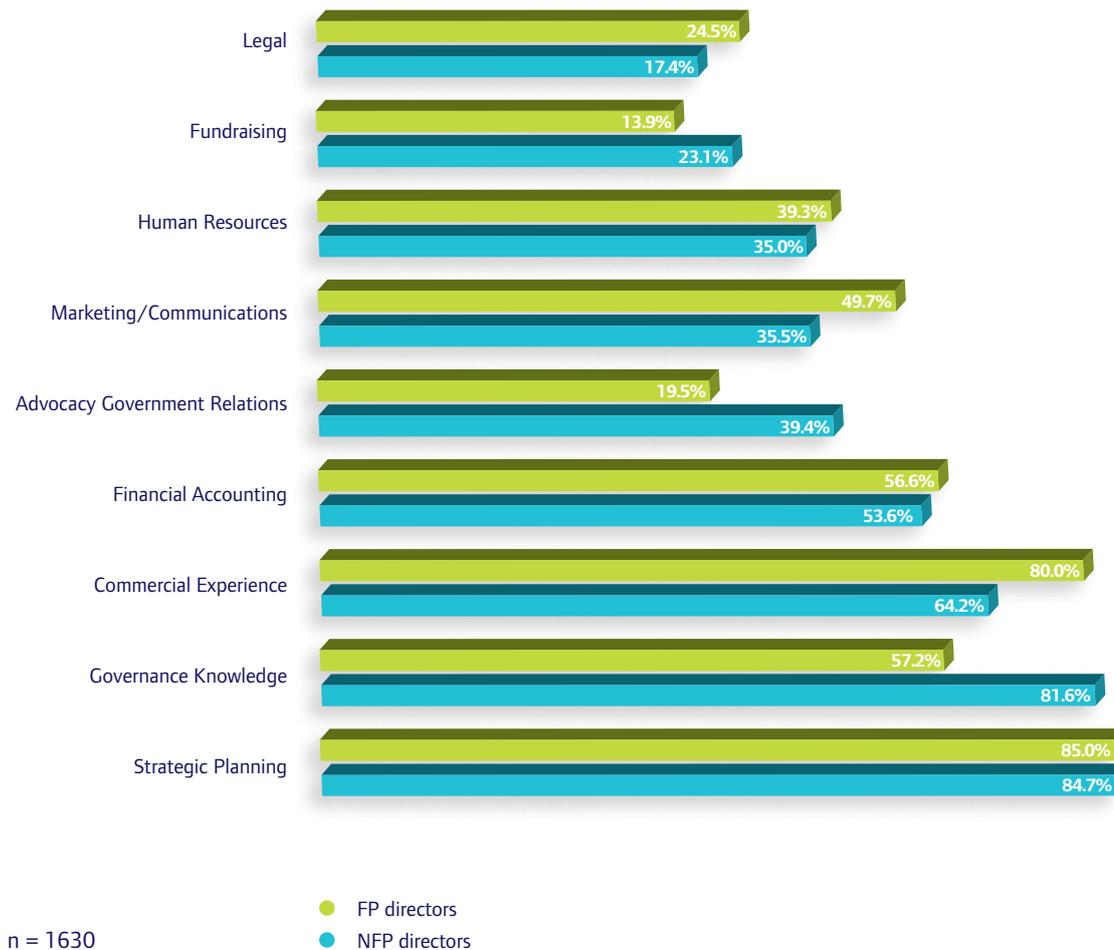


Chart 12: Skills directors bring to the board

Both NFP and FP directors cite comparable use of skills related to strategic planning (a primary role of a director) – more than 80 per cent of NFP directors use strategic planning skills, equivalent to the use of those skills in the FP sector

Four out of five NFP directors use specific knowledge of governance and director duties (82 per cent), compared to 57 per cent of FP directors.¹⁸ This might suggest that compared to FP organisations, NFPs rely predominantly on their boards for corporate governance matters rather than paid external advisers or others.

