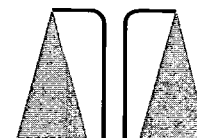


Our Ref: QM:Governance.jan2012

Reply to:

- Head Office
 Bentleigh Branch
 Cranbourne Branch
 Rosebud Branch

Your Ref:



Peninsula Community
Legal Centre inc

18 January 2012

The Manager
Philanthropy and Exemptions Unit
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The Treasury
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We gratefully acknowledge
the financial assistance of:

- Commonwealth Attorney-General's Department
- Department of Justice (Vic)
- Consumer Affairs Victoria
- Victoria Legal Aid
- City of Casey
- City of Glen Eira
- City of Kingston
- Frankston City Council
- Mornington Peninsula Shire

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Community
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By Email: NFPReform@treasury.gov.au

E-MAIL

Dear Sir or Madam,

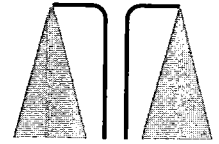
RE: Review of not-for-profit governance arrangements
Consultation Paper December 2011

Peninsula Community Legal Centre (PCLC) is a not-for-profit organisation that has been providing free legal services to its community for over 30 years, with a mission "To empower and support disadvantaged community members of the South East and Westernport Region to use the law and legal system to protect and advance their rights and broaden their awareness of their rights and responsibilities."

PCLC's staff and volunteers provide clients with free and accessible legal services, particularly the most disadvantaged and marginalised members of our community who may otherwise be unable to access legal assistance. PCLC's clients' life circumstances can be severely affected by their legal problems and they are often unable to access other legal services. Being able to obtain free legal assistance can often help our clients move on with their lives and become active participants in their local communities.

PCLC also has a strong commitment to empowering the broader community through community development and community legal education activities, which are viewed as a core function of the Centre. The Legal Centre is viewed by the local community as its key legal resource, through organising and participating in forums about legal issues, providing customised workshops and reporting on policy issues that affect the community, including through local media. Across the community, PCLC endeavours to improve understanding of legal issues through its education activities, as well as supporting community groups and participating in relevant law reform activities.

In particular PCLC provides support to not-for-profit groups through provision of advice pertaining to legal structures; assistance in obtaining legal status through incorporation; and workshops to assist in understanding legal requirements, governance and taxation implications. PCLC is itself a not-for-profit organisation and has previously made submissions in relation to proposals to introduce a statutory definition of 'charity' and to introduce a national not-for-profit regulator. PCLC is well placed to provide comment in



relation to the 'Review of Not-For-Profit Governance Arrangements Consultation Paper' (hereinafter referred to as the 'Consultation Paper').

Responsible Individuals' Duties

PCLC supports a principles-based approach to governance, as outlined in the Consultation Paper¹, where an office holder or director (responsible person) is required to: act with care and diligence; in good faith in the best interests of the organisation; not to misuse their position or information; and, to disclose any material personal interests. Existing legislative instruments generally have incorporated these basic obligations. PCLC therefore contends that these duties should be outlined in the ACNC legislation and these should be the minimum standards to which responsible individuals be held to account.

PCLC does not consider it necessary to spell out directly who responsible entities must consider when exercising their duties or to whom a duty is owed. This should be apparent from the internal governance documents of the organisation and will vary between organisations. The diversity of the NFP sector needs to be respected, rather than taking an overly prescriptive approach, which may lead to a reduction in innovation in NFP governance.

Conflict of Interest

The Consultation Paper suggests the incorporation of a conflict of interest policy to which all NFPs should abide. The policy would outline what constitutes a conflict of interest and how the organisation should treat a conflict of interest in the event that one should arise. In essence, the proposal further defines the duties of the responsible persons to not misuse their position or information and to disclose any material personal interests. As NFPs act for the benefit of the community, compliance with these duties is extremely important to ensure continued public confidence in the organisation. PCLC supports all registered NFPs abiding by a conflict of interest policy, such as that proposed in the paper².

Risk Management

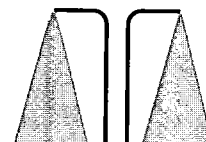
Most NFPs are relied upon by the community as valuable resources and are often representing some of the most vulnerable members of the community. It is therefore important that NFPs have risk management strategies in place. Due to the diversity of the NFP sector, there will be variability between the detail and particular policies appropriate to each organisation, however it is necessary for all NFPs to have some risk management strategies.

PCLC believes that it would be sufficient to mandate a requirement for an organisation's governing rules to include risk management procedures. A sample 'model rules' could then include an example of a risk management strategy – for example, dispute resolution.

