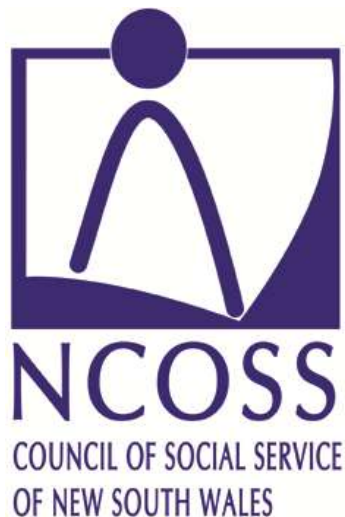


**NCOSS Submission to the
Council of Australian Governments (COAG)
*Regulatory impact assessment of potential
duplication of governance and reporting
standards for charities (RIA).***



20 Feb 2013

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1. EXECUTIVE SUMMARY

Duplicative reporting requirements have been an issue for the not-for profit (NFP) sector for a number of years. An organisation funded to provide government services often manage a number of contracts and/or grants simultaneously, each with their own reporting requirements. If they are a Company Limited by Guarantee, an Incorporated Association, a Cooperative or Trust there are additional reporting requirements, sections of which can cover similar or the same information.

Under the legislation governing the establishment of the Australian Charities and Not-for-profits Commission (ACNC), Companies Limited by Guarantee, formed under the *Corporations Act 2001 (Cth)*, are now only required to report specific information (as outlined in the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* and the proposed Regulations) to the ACNC, where the intention is that other Federal agencies will be able to access this information from the ACNC as needed via the ACNC Charity Passport.

Organisations which are not Companies Limited by Guarantee are also required to comply with the ACNC legislation but this will be on top of the relevant State or Territory legislative requirements. In addition without agreement with the state and territory governments, the information collected by the ACNC may not be available to their state and territory agencies. Far from decreasing the reporting burden, this has the potential of significantly increasing compliance obligations for all organisations that are not Companies Limited By Guarantee, where a reasonable percentage of this compliance will be duplicative.

Council of Social Service of NSW (NCOSS) is primarily concerned with the impact of duplication on human service non-government organisations (NGOs) that are legally formed as Incorporated Associations or Cooperatives in New South Wales.

In January 2013, the Council of Australian Governments (COAG) released the *Regulatory impact assessment of potential duplication of governance and reporting standards for*

charities (RIA). The RIA identified areas of potential duplication and proposed five options outlining courses of action COAG could take in response to this duplication.

NCOSS strongly recommends that COAG adopt Option 5:

*Referral of power to regulate charities by states and territories to the Commonwealth.*¹

This option has the greatest potential to support the work of the sector by removing this area of compliance duplication and reducing both the complexity of the compliance framework that charities and NFPs are required to work within and the cost of this compliance.

2. About NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the non-government human services sector in NSW. Through its organisational membership, NCOSS represents a vast network of service delivery and consumer groups.

NCOSS has a vision of a society where there is social and economic equity, based on cooperation, participation, sustainability and respect.

We work with our members, the NSW Government and other relevant agencies, towards achieving this vision in New South Wales.

2.1 The NCOSS Advocacy and Policy framework

NCOSS believes our society will be better if it is fairer. We believe in social justice and advocate for policies, programs and measures that are targeted to:

- Fair distribution of or access to resources (including quality of such resources)
- Recognition and respect of diversity
- Participation by and representation of all in all aspects of life.

NCOSS supports a strong, dynamic and effective non-government community sector (sector) because of its capacity to address disadvantage and improve social justice outcomes. The sector is able to achieve this because

- It can take the long term view and is there for the long haul
- It works within communities to build relationships and trust that are necessary to support people
- It works collaboratively to support the particular needs of individuals or communities
- It is independent of governments and partisan interests.

The sector has these capabilities not because it's funded by government but because it is the sector.

These capabilities work for government and are complementary to the work of government. Together better outcomes are achieved.

¹ Council of Australian Government (2013) *Regulatory impact assessment of potential duplication of governance and reporting standards for charities January 2013 (RIA)* p57

These capabilities can be hindered however by government policies and processes which seek to standardise practice.

The sector must and should be accountable for its work – to clients, communities and to its funders. This is about ethical and best practice, not just regulatory requirements.