“The Board has a key role in relation to developing strategy. Although it is the responsibility of the management to present the strategic analysis and a draft strategy, it is the responsibility of the board to test the analysis and refine the strategy. The board then has a responsibility to monitor progress against the strategy – to keep it on track and where necessary adapt it.” - survey participant

¹⁸ Respondents were able to select multiple categories

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Greatest governance influence on NFP boards

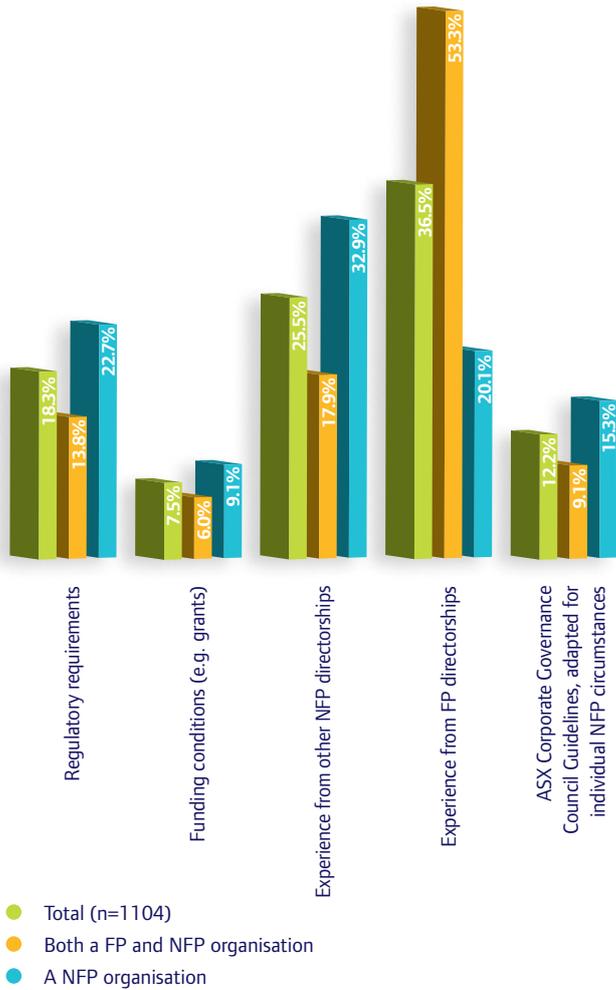


Chart 13: Greatest governance influence on NFP boards

▲ A significant proportion of respondents indicated that experience from FP directorships was the greatest influence on the development of governance practices on NFP boards.

Motivation for getting involved in NFP

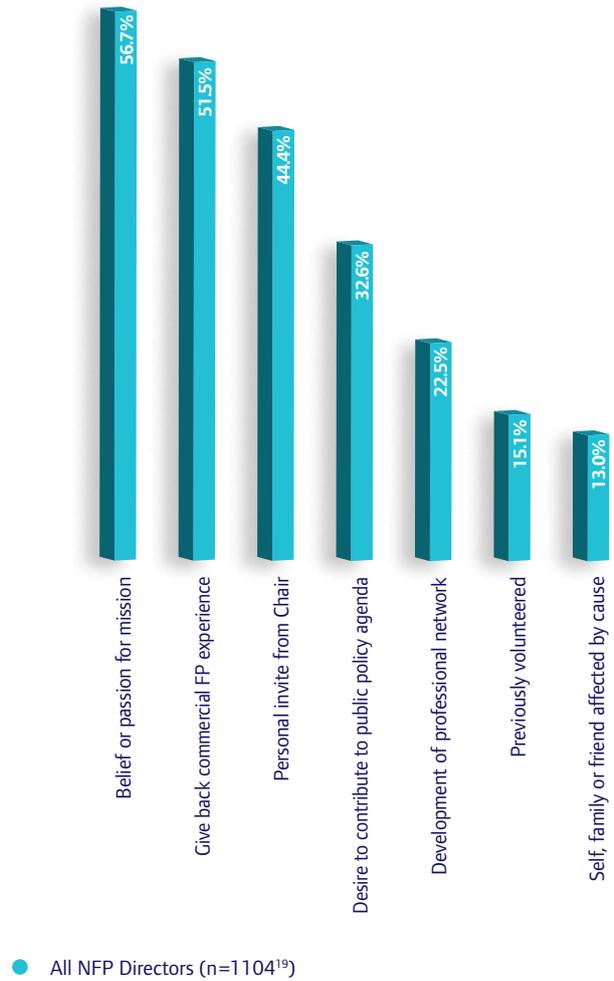


Chart 14: Motivation for getting involved in NFP

▲ More than half of directors said they were initially motivated to join a NFP board to “give back” their commercial or FP experience.

