

Scoping Study for a national not-for-profit regulator

Submission

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1 Executive Summary

Volunteering Australia welcomes the opportunity to comment on the consultation paper for the Scoping Study for a National Not-For-Profit regulator. This submission has been prepared through a process of consultation with its members, in particular state volunteering centres.

As the national peak body working to advance volunteering in the Australian community, Volunteering Australia affirms the protection and confidence appropriate regulation provides to the Australian community. Regulation is also critical to providing protection for volunteers. Volunteering Australia supports reform to achieve smarter regulation that:

- ensures good governance, transparency and accountability; and
- enables not-for-profit entities to focus effort and resources on fulfilling their mission for and with local communities.

Not-for-profit entities that involve volunteers are required to comply with relevant legislative and regulatory frameworks. This compliance has associated costs including time, knowledge, skill and organisational systems. Adequate resourcing of not-for-profit entities is essential to meeting compliance requirements.

Volunteering Australia recommends the inclusion of 'Working with and resourcing the NFP sector to build on its existing strengths in relation to governance' alongside the goal of a 'Sustainable NFP sector through good governance, transparency and accountability'. The regulatory framework also needs to enable innovation and initiative within the NFP sector.

Whilst the proposed scope of national regulation to focus on entities which receive public and government monies is generally supported in principle, various views are held.

Further detail is needed about the proposed scope and function of role of the NFP regulator in education about governance, given that (a) compliance with regulatory requirements is a central, but not sole, element of governance (b) peak bodies and other entities in the NFP sector currently provide or facilitate access to education and training about governance to varying degrees.

A report once, use often system of reporting is supported in principle. The design and implementation would need to take into account the diversity of the responsibilities and activities of the NFP and government sectors across all states and territories. Tiered reporting with varying levels of accountability that is proportional is a positive step in reducing regulatory burden. Achieving consistency across states and between the state and Commonwealth could be an interim step toward achievement of single reporting.

Location of the NFP regulator within the Australian Taxation Officer (ATO) temporarily or permanently is not supported. A new national body would be a more appropriate option for further consideration. An interim regulator would enable timely and incremental change. It could also provide the basis of piloting the model for the NFP regulator to assess the practicability of its form and function.

Any contribution NFP entities make to the cost of the national regulator should be proportional to entity size, budget, and government and public monies received and a deductible business cost.

2 Introduction

Volunteering Australia welcomes the opportunity to comment on the consultation paper for the Scoping Study for a National Not-For-Profit regulator. The report builds on previous reports including the Productivity Commission's report of the Contribution of the Not-For-Profit (NFP) Sector (2010) to which Volunteering Australia also provided input.

We look forward to the outcome of the scoping study and to working with Government in subsequent phases of the establishment of a national regulator for the not-for-profit sector.

2.1 About Volunteering Australia

Volunteering Australia is the national peak body working to advance volunteering in the Australian community. Its role is to represent the diverse views and needs of the volunteering sector while promoting the activity of volunteering as one of enduring social, cultural and economic value.

Volunteering Australia affirms the protection and confidence provided to the community and government by having appropriate regulation. Regulation is also critical to provide protection for all volunteers, particularly in relation to equal opportunity, discrimination and harassment, occupational health and safety, insurance, and out-of-pocket expenses.

Objective 2 of the National Agenda on Volunteering is 'Ensuring that volunteers have legal status and are afforded protection through every piece of legislation and public policy that affects them and their work'.

Volunteering Australia developed and promotes a range of resources that support compliance with regulation by volunteer-involving organisations, and the protection of volunteers:

- National Standards for Involving Volunteers in Not-For-Profit Organisations. The Standards include systems to support compliance with regulation and are supported by a workbook and resource kit.
- Model code of practice for volunteer involving organisations.
- Running the risk. A risk management tool for volunteer involving organisations.

2.2 Specific issues for the volunteering sector

In its submission to Productivity Commission's Inquiry into the contribution of the not-for-profit sector (2009), Volunteering Australia raised specific issues regarding legislative frameworks that impact directly on the volunteering sector.

The following areas of legislative and regulatory frameworks impact on volunteering:

Occupational health and safety (OH&S)

- The cost of compliance, including time, resources and training
- Varying state legislation, although we note the current Model OHS Act for harmonisation of legislation in occupational health and safety in Australia.
- Complex OH&S issues can be a barrier to volunteer participation.

Background checking

- The need for and current inability to transfer background checks between states and organisations.
- Complex processes.
- Lengthy processing time and costs involved.

Equal opportunity and anti-discrimination

- Inconsistency across state, territory and Commonwealth legislation, particularly in relation to whether the legislation covers volunteers.

Whilst volunteers are not explicitly protected under all relevant legislation, not-for-profit organisations are required to comply with all legislative and regulatory frameworks relevant to their work, and the paid and voluntary workforce. This compliance has associated costs in time, knowledge and skill, and organizational infrastructure.

