



INNER NORTHERN COMMUNITY HOUSING
(BRISBANE) ASSOCIATION INC.

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Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Review of not-for-profit governance arrangements

Thank you for the opportunity to comment on proposed changes to the governance arrangements for not for profit organisations.

We agree with the key concepts emerging from the ***Final Report of the Scoping Study for a National Not-for-profit Regulator (Final Report)*** that any new governance requirements should be:

- Principles – based
- Take into account the size of the entity; revenue would be one of the few common denominators on which to base this
- The relative risks based on the nature of the organisation, its turnover and the amount of government support the organisation receives
- That new governance regulation and monitoring should add another layer of regulation particularly as many organisations have multiple forms of Government funding, often with multiple departments carrying out the same level of checking of standards of governance. This offers scope for both Government and the organisations they fund having a reduced level of regulatory compliance checks
- We welcome the opportunity for further consultation on the detail for implementation through the transition period.

We would add that:

- The governance and reporting requirements should be no more onerous than the requirements placed on companies limited by guarantee for the relevant size of the organisation
- Should reflect the risk associated with the geographic nature of the organisations involvement in activity and fund – raising. Eg a small organisation resourced by local people for the benefit of local people is highly dependent on its reputation for the on-going investment of the community. The risk of substantial abuse of trust is less and the risk of the impact on the NFP sector as a result of any abuse is also less. This could encompass groups such as local sport /social/activity clubs, local groups supporting local people with health issues etc

- The country is heavily dependent on the vast range of NFP organisations that deliver social services, fund services not afforded by the Government and support the social fabric of Australia through providing community and a place for people to engage with others. If the governance arrangements become too onerous for “responsible people” they will be harder to recruit and it will cost more to train and support them. This could result in the decimation of the NFP sector

While it is important for the governance requirements to be adequate to protect the public funds committed to the NFP organisations, the Commission should consider the fact that private individuals will generally take into account the reputation of the organisation, the value they add and their accountability before giving significant sums or on-going donations. As such, the risk of small, local organisations taking advantage of private individuals or bringing the NFP sector as a whole into disrepute is limited.

Paragraph 57 refers to governance practices helping to reduce money laundering and financing terrorism. It is suggested that the simple act of having formal governance arrangements in place will address this. People who wish to conduct criminal activity will find ways to comply with requirements while hiding their activity.

Inner Northern Community Housing (INCH) has an annual turnover in the order of \$2.2m pa of which approximately 50% is directly from the Government, with a further proportion indirectly funded by the Government through Centrelink payment to our tenants.

We are constituted as an Incorporated Association with simple and clear Rules outlining the Objects of the Association and its Powers. The Powers are general and simple and allow an organisation to do all the things it would need to do in order to operate effectively as a NFP. The governance around this is therefore minimal with the main cost of compliance being associated with properly calling and holding an AGM with a simple annual report presented to the members.

However, as a recipient of Government funds we are required to comply with the Standards set by the funding bodies that includes complying with a range of governance activities. The governance requirements in these standards are what we consider to be normal good governance practices. We have to achieve accreditation and may have our status checked by more than one government agency. It would be beneficial for organisations in receipt of substantial and potentially multiple government grants to be able to have one regulator that certifies the strength of the organisations governance and that this be relied on by all Government agencies, both Federal and across all States. An organisation should not have to be accredited or licenced in each State such as with the fundraising licencing laws.

It should be recognised that there is a cost of delivering such good governance, particularly in the time taken by management to set policy, procedure, ensure training and compliance and to collate the evidence required to demonstrate that good governance and other practices relevant to the sector are being adhered to. Small organisations find this a significant impost that is not funded adequately in the amount allowed for management of government contracts. The more regulations there are, the higher the expectation that monitoring those regulations through annual reports or other returns, and the higher the risk that an organisation will be penalised or sued for non-compliance; this all adds to the cost of administration that has to be financed through donations or grants.