NCOSS calls for balance in regulatory regimes that are sought to be imposed on the sector. These should be evidence based (do they work to achieve the benefit/outcome sought?), based on a risk management approach (do the costs in time and resources justify the regulation given the likelihood and severity of the risk?) and proportionate (sufficient to address the issue without placing onerous requirements on those regulated).

Most of all we would argue that regulation should not undermine the unique characteristics of the sector that allow it to deliver improved social justice outcomes.

3. Introduction

Duplicative reporting requirements have been an issue for the NFP sector for a number of years. Organisations providing government services often manage a number of contract and/or grants, each with their own reporting requirements where the information requested may be the same or very similar.

NCOSS is aware of and has made a number of submissions to government inquiries which have recommended the need for governments to address this issue and reduce the burden of regulatory compliance on the NFP sector. The Productivity Commission's landmark national study, *Contribution of the Not-for-profit Sector*² noted that:

*"The current regulatory framework for the sector is complex, lacks coherence, sufficient transparency and is costly to NFPs."*³

The study recommended that a statutory body be established to oversee the charity and NFP sector and work towards a more effective compliance framework for the sector. This led the way for the establishment of the ACNC and the current development of its Regulations.

In 2009, the NSW Government completed a review on red tape reduction focusing on NGOs funded to provide services and programs in the human services area. Whilst its recommendations did not refer to the creation of a national body such as the ACNC, its recommendations do align with one of the stated objectives of the Commission, that being to:

*"promote the reduction of unnecessary regulatory obligations on the Australian non-for-profit sector"*⁴

Another significant issue facing the sector was the perceived need for improved governance. In relation to both NSW Incorporated Associations and Cooperatives, reform has aimed at tightening legislative requirements by aligning governance and financial

² Productivity Commission (2010) *Contribution of the Not-for-Profit Sector*

³ PC pXXIII

⁴ *Australian Charities and Not-for-profits Commission Act 2012, (Cth) Part 1-2, Cl15-5 (10 (c))*

reporting compliance with the *Corporations Act 2001 (Cth)*. The *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* has taken this alignment further.

As previously noted, NCOSS is primarily concerned with the impact of duplication on New South Wales human service NGOs that are legally formed as Incorporated Associations or Cooperatives. Its focus is to ensure that the sector's limited resources are channelled towards providing sustainable services that will reduce disadvantage in NSW as opposed to funding the provision of identical or similar information to meet the compliance requirements of several government agencies.

4. Purpose of the Consultation Regulatory Impact Assessment

The RIA has been produced to identify areas of regulatory duplication between the proposed Commonwealth governance standards, under the banner of the ACNC, and existing state and territory requirements.

The RIA also includes five options that were developed by the Not-for-profit Reform Working Group established by COAG in response to the identified duplication. These being:

1. Retain existing arrangements
2. Sharing of regulatory functions
3. Changes to Commonwealth legislation to adopt a common regulatory practice
4. Changes to States' and Territories' legislation to reduce duplication
 - a. harmonising charities' compliance burden
 - b. Carve out charities
5. Referral of power to regulate charities by States and Territories to the Commonwealth

The purpose of the consultation is to assess whether all duplicative requirements, other impacts and unintended consequences have been identified in relation to incorporated associations, trusts, unincorporated associations, cooperatives and other bodies. It considers the five options in terms of advantages and disadvantages and whether there may be alternative solutions. Finally it raises the issue of the cost of full or partial transition of powers to the ACNC and how this might be managed.

5. Response to the Consultation RIA

5.1 Reporting duplication is a form of red tape that has been identified in a number of government inquiries and reviews of the Not-for profit (NFP) sector as adding complexity and cost to an organisation's compliance regime. Both Federal and State and Territory governments have referred to the need to reduce and/or better manage compliance obligations with the express intent of reducing red tape.

As noted above, one of the objects of the Australian Charities and Not-for-profits Commission Act 2012 is to:

“promote the reduction of unnecessary regulatory obligations on the Australian non-for-profit sector.”⁵

In addition, the current RIA noted that:

“COAG reconfirmed in July 2012 the objective of minimising regulatory compliance costs to the NFP sector.”⁶

Whilst accountability and transparency must be maintained particularly in relation to governance and financial issues, it needs to be balanced against what is reasonable. For most charities it is difficult to concede that providing the same or broadly similar information to different government agencies is a beneficial exercise. Any reduction in red tape no matter how small from COAG’s perspective is a step forward and provides evidence of Government commitment to red tape reduction.