3 Response to the consultation paper

3.1 Goals of national regulation

1. Are these goals appropriate and adequate for national regulation? Which of these are most important?
2. Are there any other goals for national regulation?

Response:

The goals for a national regulator need to be very clear about the outcomes they are designed to serve for government and the community, including effective expenditure of government and public monies and non-financial community benefits i.e. social outcomes.

Volunteering Australia supports 'Strong and sustainable NFP sector through good governance, transparency and accountability' as a goal of the national regulator for not-for-profit sector (page 7).

The strength and sustainability of the sector is dependent on a range of factors including, but not limited to, creating a regulatory and funding environment that builds the sector's capacity to engage with and support communities in Australia.

One example of building the capacity of the sector provided in response to Volunteering Australia's invitation to comment on the Scoping Study is that government funding programs need to allow the equivalent of a 'profit margin' which can be re-invested in growing not-for-profit entities and allowing them to undertake more long term planning.

Regulatory compliance requires significant staff, financial and technological resources. Volunteering Australia has commented in other submissions to the Commonwealth about the cost of volunteering to organisations and volunteers, including out-of-pocket expenses for volunteers and organisations, and compliance with specific regulations such as police checks and working with children checks.

The Not-For-Profit sector is diverse in relation to its governance and organisational capacity, encompassing areas of enormous skills and strength, and areas where capacity could be developed further.

We recommend including 'Working with and resourcing the NFP sector to build on its existing strengths in relation to governance' as a goal of the Not-For-Profit Regulator. This includes ensuring the NFP sector is adequately resourced to meet the costs of compliance with regulation.

As well as enabling governance capacity, the regulatory framework needs to enable innovation in the NFP sector. We note that the regulatory framework to date has tended to be driven from a risk management rather than an entrepreneurial perspective. This imbalance needs to be addressed so that innovation and initiative are not stifled by the burden of regulation.

Finally, with regard to the sub-set of goals for regulation outlined on page 7 of the consultation paper, these would seem appropriate criteria in decision making about the scope, function and form of the national regulator, rather than goals.

3.2 Scope of national regulation

3.2.1 Diversity of the NFP sector

Grouping the entire non-profit sector into one category presents challenges due to the diversity of entities that comprise the sector. There is a risk that by attempting to group all non-profits into one regulatory framework new barriers will be created for many existing entities, rather than easing of the regulatory burden. This presents additional challenges when the significant number of non-incorporated groups are considered.

3.2.2 Legal form

What should the scope of the national NFP regulator be? What type of entities should be regulated by a national NFP regulator? (Question 3, page 9).

Response:

The proposal that national regulation focuses on entities which receive public and government monies has merit. However, varying views are held about the detail regarding the scope, including that the types of entities to be regulated should be limited to those that have PBI status.

3.2.3 Incorporated associations

Should regulation of incorporated associations (including governance) be moved to a national regulator? (Question 6, page 11).

Response:

As stated in the Treasury's consultation paper for the Scoping Study for a National Not-For-Profit Regulator, incorporated associations are governed by state and territory legislation and requirements differ between jurisdictions.

Our consultation with members also indicates there are gaps in the support provided to NFP entities that seek assistance regarding incorporation requirements from relevant state regulatory bodies, e.g. NFP entities being advised by Business and Consumer Affairs to seek the assistance of a solicitor regarding incorporation issues. Comment was also offered about regulatory bodies failing to exercise their powers to regulate incorporated entities.

National regulation of incorporated associations is supported in principle. Further consultation and information is required about the form this regulation would take, how responsibility for incorporation would be transferred from the states and territories, and what information and support a national regulator would provide to NFP entities that are incorporated (or seeking to incorporate).

3.2.4 Access to tax concessions

Access to Public Benevolent Institute (PBI) and Deductible Gift Recipient (DGR) status by volunteer-involving organisations contributes significantly to the financial viability of the sector in terms of fund raising, and its capacity to compete with the public sector to recruit and retain qualified and skilled staff through wage parity for paid staff.

The development of proposals that reduce the complexity and cost of the assessment, granting and monitoring of these tax concessions would be welcomed.

The goods and services tax, state government stamp duty and other levies impose significant additional costs to insurance premiums. The removal of taxes and charges on insurance premiums would go some way to reducing the financial burden of the level of premiums paid by volunteering involving organisations.

Volunteering Australia also notes the *Rising Costs of Volunteering Report* which made a suite of recommendations about out-of-pocket expenses incurred through volunteering, including organisational and personal reimbursement options (2007).¹

3.2.5 Potential cost savings

The degree of cost savings from improvements to taxation arrangements in relation to the cost of meeting new compliance requirements is unknown without analysis of detailed proposals for taxation.