For a consultation on such an important change to the sector it is disappointing that the changes are being rushed to the extent that the consultation had to take place over the main summer holiday months when most NFP groups have few if any meetings and limited if any resource available to

absorb, reflect on and respond to such a conceptual and wide reaching document. Given the time available, the detail of the responses given in the attached appendix are limited.

Yours faithfully

Claire Davis
President
Inner Northern Community Housing (Brisbane) Association Inc.

Responses to Consultation Questions

- 1 No - If anything were included it would have to be so generic as to have little meaning to the individual organisation. Including a duty to stakeholders would be as meaningful as any list.
- 2 If there were a list of who the duty would be to then it should include:
 - the safety of the public and to use donations in the furtherance of the objects,
 - providers of grant revenue for acquitting the funds in accordance with the funding requirements,
 - employees and volunteers for their safety and paying staff,
 - suppliers so as not to trade insolvently and to pay bills as they fall due,
 - the group intended to benefit from the NFP's objects.
- 3 As outlined above and to have a fiduciary duty of care, to keep proper financial records
- 4 The standard of duty should be linked to the size of the organisation. Larger organisations would be more likely to have paid staff. As such the extra duty of care would go with the accountability appropriate to the scale of the business rather than because the person is paid or otherwise. In a larger organisation with a voluntary Board, the paid employees such as the CEO and Directors should and would have a more detailed knowledge than the Board and the Board may delegate responsibilities for the development of strategy, policies and procedures and for the operational implementation of those. However the voluntary Board members should still make such enquiries and understand the nature of the decisions they are making at the point at which they make the decision.
- 5 The specific skills of responsible individuals should be tailored to the nature of the business. A larger organisation should assess the skills needed for the effective oversight of the organisation, assess the skills of the incumbent responsible individuals and train or recruit into the areas of weakness. Many organisations would not have a qualified Company Secretary and the Treasurer may not be a qualified accountant, and these qualifications may not be necessary to the scale of the organisation provided there is adequate understanding of the requirements in a normal operating environment and that professional advice is sought in relation to any unusual events.
- 6 A duty of care should apply to all the responsible individuals. While some members may have higher skill sets in relation to a particular matter and may provide the others with more advice on the matter, everyone should make such reasonable enquiries as to be able to understand the decision they are making at the time.
- 7 The sector is complex and very varied. To be meaningful any requirements would have to be very generic and applicable to all eg comply with law, keep financial records, manage health & safety, insure risks.
- 8 None

- 9 Most of this higher duty of care such as Health & Safety, care of children and the elderly is covered by other Legislation or Standards imposed by funding or licencing agencies. It is important not to add duplication.
- 10 With the exception of the requirement in relation to qualifications, and with the caveat that the scale of the organisation is taken into account, paragraphs 99, 101 and 102 are supported.
- 11 Information to be disclosed should be relevant to the nature of the organisation and appropriate to its size. It should be noted that the accounting industry has recognised that the very high levels of disclosure now required under the accounting standards is not helpful. The amount of detail can make it hard to see the important issues, and many companies adapt “boiler plate” examples of disclosure as it is so hard to prepare the quantity of information from scratch and be comfortable that all the requirements are met. Therefore disclosure requirements should be minimal. They should include:
- A summary statement of income and expenditure and a balance sheet. Larger organisations should have those documents audited and should have more disclosure relevant to their scale of operations.
 - Related party transactions
 - Payments made to responsible officers
 - A summary of operations for the year such as an annual report that indicates how the organisation has been fulfilling its objects.
- 12 Yes
- 13 Yes
- 14 It may not be necessary to have higher conflict of interest requirements for these organisations in addition to matters noted in 11. People understand the nature of organisation such as charities established by parents to help raise support for the benefit of a sick child. If people feel there is inadequate accountability then they will stop giving to that charity.
- 15 “Material personal interest” should be adequate.
- 16 All organisations should carry out an annual risk assessment appropriate to the size and nature of the organisation.
- 17 Requirements that apply to all organisations should be kept to the minimum that apply to all organisations such as health & safety, financial records, annual report and risk assessment. Other policies will depend on the organisation eg an investment strategy would depend on how much money an organisation has to invest. UK Trust law requires that funds should not be invested speculatively; this seems a reasonable requirement for an NFP given the source of those funds. Recent aged care regulations only requires an investment strategy to be in place for any funds invested in financial products other than those invested through an Authorised Deposit-Taking Institute (ADI). The majority of NFP’s will be relatively small and would be investing surplus cash in an ADI. Larger organisations with significant cash balances should have reasonable investment strategies that would arise from their annual risk assessment.

