



Submission to:

The Treasury

Development of Governance Standards

February 2013

Introduction

This submission briefly outlines the Community Council for Australia (CCA) response to the Development of Governance Standards Consultation Paper published in December 2012 by The Treasury.

The CCA Board and members believe the issue of effective governance in not-for-profit (NFP) organisations is a critical issue.

Given the desirability of having good governance practice across the NFP sector and enforceable provisions relating to organisations misusing their charitable status, CCA is broadly supportive of the light touch principles approach outlined in the consultation paper.

CCA acknowledges the fundamental importance of providing some guidance about what is acceptable governance practice to enable the Australian Charities and Not-for-profit Commission (ACNC) to operate and take action when inappropriate governance practice is identified.

It is important to note that this submission has been prepared through a process of consultation with the membership of CCA (see Attachment 1 list of CCA members) and other key organisations in the NFP sector. This submission does not over-ride any positions outlined in individual submissions from CCA members.

CCA commends the government and its officers for the process adopted in developing this consultation paper including seeking input from the NFP sector and other interested groups. It seems The Treasury, government and NFP sector have come a long way in developing more tolerant and inclusive ways of working together over the last two years.

CCA looks forward to participating in an ongoing dialogue about how best to support the NFP sector while ensuring it is compliant with good governance practices.

The Community Council for Australia

The Community Council for Australia (CCA) is an independent, non-political, member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the NFP sector in Australia. CCA seeks to change the way governments, communities and the NFP sector relate to one another. This includes establishing a regulatory environment that works for community organisations, not against them.

The mission of CCA is to lead the sector by being an effective voice on common and shared issues affecting the contribution, performance and viability of NFP organisations in Australia, through:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with government, business and the broader Australian community to achieve positive change.

Context: not-for-profit reform

The NFP sector contributes over \$43 billion to GDP per annum, encompasses over 600,000 organisations ranging in size from large to very small, and is estimated to employ over one million staff (or eight per cent of all employees in Australia). Over the last decade, the growth in the NFP sector is second only to the mining industry, and employment growth has outstripped any other industry.

These figures only tell a small part of the story. The real value of the NFP sector is in the often unattributed contribution to the quality of life we all experience in Australia. NFPs are at the heart of our communities and are what makes us resilient as a society.

The current Federal Government has committed to promoting social enterprise; reducing compliance costs for NFP organisations; encouraging a diversification of financing options to build a more sustainable funding base; streamlining and refining the regulation of NFPs and charities; developing a clearer definition of charities; establishing less bureaucratic reporting requirements while building community transparency; and working to improve relationships between government and the NFP sector (see Attachments 2 and 3). These are major commitments and have informed a raft of NFP sector reforms. While the benefit of these reforms may take some time to be realised, the NFP reform agenda is already well advanced.

The Australian Charities and Not-for-profits Commission (ACNC) is now established and operational. While the ACNC still lacks full capacity to investigate and take action where inappropriate practices are suspected, the establishment of the ACNC is the first time the NFP sector has had an independent regulator dedicated to serving their needs. It is a very positive step towards reducing red tape and enhancing the role of the sector. The new regulator has followed other reforms including the signing of the National Compact between the government and the NFP sector, and the now well established work of the Not-for-profit Sector Reform Council that continues to drive reform across government from the Department of Prime Minister and Cabinet.

The recent history of the NFP sector is framed by growth and reform, but there are a number of new issues emerging. The level of individual giving continues to decline from the high in 2008 and the revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations.

When we talk about community expectations, it is not unreasonable that one of these expectations might reasonably be for all registered charities to have in place some basic accountability frameworks around governance, monitoring and management.

Given the diversity in scope and scale of charitable organisations in Australia there is clearly not a one size fits all approach to governance. At the same time, the establishment of minimum governance standards is a desirable goal that most in the NFP sector will welcome, provided it is flexible, proportionate, principles based and self-assessed.

Within this context the issue of how charities meet their governance requirements is not only important for the NFP sector and the ACNC, it is also important for the broader community.

NFP Governance Standards – the issues

Providing enforceable provisions

CCA understands that for the ACNC to be able to investigate and intervene in a charity that is breaching public trust by failing to implement fundamental governance requirements, the ACNC would need a trigger, a basis for an investigation. The governance standards have partly been developed to provide this trigger - the capacity for the ACNC to investigate.

As outlined in the governance standards consultation paper, all charities will be required to *'comply with these standards to become registered with the ACNC and to remain entitled to be registered.'* (page 7)

CCA recognises and accepts the importance of the governance standards for this purpose, but believes it might be prudent to be more explicit about this purpose in the introduction to these standards.