3.3 Functions of the national regulator

3.3.1 Compliance and education

'A new national regulator could take over the role educating the sector about governance and reporting standards and encouraging understanding and compliance with new regulatory requirements' (paragraph 68, page 12).

Response:

The current education about governance and compliance obligations provided to NFPs by government agencies that deal frequently with the NFP sector is acknowledged.

As with all national and state regulators, a national regulator for the NFP sector has the potential to undertake compliance and educative roles.

Streamlining of education about compliance obligations for the NFP sector has potential benefits including development of a coordinated bank of knowledge and information on which the sector can call on.

We note that:

- Understanding of and compliance with regulatory requirements is a central element of governance, but not the only element.
- Peak bodies currently provide or facilitate access to education and training relating to governance to varying degrees.

Further detail is needed about the proposed scope and function of the NFP regulator's role in relation to education.

Consideration could be given to a dual approach by the regulator and the NFP sector in relation to education, rather than the regulator assuming full responsibility for the role of educating the sector about governance and reporting standards and encouraging compliance with the new regulator arrangements. Consultation with the sector about the content and mode of delivery of such education is necessary to ensure training and

¹<http://www.volunteeringaustralia.org/files/G0V4LO2CTG/Costs%20of%20Volunteering%20Report%20-%20final.pdf>

development activities provided are relevant and appropriate to the needs of the diverse entities in the NFP sector.

3.3.2 Report once, use often principle

With the establishment of a new regulator, NFP entities within the scope of the NFP regulator could be required to lodge annual information statements. NFP entities would only be required to 'report once' for standard reporting, and as such would no longer be required to report to ASIC or other Commonwealth agencies requiring the same information (paragraph 81, page 14).

Response:

The proposal to report once, use often through a single reporting requirement has potential to reduce the burden of duplication of effort and present possible savings by reducing the need to collect different information for different reporting bodies and/or reorganise information to meet different reporting formats. We note the design and implementation of a single reporting system would need to take into account the diversity of the NFP and government sectors across all states and territories.

An interim approach would be to work toward achieving consistency in reporting requirements across states, and between the states and Commonwealth, particularly in regard to what is reported and the format in which it is required.

3.3.3 Tiered reporting

To reduce the regulatory burden on smaller NFP entities, a tiered system of reporting could be introduced (paragraph 85, page 14).

Response:

Tiered reporting with varying levels of accountability which takes into account proportionality of size of the NFP entity size and infrastructure is a positive step to reduce regulator burden.

However, agency size is not the sole factor. Other criteria relating to proportionality need to be considered, e.g. the amount of government and public money received by the entity.

3.3.4 Information portals

What benefits would the establishment of a NFP sector information portal have for the public, the sector and governments? What information should be available on the portal? (Question 14, page 17).

Response:

The establishment of a single information portal could have benefits of reduced duplication and coordination of intelligence, if it replaced existing portals. Further duplication through the creation of an additional portal would be costly and add to duplication.

If it were to replace existing mechanisms, a new single information portal would need to be designed to accommodate the complex matrix of information needs required by different stakeholders within the public, the NFP sector and government in a clear and accessible way.

Alternatively, a single information portal could be used to redirect the public, the NFP sector and governments to existing information portals that have information specific to their needs at a particular point in time, or circumstances.

3.4 Form of the national regulator

3.4.1 Location

What form of the national regulator best meets the objectives of simple, effective and efficient regulation of the NFP sector? (Question 23, page 23).

Response:

Location of the NFP regulator within the Australian Taxation Office (ATO) temporarily or permanently is not supported as it would not sufficiently meet the criteria of independence or expertise. In our view, there would be an inherent conflict of interest between the primary purpose of the Australian Taxation Office to protect Australia's revenue and the purpose of a regulator that oversees and supports a sustainable NFP sector. A new national body would be a more appropriate option for further consideration.

3.4.2 Interim or permanent arrangements

Are there benefits from establishing an interim regulator through an existing Commonwealth regulator to undertake immediate reform? (Question 25, page 25).

Response:

The concept of an interim regulator would enable timely and incremental change. It would also provide the basis of a piloting the model on which the NFP regulator is designed to assess the practicability of its form and functions of an NFP regulator.

However there is also potential for discontinuity, disruption and cost for the NFP sector and government.

3.4.3 Financial contribution to the cost of the NFP regulator

What level of contribution should NFP entities make to the cost of the national NFP regulator? (Question 29, p25).

Response:

Any contribution NFP entities make to the cost of the national NFP regulator should be proportional to factors such as the estimated value arising from the tax concessions (especially PBI) provided to that entity, entity size, budget, government and public monies received. Contributions should be a deductible business cost.

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Hori Howard. Australian Council of State Emergency Services.

5 References

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