- 5.2 As noted above, NCOSS is primarily concerned with the impact of duplication on NSW Incorporated Associations and Cooperatives. A primary concern therefore is the narrow interpretation of duplication.

The RIA only considers duplication of reporting in relation to the legal form of an organisation ie incorporated association, cooperative, trust or other bodies. It specifically noted that:

“Commonwealth and State or Territory governance and reporting requirements that arise from grant funding or contracts for service delivery are not included in the analysis”⁷

This very narrow focus ignores the degree of duplication that occurs when reporting to government agencies in relation to service delivery funding, particularly in the area of financial reporting.

This has been noted as an area of concern by charities involved in service delivery and has been referred to in a number of reviews of the sector including the Productivity Commission’s study⁸. The reality is that this duplication when identified could potentially be addressed through the effective utilisation of the ACNC’s Charity Passport irrespective of which tier of government the agency represents.

- 5.3 In terms of the proposed ACNC Standards and reporting requirements, the RIA does not consider the impact of new compliance obligations.

Based on Table 2 of the RIA⁹ which looks at the level of the potential burden of the proposed ACNC Standards and additional reporting obligations, there will be significant impact. Of the proposed standards and reporting requirement, six will impose additional reporting burdens on Incorporated Associations and four on Cooperatives.

- 5.4 It also needs to be noted that the proposed standards have not been finalised, indeed the consultation period for the standards closed 15 February, six days before the COAG RIA consultation period closes. However, for example, the ACOSS submission questions the appropriateness of Standard 4, recommends the removal of Standards 5 and

⁵ *Australian Charities and Not-for-profits Commission Act 2012, (Cth) Part 1-2, Cl15-5 (10 (c))*

⁶ *RIA Cl 104p45*

⁷ *RIA, Note 5 p7*

⁸ *Productivity Commission (2010) Contribution of the Not-for-Profit Sector*

⁹ *RIA, “Appendix K – Detail of impact analysis” p97-98*

questions the select coverage of Standard 2¹⁰. In reality the extent and impact of potential duplication is actually uncertain.

5.5 Of the five options proposed by COAG's Not-for-profit Reform Working Group in response to the identified duplication, Option 5 is the preferred outcome: *Referral of power to regulate charities by states and territories to the Commonwealth.*

This will impact positively on Incorporated Associations and Cooperatives (See Table 2 of the RIA¹¹). It was noted In the RIA that under this option:

- All duplication costs would be removed
- It would largely eliminate duplication and the related red tape
- It would reduce State and Territory revenues but would also reduce, and possibly eliminate the cost of enforcement at the State and Territory level.

It is acknowledged that the long term implementation will require considerable political will if the process is to be successful. It will also require COAG negotiation, process change and legislative change. However the process may be simplified if all states and territories work through the issues simultaneously.

NCOSS is aware that there will be costs for the NSW's government in relation to transitioning to the new system. However, no longer managing compliance in relation to legal form and the potential improved access to governance and financial information as a result of the development of the ACNC's Charity Passport and the public charity information portal, is likely to result in cost savings long term.

The current duplication of systems makes these compliance processes in Australia unnecessarily complex and expensive. A single system where organisations are only expected to deal with one tier of government would reduce red tape and potentially increase transparency and may result in improved accountability.

By transferring powers from states and territories to the Commonwealth, notably the ACNC, it would also move these organisations across to a framework which is mandated and resourced to ensure that education and where necessary enforcement processes are in place to support effective governance in the charity and NFP sector. It is also more likely to meet its own object that being to ensure that:

“Regulation for the sound governance and financial accountability of charities is effective and proportional, taking into account the type, size and geographical scope of charities involved.”¹²

6. RECOMMENDATION

6.1 NCOSS recommends that Option 5: the referral of power to regulate charities by states and territories to the Commonwealth, be adopted by COAG, irrespective of the outcome of Treasury's *Governance Standard for the Not-for-profit Sector* and *Australian Charities and Not-for-profits Commission – financial reporting requirements* consultations.

¹⁰ ACOSS (2013) *Submission to Consultation Paper on the development of governance standards*

¹¹ RIA, “Appendix K – Detail of impact analysis” p97-98

¹² RIA, CI 105 p45