Whilst it may be beneficial for NFPs to be covered by insurance as an effective manner of reducing risk within an organisation, it must also be considered that many NFPs are very small, consist entirely of volunteers and have limited funds. For many small NFPs the costs of insurance policies are in excess of their annual income.

¹ The Australian Government the Treasury, *Review of Not-For-Profit Governance Arrangements Consultation Paper*, December 2011, paragraph 91, p17.

² *Ibid*, paragraph 126, pp22-23.



Internal and External Reviews

Internal review of the procedures of NFPs enables accountability and transparency within the organisation. In the case of a small NFP, this is generally sufficient to enable those involved with the organisation (i.e. the members) to review, in particular, the financial functioning of the organisation. Larger NFPs are required to have their books audited. Whether entities are within the parameters of Corporations legislation or Incorporated Associations legislation, there is generally a monetary range provided which specifies when auditing is required and how this auditing is to be completed. PCLC believes that this range based upon income and assets of an association is appropriate in the mandating of external reviews.

The process of review of Incorporated Associations within Victoria provides a good working example of how internal reviews of NFPs could be mandated. Completion of an annual financial statement which is submitted annually to the ACNC following presentation to the organisation ensures that there are regular internal reviews for each organisation. PCLC would support the mandating of such an internal review procedure.

Minimum Requirements for an Entity's Governing Rules

Regulation of the internal governance arrangements of NFPs is a core aspect of this review. At present commonwealth Corporations legislation and state based Incorporated Associations legislation prescribe minimum aspects of governance, such as stipulating the required officers of the organisation and outlining directors' duties.

Any regulatory framework should cater for the diversity of the sector and needs to ensure that it is not too detailed, such that it reduces the autonomy of NFPs to an unnecessary extent. The Association of Chief Executives of Voluntary Organisations believe that "charities are best placed to determine institutional detail as long as their reasons are public and they can be challenged".³ PCLC agrees that latitude should be given to NFPs to pursue their own aims provided they are for the public benefit.

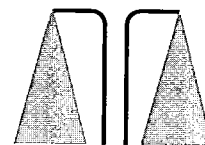
The ACNC has the capacity to support NFPs in the establishment of appropriate governance in accordance with their purposes. There is merit in the preparation of 'model rules', which can be adopted as a whole or modified by an organisation as required. This has the added benefit of the organisation considering its governance processes and ensuring that all of their requirements are met. For example, the *Associations Incorporations Act 1981 (Vic)*, as amended, provides for model rules and requires either adoption of them or adoption of a governing document covering specified matters.⁴

At a minimum PCLC believes that the following should be included in a model governing document, which may be modified by an organisation, if required, with approval from the ACNC:

- Standard definitions
- Arrangements for disputes and mediation
- Provisions for calling of meetings, including annual general meetings and special general meetings
- Rules about office holders/directors
- Rules about financial transactions/record keeping
- Provision for membership

³ Association of Chief Executives of Voluntary Organisations (ACEVO), *High Level Report of the ACEVO Taskforce On Better Regulation: Public Impact Centred Regulation for Charities* (2010) <<http://www.acevo.org.uk/Document.Doc?id=733>>, p14.

⁴ *Associations Incorporation Act 1981 (Vic)* ss 4-6.



Peninsula Community
Legal Centre Inc

- Members rights/responsibilities
- Winding Up
- Not for Profit tax requirements

Relationships with Members

Whilst it is acknowledged that not all NFPs will have members, it is nevertheless important in a consideration of governance requirements for NFPs to consider meeting procedures, which establish the relationship of the organisation with its membership base. PCLC has already indicated in this submission the importance of including grievance procedures within governing documents, as well as members rights and membership procedures. Meeting procedures and involvement of members in meetings is a further means by which the accountability and transparency of the organisation can be assured. PCLC therefore supports compulsory meeting requirements for applicable organisations registered with the ACNC.

The majority of NFPs PCLC provides assistance to are incorporated associations. It is the experience of PCLC that whilst these organisations have the best of intentions in carrying out their goals, often their management, which is carried out on a voluntary basis, lacks knowledge as to regulatory and governance requirements. PCLC has held workshops in this regard for NFPs, in many locations throughout the catchment, which have recently generated much interest. A single point of contact for regulation would greatly assist incorporated associations and the ACNC should ensure that there is a corresponding education campaign which accompanies the roll out of new procedures and requirements for NFPs to avoid confusion and non-compliance.

Thank you for the opportunity to provide input and PCLC looks forward to involvement in the future stages in the development of national NFP legislation.

Yours faithfully,

HELEN CONSTAS
CHIEF EXECUTIVE OFFICER
PENINSULA COMMUNITY LEGAL CENTRE INC.

Enc.0