

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

REVIEW OF NOT-FOR-PROFIT GOVERNANCE ARRANGEMENTS

8 December 2011

AT A GLANCE

The Assistant Treasurer, the Hon Bill Shorten MP, today released a consultation paper on current governance arrangements for the not-for-profit (NFP) sector. The consultation paper can be found at www.treasury.gov.au.

Submissions to the paper are due on 20 January 2012. Queries and submissions should be sent to NFPReform@treasury.gov.au.

KEY FACTS

The Government is consulting on what the core organisational governance principles applying to registered NFPs should be.

Governance refers to the practices and procedures in place to ensure that an entity operates in such a way that it achieves its objectives in an effective and transparent manner.

The proposed governance principles are grouped into the following areas:

- duties and minimum standards of responsible individuals, including rules for proper organisational management and running of the entity;
- disclosure requirements and managing conflicts of interest;
- risk management procedures, including external reviews and auditing requirements;
- the coverage of the minimum requirements of governing rules; and
- relationships with members (where applicable).

THE NEED FOR STREAMLINED GOVERNANCE ARRANGEMENTS

The Government is committed to strengthening the NFP sector and announced a number of reforms for the sector in the 2011-12 Budget, including the establishment of an independent statutory office, the Australian Charities and Not-for-profits Commission (ACNC).

The ACNC will work to improve public trust and confidence in the sector, through promoting good governance, accountability and transparency.

The Government consulted on appropriate governance arrangements as part of the *Scoping Study for a National Not-for-profit Regulator*.

The *Final Report of the Scoping Study for a National Not-for-profit Regulator* (Final Report) highlighted the concerns of the NFP sector about duplicative, burdensome and unclear governance requirements across all Australian jurisdictions.

The Final Report found that a principles-based approach to governance would be largely welcomed by the sector, particularly for smaller NFPs who often lack the resources to develop detailed and prescriptive governance policies.

The Final Report also found that governance rules should take into account the size of the entity, the risks it presents by virtue of its activities, and turnover as well as the level of government support a NFP receives.

At present, there is no single scheme of governance requirements applying across all NFP entities. Governance principles that apply depend on the structure of the entity, and the sector the NFP operates in. The ACNC will be regulating many structures of entities, and a single set of core principles will make it easier for NFP entities to comply with the requirements.

The Government recognises that many entities already have good governance procedures in place. The governance requirements will be principles-based, and may mean no change for entities who already have adequate procedures.

The Government announced in the 2011-12 Budget a number of further reviews of aspects of the regulation of the NFP sector, including a review of the governance obligations appropriate for NFP entities.

The consultation paper provides an opportunity for the NFP sector and the wider public to engage on this issue.

PROCESS FOR CONSULTATION ON GOVERNANCE ARRANGEMENTS

The outcomes of the governance review will help form the governance requirements for registered entities in the ACNC legislation, starting from 1 July 2012.

In order to have the ACNC in place and up and running by 1 July 2012, legislation for the ACNC needs to be ready to be introduced into Parliament in the first quarter of 2012.

This means that the Government needs to consult on governance issues in December 2011, to allow time to take account of any comments from the sector, and ensure that the core governance rules are in place in time.

Following consideration of the outcomes of the Governance review, the Government will undertake targeted confidential consultation on the governance draft law before implementation.

FREQUENTLY ASKED QUESTIONS

When will the governance requirements apply from?

The new governance arrangements will apply from 1 July 2012, the same time the (ACNC) commences operations. Appropriate arrangements will be put in place to allow a smooth transition for existing entities.

My entity has its own governance framework, what does this mean for us?

The Government is consulting on what the core organisational governance principles applying to registered NFPs should be.

Principle-based governance arrangements will ensure flexibility and proportionality. If your entity has an existing adequate governance framework in place, it is likely that the ACNC will not be expecting more from your entity to meet any new requirements.

I'm a small entity, I don't have the same capacity to meet governance procedures as a larger NFP?

The Final Report also found that governance rules should take into account the size of the entity, the risks it presents by virtue of its activities, and turnover as well as the level of government support a NFP receives.

Principles-based governance requirements, which will take into consideration proportionality, will allow smaller NFPs, who often lack the resources to develop detailed and prescriptive governance policies, to still uphold good governance procedures and meet ACNC requirements.

The requirements for a small entity to meet the requirements will not be the same as for a large entity.

The ACNC will have a role in assisting NFPs to achieve best practice governance outcomes by producing guidance material which demonstrates what best practice governance is and explaining how NFPs can adopt such practices easily into their day-to-day operations.

Will people still want to volunteer?

The governance arrangements are not intended to make things harder for NFP entities.

As a sector that is in receipt of significant amounts of public and individual monies (in the form of tax concessions and grants, and donations), NFPs need to be governed appropriately, to meet community expectations.

The diversity of the sector should drive consideration of suitable principle-based governance arrangements that embody flexibility, proportionality and public confidence.

Good governance will help promote sector confidence, and shouldn't decrease the number of volunteers in the sector.

Will any new arrangements apply to indigenous entities?

Yes, once a single scheme of governance arrangements is implemented, these principles would apply to indigenous entities registered with the ACNC, in the same way they applies to all registered entities.

The governance arrangements are expected to be principles-based and tiered, taking into consideration proportionality, so that small entities will not be have a large compliance burden placed on them. Special rules will be provided in certain circumstances.

Why is governance not part of the ACNC legislation?

The *Final Report of the Scoping Study for a National Not-for-profit Regulator* highlighted the need for better governance arrangements for NFP entities.

While some entities have effective and thorough governance policies in place, the arrangements for other entities do not meet community expectations in relation to entities in receipt of public monies and support. The Government felt that this important issue warranted further consideration.

The outcome from the governance review will feed into the ACNC legislation, and be in place by 1 July 2012. However, due to time constraints, the exposure draft of the ACNC legislation needs to be released for public consultation this year, which does not allow time for the feedback from the governance consultation paper to be included in the ACNC draft.

Following consideration of the outcomes of the Governance review, the Government will undertake targeted confidential consultation on the draft law.

What if I have governance requirements from another regulator?

It is envisaged that any governance requirements under Commonwealth laws or contracts will be replaced with new uniform governance requirements, and not be additional to existing requirements. For example, this means that the ACNC will take over governance arrangements of NFP companies limited by guarantee from ASIC.

While the aim is not to impose additional requirements on top of any existing governance requirements, it should be acknowledged that the process of negotiation with the states and territories in aligning requirements may take time. Some duplication during a transitional period might result while Australia moves towards a truly national NFP regulator.