The no reporting approach

The governance standards consultation paper states: *'Once a charity is registered with the ACNC, it will be responsible for assessing its own compliance with the governance standards. The Commissioner will assume that registered charities are in compliance with the governance standards unless there is evidence to the contrary. A charity would not be expected to demonstrate compliance with all the governance standards upon registering with the ACNC.'* (page 9)

CCA believes this is a good approach that enables the onus of meeting appropriate governance standards to rest with each charity. At the same time, where there are legitimate concerns about the operations of a particular charity, the ACNC is in a position to investigate, educate, work with, and, if necessary, penalise the charity for failing to meet fundamental standards of governance.

Principles based - flexibility and scale of expectation

CCA endorses the principles based approach which specifies *'the outcome that registered charities need to achieve, rather than the mechanism that achieves it. The advantage of principles-based governance standards is that they allow registered charities to decide how to achieve the outcome, taking into account their particular circumstances (including their size).'* (page 8)

The reality is that charities come in many shapes and sizes, and have many different ways of operating and serving their communities. There is no one size fits all set of governance standards, nor one approach to achieving such a standard. The most important aspects of any governance structure is that it is accountable and appropriate for the individual charity, the actual operations of that charity, and the communities the charity serves.

The principles based approach encapsulates the level of flexibility required for the standards to have relevance and be applicable to a wide range of charities.

Supporting better governance practice

It is not the role of the ACNC to become actively involved in accrediting governance standards. In this area, the primary role of the ACNC is to ensure compliance with minimum standards taking into account a range of variables including size and scope of each charity. In achieving this compliance the ACNC has an education and awareness role, and a capacity to work with individual organisations where there are significant issues associated with their governance. This is not about the ACNC providing governance development modules or accredited training, etc.

There are already any number of groups and individuals who actively work to provide education, training, review, accreditation and other services targeted at improving governance strategies within charities.

There are also a range of industry groups and peak bodies that work to improve governance within particular service groups. There are governance standards that apply to charities in areas such as education and training; child care; family services; sport and leisure; animal welfare; arts and culture; international development etc.

While the ACNC may support these more specific standards, it should not be in the business of developing its own accreditation of governance programs, or picking winners and losers amongst the many third party accreditation agencies.

Covering existing regulatory requirements

The description of the standards themselves within the governance standards consultation paper appears to effectively cover-off the existing provisions within the *Corporations Act* and relevant *Associations Legislation*.

When seen in the context of a self-assessed, principles based approach that allows for significant variations and proportionate responses from individual charities, CCA believes it is reasonable to expect most charities to have in place governance provisions addressing the following six areas as outlined in the governance standards consultation paper:

- *purposes and NFP character of a charity*
- *accountability to members (for those charities with members)*
- *compliance with Australian laws*
- *responsible management of financial affairs*
- *suitability of responsible entities*
- *duties of responsible entities* (page 10)

Each of these areas is explained in some detail within the governance standards consultation paper, and it is on the basis of these explanations that CCA is able to endorse them as appropriate governance standard principles.

Language and communication

While noting the CCA endorsement of the governance standard principles, it is also important to consider how the proposed standards might be improved.

It is unfortunate that some of the language within the proposed governance standards makes them less understandable or readily accessible to many people who might work in the charities sector.

Terms such as *registered entities* and *responsible entities* may be required to ensure existing regulations are encapsulated in proposed standards, but when we are talking about volunteer board members and individuals choosing to support their local charity, it is desirable to ensure accessible language is used wherever possible.

To the extent that the more legalistic terms can be replaced with more accessible language, CCA would support changes to the draft governance standards.

Conclusion

CCA commends the Treasury and the ACNC for the work done to date in developing the governance standards.

In general, CCA is very supportive of both the approach taken and the substantive proposals for the governance standards as listed under the six sub headings.

CCA believes it is appropriate to explain in the introduction to the governance standards that one of the primary purposes of the standards is to provide a trigger that enables the ACNC to investigate charities where there may be major breaches of fundamental governance practice.

If possible CCA would also like to see the language of the standards themselves made more accessible, but recognises the requirement to cover off existing regulatory requirements under the *Corporations Act* and relevant *Associations legislation*.

CCA looks forward to working with the Treasury, the ACNC and other stakeholders in formalising the proposed governance standards and ensuring the ACNC has the capacity to appropriately regulate the charities sector without creating unnecessary new compliance requirements.

Current Membership – Community Council for Australia (December 2012)**Attachment 1**