¹⁹ Respondents were able to select multiple categories

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Directors' governance education and professional development

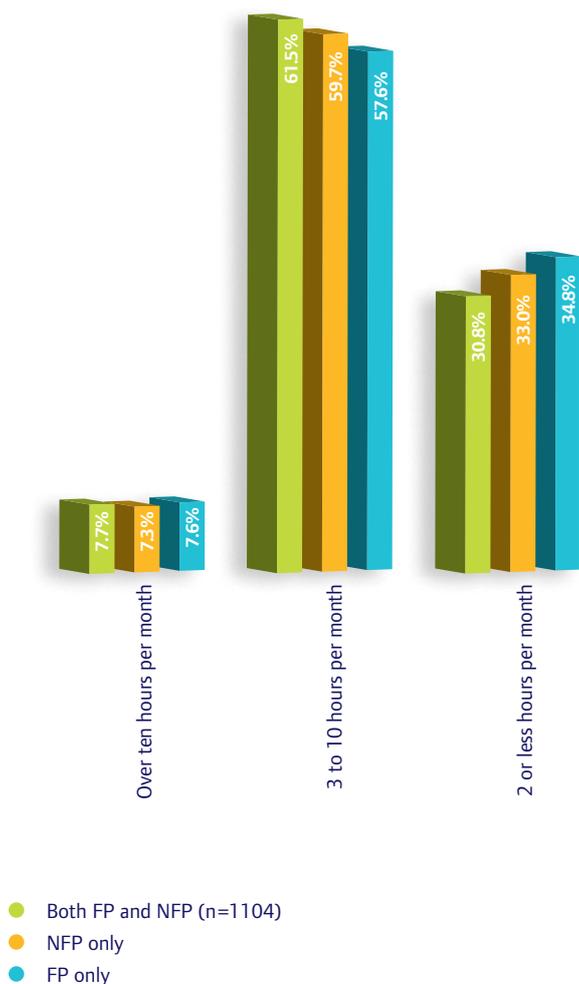


Chart 15: Directors' governance education and professional development

▲
There is no significant difference between the commitment of the different groups of directors to education and professional development relating to governance matters.

“ I wanted to achieve a balance between my paid for-profit and voluntary not-for-profit board roles. Joining a not-for-profit board has given me the opportunity to utilise my commercial experience for the benefit of others. The mission of the organisation was very important to me and the values of the organisation were aligned with my own values. ”

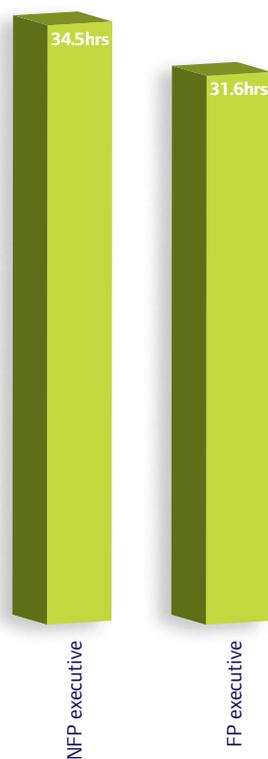
- survey participant

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector



Average hours per month serving in the role of director based on time spent per month for the previous three months



● Average hours per month

n = 587

Chart 16: Average hours per month serving in the role of director



Executive directors of NFPs spend more time than their FP counterparts serving in the role of a director.

Directors Social Impact Study 2011

Examining the contribution of directors to Australia's not-for-profit sector

Commonwealth Bank Community Commitment



▲
Don Ritchie OAM, Australia's Local Hero 2011 visiting Commonwealth Bank Rose Bay branch

Commonwealth Bank's Institutional Banking and Markets team supports the advancement of Australian Directors and Boards through a collaborative and meaningful partnership with Company Directors. As part of the NSW Fellows program we are proud to support the

Directors Social Impact Study 2011 and recognise the important role that not-for-profits play in communities in which we operate.

