

**SUBMISSION TO:**

# **REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS**

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#### **Breaking New Ground**

(BNG) specialises in not for profit management, governance, organisational development and building capabilities and capacity for communities, organisations and the people who work in them.

The Directors are **Jane Bradfield and Dr Julie Nyland**.

BNG incorporates:



#### **Bradfield Nyland Group Consultancy Practice**

The BNG consultancy practice works with not for profit and community based organisations to improve performance and develop good practice within organisations, enhance quality improvement at service, operational and governance levels, transfer skills and build capability, and assist organisations to problem solve, learn and change.

BNG Consultancy Practice: [www.bradfieldnylandgroup.com.au](http://www.bradfieldnylandgroup.com.au)



#### **BNG NGO Services Online**

**Management Support Online Subscriber Service (MSO)** – an online integrated service for Australian and New Zealand not for profit organisations specialising in not for profit governance, management, operations and administration. The MSO carries self-paced animated training sessions, organisational development activities and good practice guides, downloadable tools for tailoring, information sheets and resources, a gateway to other specialist websites and resources and a confidential advice service.

**Standards and Performance Pathways (SPP)** – an integrated online system for the completion of self assessments and compliance activities related to service and quality standards. It is supported by resources to enable NFPs to complete improvement/evidence based tasks, and, through cross referencing of standards, provides a way of completing multiple sets of standards through a single assessment process. The SPP addresses the time consuming and labour intensive aspects of standards implementation and compliance, and the duplication of effort required by NGOs with multiple government funding sources subject to multiple sets of quality standards. It has been specifically designed for human services in Australia, and its content covers the main sets of quality standards for NGOs that provide health and community services. The SPP is a unique product, carries an Australian Patent and is trademarked.

BNG NGO Services Online: [www.ngoservicesonline.com.au](http://www.ngoservicesonline.com.au)

## Background

This submission has been prepared by Jane Bradfield and Julie Nyland (BNG NGO Services Online & Bradfield Nyland Group). Our organisation specialises in governance and management in the Not-For-Profit (NFP) sector and has been involved in a number of significant governance development programs for the sector. These include the development of good practice indicators for NFP governance, the development of extensive resource and support materials for NFP governance and the design and evaluation of training and education materials and programs in NFP governance.

We currently provide online resources and support for NFPs, which includes an advice service.

We also have a long standing concern about quality and service standards for NFPs and the role played by standards assessment and compliance in exacerbating 'red tape' for NFPs. To address this, we have mapped and cross referenced applicable standards and recently launched an online platform (Standards and Performance Pathways) that streamlines the assessment and compliance process, enabling NFPs to complete multiple sets of standards through a single assessment process.

Because of our work directly with a large number of NFPs over the past 25 years, we are very familiar with the impact that various regulatory regimes have on different types of NFPs, and of the impact of changes to governance requirements in particular.

## Issues

We are confident that many other NFP sector submissions will address the questions raised in the consultation document and that they will also reiterate the importance of ensuring that regulatory requirements for NFP governance are streamlined, reporting burdens reduced, flexibility maintained for different types of governance arrangements used by NFPs (including a range of incorporation options and requirements) and requirements scaled to reflect the sizes and resource bases of different groups of NFPs.

In this brief submission, we wish to focus on the impact directly on NFPs during the implementation and transition period and address a couple of issues that may not be otherwise be noted.

1. **Flow on impact to service and quality standards requirements:** Currently, there are over 50 different sets of quality or service standards applicable to community services and health NFPs. These affect about 12,000 NFPs that collectively receive over half of all government funding to NFPs. An estimated 85%<sup>1</sup> of these NFPs are subject to multiple sets of standards as a direct result of multiple sources of government funding. All but a few sets of standards include governance requirements, with the majority having significant and detailed requirements for governance practice. Although most generally reflect the types of governance principles flagged in the Treasury consultation document, they are not necessarily comprehensive in their coverage of governance principles (with key areas often missed), nor are they always consistent with one another.

The introduction of a set of national governance requirements will, over time, drive review and changes in the individual sets of these service and quality standards, which in turn will impact on the workload of NFPs required to comply with them. If this proceeds in an uncoordinated manner, many NFPs may end up going through this review and adjustment process repeatedly for each set of standards they are subject to.

Ideally, this needs to be addressed by the ACNC directly to prevent a slow and piecemeal process, and tackled as part of a broader service and quality standards harmonisation and mutual recognition strategy.

2. **Provision of assistance for NFP constitutional review:** Potentially, the most significant impact on most NFPs preparing to register with the ACNC, or aligning to new requirements that will flow on at State and Territory level, will be the time they need to take to review their current constitutions to check that they comply with the new governance requirements. It is our experience that there is not much awareness of how difficult constitutional review can be for NFPs.

<sup>1</sup> BNG NGO Services Research (2011): *The Cost of Quality Service Standards: Assessment and compliance reporting for the not-for-profit sector*, Breaking New Ground

For those of us familiar with governance requirements and organisational constitutions, a review of incorporation documents to check compliance with a set of requirements is a fairly simple and quick process. However, it is our experience that for NFPs, and particularly for those small to medium NFPs that make up the majority of the NFP sector, this process is often quite challenging and time consuming. In addition to identification of inconsistencies between the organisation's constitution and the new requirements, it also potentially involves the preparation of documentation and processes for constitutional amendments to be made.

Many NFPs find this daunting, and those that can afford it will tend to engage lawyers or consultants to undertake the work.

We recommend that the ACNC consider providing a constitutional review service at no charge using in-house staff, where NFPs could submit their constitution for review, and receive back a pro forma report identifying any clauses that did not comply, suggested changes to these clauses and suggested text for any additional clauses required.

This type of constitutional review is similar to that already performed by staff within NFP incorporation regulators when organisations initially submit incorporation papers. This would be a far more efficient way of performing this work, would ensure high level expertise was applied with minimum cost and would prevent NFPs from wasting time, government funding and emotional energy on the process.

3. **Provision of general support for governance practice:** The ACNC is charged with the responsibility of providing online information as part of its charter, and we assume that the transition period for the introduction of national governance requirements will be accompanied by information and resources. We recommend that this information include:

- Specific transition 'step by step' tools for NFPs that guide them through the processes involved in reviewing their governance practices and documentation against the new requirements, and in making changes to constitutions in particular.
- A gateway 'clearing house' to existing governance resources: There are a range of excellent online resources for all aspects of NFP governance, and it is important that the ACNC provide a reliable and comprehensive 'gateway' to these rather than duplicate effort by producing resources that already exist.