- 18 Insurance requirements should stem from an annual risk assessment. However, limited funds may cause some NFP's to use their resources in other ways and not insure their risks appropriately. It may be appropriate to regulate that appropriate liability based insurances are entered into, depending on the nature of the organisation. Therefore it is likely that Public Liability, Volunteer Injury etc would be appropriate. While Directors and Officers Insurance is likely to be advisable in most cases, it may not be necessary in all.
- 19 As above.
- 20 Internal review procedures should be no more onerous than those required of companies limited by guarantee.
- 21 Objects and Powers that enable them to conduct all necessary activity to carry out their business eg the list in paragraph 156 does not include the ability to borrow. There should be a requirement that NFP's that cease to operate should be wound up and any remaining funds should be given to another NFP that has similar objects of the NFP that is being wound up. There would have to be some latitude in deciding what organisation had similar objects so that the responsible officers can make a reasonable decision without being challenged. Eg it would not be reasonable to have to research all NFP's to know which is the most like the NFP that is to be wound up.
- 22 Yes.
- 23 Members and ACNC in extreme circumstances such as disputes between the Members and the responsible officers that has not been resolved through mediation.
- 24 Money is given to NFP organisations in order to fulfil their objects. Where the NFP stops delivering on its objects eg the purpose of the objects no longer exists or volunteers cannot be found to continue running the NFP then it is appropriate that the NFP should be wound up. Where an NFP has ceased to operate and no responsible officers can be found to wind the company up voluntarily then it would be appropriate for the ACNC to wind up an organisation and to direct where the funds to an appropriate NFP with similar objects. It is also appropriate for ACNC to suspend or de-register a NFP for persistent or gross mal-practice.
- 25 Model rules are a helpful option but should not be mandatory as they need to meet the needs of the organisation. If model rules are introduced then they should be no more onerous than would apply to an equivalent sized company limited by guarantee.
- 26 Members should be engaged in the appointment of responsible people, there should be a formal annual meeting that members are invited to and may vote, with provisions for voting by proxy and they should be provided with an annual report on the activity of the organisation and financial report. The annual report should not be prescriptive, but it should aim to communicate how the organisation has been working to meet its objects.
- 27 It is likely that non-member based organisations that want to attract funds will need to produce an annual report and financial statement to continue to attract those funds whether from Government or the general public.

- 28 There should be a requirement to have an annual meeting. In-active NFP's should be wound up and their assets transferred to another NFP with similar objects.
- 29 There should be a national threshold set above which an NFP should have minimum governance requirements in place. This may be phrased in terms of revenue and / or capital funding. If 1 set of common governance arrangements are in place that meet national requirements they it will not be necessary for various funding bodies to each seek to assess an organisation's governance capability.
- 30 This is critical. The only practical way will be a form of central registration and compliance monitoring that meets one national set of Government requirements. It would be necessary to have such registration in order to apply for government funding. Then those State and Federal Government agencies will know they can rely on the registration process. It should then be a requirement that Government agencies should not seek to verify the governance arrangements of the NFP's to whom funding is awarded.
- 31 Legislation should be minimal and regulations should meet the principles identified in the covering letter. Those outlined in section 175 appear to be a good summary and will have been tried and tested in the UK.
- 32 No comment.
- 33 No.