The Bank is proud to contribute to the communities where we live and work. That's why we've created enduring partnerships with some of Australia's leading community organisations ranging from health and welfare to the arts, environment and sport. This includes our major sponsorship of the Australian of the Year Awards for over thirty years. Through this program we help to recognise local hero's and the outstanding achievements, large and small, of Australians doing outstanding work in our community.

Being the most recognised brand in the Australian financial services industry we are committed to our communities, our shareholders and our clients. Our holistic approach to capture opportunity is a client-centric, bespoke approach to delivering Australia's broadest range of debt, equity, risk management and transaction banking services. We look forward to forging strategic partnerships with you.

For more information, visit: commbank.com.au/totalcapitalsolutions or commbank.com.au/community

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Not-for-Profit Governance

Benefiting individuals and communities

Resources to support directors in the not-for-profit sector



Not-for-Profit Governance

Resources to support directors in the not-for-profit sector

About us

We are Australia's leading member institute for directors with over 30,000 members that include directors from organisations as diverse as not-for-profit (NFP) organisations, ASX-listed companies, government bodies, entrepreneurial ventures and family owned/private companies.

We are particularly committed to promoting and supporting directors and boards operating in the NFP sector. Challenges faced by boards and directors of NFPs include issues associated with funding, succession planning, clarity of mission, the role of the board versus the role of management and fundraising.

Results from our Director Social Impact Study 2011, suggest that almost two-thirds of our membership have at least one directorship in the NFP sector.

The following pages provide an overview of our key role in providing relevant and practical governance information to NFP organisations and directors and our contribution to governance in the NFP sector. This includes descriptions of our tailored product offerings.

Our mission:

We are Australia's pre-eminent organisation for directors, dedicated to making a difference to the quality of governance and directorship.

Our vision:

Providing leadership on director issues and promoting excellence in governance to achieve a positive impact for the economy and society.

Events and Briefings



Our suite of Director Briefings and events are designed to help members make connections and gather insights. Our range of speakers and topics cover the spectrum of issues for directors working in the NFP sector. Events tailored to specifically meet the needs of NFP directors have included:

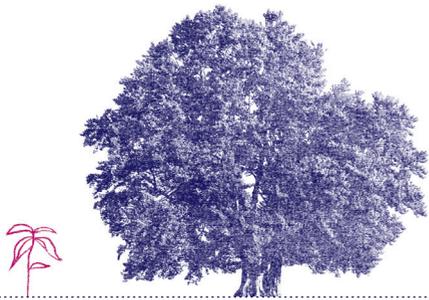
- Update on the Reform Agenda
- Financial governance
- Managing not-for-profits in a downturn
- Getting the most from your asset base
- Fundraising
- Raising the profile of your organisation through strategic marketing
- Accounting and reporting
- Challenges facing not-for-profit boards

Briefings and events are held in both metropolitan and regional centres to reflect the geographic diversity of the NFP sector and our membership.

Not-for-Profit Governance

Resources to support directors in the not-for-profit sector

Education



We are committed to providing professional development for directors and boards of all levels of experience. As part of the suite of education programs we provide for our members, tailored offerings have been created for directors operating in the NFP sector. They include:

The Not-for-Profit Board

The one day Not-for-Profit Board course is an interactive facilitated session which provides a detailed overview of specific governance issues that typically arise in a NFP environment.

The Not-for-Profit Board course covers:

- Duties and responsibilities of directors and board members, and the role of regulators in the NFP sector.
- Potential personal liability of directors and board members of a NFP board.
- Major elements of financial statements and the linkages between financial statements.
- Directors' duties with regard to financial statements and financial reports.

In-Boardroom

We recognise that the NFP sector encompasses a wide range of organisational structures, missions, and activities with differing size and complexity. To cater for this, our In-Boardroom service tailors delivery to suit the diversity of the NFP sector.