Organisation	CEO/Director
Aboriginal Employment Service	Danny Lester
Access Australia	Sandra Dill
Access Community Group	Samantha Hill
Alcohol and Other Drugs Council of Australia	David Templeman
Alcohol Tobacco and Other Drugs Association ACT	Carrie Fowlie
ANEX	John Ryan
Associations Forum Pty Ltd	John Peacock
Australian Council for International Development	Marc Purcell
Australian Healthcare and Hospitals Association	Prue Power
Australian Indigenous Leadership Centre	Rachelle Towart
Australian Institute of Superannuation Trustees	Fiona Reynolds
Australian Major Performing Arts Group	Bethwyn Serow
Catholic Social Services Australia	Paul O'Callaghan
Church Communities Australia	Chris Voll
Connecting Up Australia	Doug Jacquier
Consumers Health Forum of Australia	Carol Bennett
Drug Arm	Dr Dennis Young (Director)
Foundation for Alcohol Research and Education	Michael Thorn
Fundraising Institute of Australia	Rob Edwards
Goodstart Early Learning	Julia Davison
Good Beginnings Australia	Jayne Meyer-Tucker (Director)
HammondCare	Stephen Judd (Director)
HETA Incorporated	Sue Lea
Hillsong Church	George Aghajanian
Illawarra Retirement Trust	Nieves Murray
Lifeline Australia	Dr Maggie Jamieson
Maroba Lodge Ltd	Viv Allanson
Mental Health Council of Australia	Frank Quinlan
Melbourne Citymission	Rev. Ric Holland
Missions Interlink	Pam Thyer
Mission Australia	Toby Hall (Director)
Musica Viva Australia	Mary Jo Capps (Director)
Opportunity International Australia	Rob Dunn
Philanthropy Australia	Deborah Seifert
Principals Australia Institute	Heather Parkes
Pro Bono Australia	Karen Mahlab (Assoc. Member)
RSPCA Australia	Heather Neil (Director)
St John Ambulance Australia	Peter LeCornu
Social Ventures Australia	Michael Traill
Surf Lifesaving Australia	Brett Williamson (Director)
The ANZCA Foundation	Ian Higgins
The Australian Charities Fund	Edward Kerr
The Benevolent Society	Anne Hollonds (Director)
The Big Issue	Steven Persson (Director)
The Centre for Social Impact	Andrew Young
The Smith Family	Lisa O'Brien (Director)
The Ted Noffs Foundation	Wesley Noffs
Volunteering Australia Inc	Cary Pedicini
Wesley Mission	Keith Garner (Director)
WorkVentures Ltd	Arsenio Alegre
World Vision Australia	Tim Costello (Chair)
YMCA Australia	Ron Mell
Workplace Giving Australia	Peter Walkemeyer
Youth Off The Streets	Fr Chris Riley
YWCA Australia	Dr Caroline Lambert

Attachment 2

National Compact Extract: signed by sector organisations and Government 17/3/10

Shared principles of the National Compact

The Australian Government and the Third Sector will work together according to these principles to achieve their shared vision:

- We believe a strong independent Sector is vital for a fair, inclusive society. We acknowledge and value the immense contribution the Sector and its volunteers make to Australian life.
- We aspire to a relationship between the Government and the Sector based on mutual respect and trust.
- We agree that authentic consultation, constructive advocacy and genuine collaboration between the Sector and the Government will lead to better policies, programs and services for our communities.
- We believe the great diversity within Australia's Third Sector is a significant strength, enabling it to understand and respond to the needs and aspirations of the nation's varied communities, in collaboration with those communities.
- We commit to enduring engagement with marginalised and disadvantaged Australians, in particular, Aboriginal and Torres Strait Islander people and their communities.
- We recognise the value of our multicultural society and we will plan, design and deliver culturally responsive services.
- We share a desire to improve life in Australia through cultural, social, humanitarian, environmental and economic activity. To achieve this, we need to plan, learn and improve together, building on existing strengths and making thoughtful decisions using sound evidence.
- We share a drive to respond to the needs and aspirations of communities through effective, pragmatic use of available resources.
- We recognise concerted effort is needed to develop an innovative, appropriately resourced and sustainable Sector.
- We acknowledge the need to develop measurable outcomes and invest in accountability mechanisms to demonstrate the effectiveness of our joint endeavours.

Priorities for action

Implementing the Compact principles will require coordinated engagement across Government and collaboration with the Sector to develop action plans. These plans will detail how the Compact's eight priorities for action, outlined below, will be met.

1. Document and promote the value and contribution of the Sector.
2. Protect the Sector's right to advocacy irrespective of any funding relationship that might exist.
3. Recognise Sector diversity in consultation processes and Sector development initiatives.
4. Improve information sharing including greater access to publicly funded research and data.
5. Reduce red tape and streamline reporting.
6. Simplify and improve consistency of financial arrangements including across state and federal jurisdictions.
7. Act to improve paid and unpaid workforce issues.
8. Improve funding and procurement processes

Reference: www.nationalcompact.gov.au/resources/national-compact/

Attachment 3

Statement of government support for PC recommendations (extract from the Communiqué from the second meeting of the Not-For-Profit Sector Reform Council, 18 May 2011)

With regards to the Productivity Commission research report, Contributions of the Not for Profit Sector, the Minister advised that the Commonwealth Government has accepted 'in-principle' all but one of the recommendations relating to the Commonwealth. The one recommendation not supported was recommendation 9.5 pertaining to program related social innovation funds. While encouraging greater innovation is critical, the Government believes this should be pursued in other ways.

Reference: www.notforprofit.gov.au/node/140