Our comprehensive offering of over 25 programs and courses are all available for In-Boardroom delivery with program selection and tailoring based upon the specific needs and goals of the group and the organisation. In-Boardroom delivery provides a focused approach to maximise relevance with the learning delivered in a boardroom or selected venue. The confidential learning environment optimises effectiveness, and given the focus on the organisation, participants are able to apply new knowledge and skills immediately.

The Role of the Not-for-Profit Director

Our popular 1 hour live webinar, The Role of the Not-for-Profit Director, is designed to give NFP directors an understanding of their duties and responsibilities as well as the rights and protections available to them.

This live online session covers:

- The skills needed to be an effective director.
- Avoiding the 'volunteer' mentality.
- Evaluating the effectiveness of board meetings and processes.
- Ensuring boards are governing in the best interest of the organisation.

Not-for-Profit Governance

Resources to support directors in the not-for-profit sector

This webinar allows participants to ask questions and provide comments through an interactive chat function.

Core Programs

Our core programs, the Company Directors Course, Foundations of Directorship and In-Focus all feature NFP-specific case studies to maximise relevance to the sector.

Scholarships

Recognising the financial challenges experienced by many NFP organisations, we partner with Australia's only organisation solely focused on funding and facilitating scholarships for Australian NFP directors and staff, the Australian Scholarship Foundation (ASF).

Since the commencement of the partnership 400 directors and managers in the NFP sector have been awarded scholarships to attend our education programs.

Publications and guides

We produce a range of publications and guides on good governance and directorship. This is in addition to our monthly magazine, *Company Director*, and our fortnightly e-newsletter, *The Boardroom Report*.

Our publication, *The Not-for-Profit Director*, has been specifically created to provide leadership and guidance for aspiring and practicing directors in the NFP sector.



The Not-for-Profit Director

Written by Geoff DeLacy, *The Not-For-Profit Director 2nd Edition*, gives readers a powerful insight into the unique opportunities and challenges this sector provides.

Policy and representation

The development of policy on issues of interest to directors is one of our core functions in serving our membership and in contributing to the improvement of the Australian economy and society. Through our expertise, representation, and guidance on key issues, we are the premier voice of governance and directorship in Australia.

Expertise

Our expertise in governance and directorship issues stems from the experience and knowledge of our policy team, our policy committees, forums, professional networks and our members.

Policy team

Our policy team develops policy on specific director and board-related issues and represents our members on these issues. Our objective is to ensure that governments develop an economic and regulatory environment in which the governance practices of NFP organisations can flourish.

Not-for-Profit Governance

Resources to support directors in the not-for-profit sector

Representation

We provide a voice for directors by preparing submissions to government, giving evidence and appearing at public hearings, and by meeting with government ministers and representatives of regulatory bodies to discuss director-related issues. We are also regularly called upon as a commentator in the media on issues affecting directors.

All submissions and policy papers are carefully researched and developed using our internal expertise and by consulting with our policy committees, members, or external networks.

Our recent policy submissions in the area of NFP governance have been in response to the:

- Consultation paper – A definition of charity
- Scoping Study for a National Not-for-Profit Regulator
- Productivity Commission's review of Not-for-Profit Sector
- Senate Economics Committee Inquiry into Disclosure Regimes for Charities

Research

The Director Social Impact Study is Australia's only study examining the governance of the NFP sector and the contribution made by its directors. The inaugural research study, completed in 2010 in New South Wales and Victoria, was expanded nationally in 2011.

The study provides us with further insights into the governance of NFP organisations and helps



us strengthen our understanding of the challenges that directors operating in the NFP sector are facing. The results add further weight to the representations we have been making to Government and policy makers, and help us to continue to support the professional development of our members.

Member engagement

Our guiding philosophy of 'for directors, by directors', means we often seek input from our members to help guide our policy positions, education programs and other member services. NFP directors, looking to make a difference to the quality of governance and directorship in Australia, can engage with us in a variety of ways. These include:

- Roundtable discussions
- Division Councils
- Research projects
- Regional committees
- Member-only *LinkedIn* group

More information

For further information on any of our offerings in the NFP sector visit our website [companydirectors.com.au](https://www.companydirectors.com.au) or contact your local office.

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