

Reform in the not-for-profit sector: governance

On 8 December 2011 the government issued a consultation paper titled "*Review of not-for-profit governance arrangements*" and an accompanying fact sheet on proposed changes to governance arrangements applying to not-for-profit (NFP) entities.

Background

The consultation paper follows the 2011-12 Federal Budget which announced that treasury would review existing governance obligations for NFPs with view to establishing a new governing body, the "*Australian Charities and Not-for-profits Commission* (ACNC)". This series of proposed reforms arose from the findings of the Final Report of the "*Scoping Study for a National Not-for-profit Regulator*".

The consultation paper, inter alia, is seeking views in relation to reform proposals concerning the duties and minimum standards of responsible individuals, disclosure requirements, risk management procedures, minimum standards of governing rules and relationships between members of NFPs.

It also addresses some important issues that have existed in the NFP sector for some time, including the potential formation of a national high level principles-based approach to good governance.

On 9 December 2011, the ACNC Implementation Taskforce also released a discussion paper titled "*Australian Charities and Not-for-profits Commission: Implementation design (Implementation Design Discussion Paper)*" and accompanying factsheets outlining the proposed design and implementation of the new reporting framework for charities that will be administered by the ACNC.

This was accompanied by the release of an Exposure Draft (ED) "*Australian Charities and Not-for-profits Commission Bill*" of the proposed ACNC legislation, not including governance principles which are the subject of the current consultation.

Submissions responding to the consultation paper and ED are now due by 27 January 2012 (following several extensions granted after feedback from industry groups) and will be followed by another exposure draft released to

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select interest groups shortly thereafter, before the government tables legislation in parliament. Submissions to the *"Implementation Design Discussion Paper"* are due by 27 February 2012.

The Australian Accounting Standards Board (AASB) is also currently undertaking work aiming to improve reporting mechanisms for not-for-profit entities. There have been calls in the sector to develop a not-for-profit specific standard in review of the existing AASB 1004, contributions. Proposals made in the exposure draft to renew this standard which began in the June 2009 ED were not supported by resulting submissions. Therefore the AASB is now taking a different approach based on performance obligations when considering the appropriate recognition of income. The AASB expects to issue an exposure draft documenting this approach during 2012.

This newsletter presents an overview of the consultation paper and five reform areas relating to NFPs where the government is seeking comments. A list of its consultation questions is annexed as Appendix A.

Appendix B contains an overview of the different areas in which reform is being undertaken as a part of the overall NFP reforms. It summarises government objectives in undertaking reforms in these areas, progress that has been made and important upcoming dates, where relevant.

The government has stated that it anticipates that the governance requirements for NFPs will be in place in time for the commencement of the ACNC on 1 July 2012.

Consultation paper analysis

The government has noted a range of issues which it believes form an imperative for change in the way NFP entities are governed. Some of these are issues presented by current statutory requirements regarding NFPs, while others are a result of the nature of NFPs as distinct from for-profit corporations and enterprises.

The most important of these issues are highlighted in the following subsections. The sections thereafter refer to the specific reform proposals which the government has put forward as part of its bid to remedy some of these existing issues.

The complexity surrounding current NFP requirements

One of the reasons noted by the government for reform is the complexity of current NFP governance arrangements. The consultation paper characterises these as 'complex, ad hoc and lacking transparency'. It repeatedly stresses the importance of cutting 'red tape' to allow resources to be more efficiently used for the purpose of actually executing the functions of the organisation. The consultation paper notes that the intention behind the review is not to impose additional governance requirements on NFP entities.

Challenges posed by multiple schemes regulating NFPs

Currently, a combination of common law, commonwealth and state legislation provides the guidelines pertaining to the function, administration and governance of NFPs.

The consultation paper identified that 'existing arrangements can also be duplicative, often resulting in high and unnecessary compliance costs'. This status quo gives rise to administrative difficulties for NFPs and requires them to comply with several schemes, increasing the potential for creating compliance issues and potentially detracting time and resources from those activities which are more centrally geared towards fulfilling organisational purpose.

Reasons for changes stemming from the inherent nature of NFPs

The consultation paper notes that many NFPs are operated with the assistance of volunteer members. This means that existing regulatory regimes, already complex in nature, are difficult for non-experts to negotiate and often lead to non-compliance or additional costs if the NFP employs individuals to handle legal compliance issues beyond their capabilities.

If handled by existing volunteers (or even employees) compliance efforts add not only to costs, but also to expenditure of time on non-core functions.

Jurisdictional issues and the diverse structures of NFPs

NFPs can exist in a range of structures. Different structures are often regulated by type-specific statutory regimes that are unique to that particular sector. The common structural types that NFPs currently utilise, and the relevant governing laws, include the following:

- Companies limited by guarantee. Some 11,000 NFPs of this type exist, and are governed by the Australian Securities and Investment Commission (ASIC) and the *Corporations Act 2001*.
- Indigenous Corporations. Some 2000 Indigenous corporations are registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).
- Incorporated Associations. NFP associations can be incorporated under state (and territory) legislation, which often differs from state to state. These associations are not governed by ASIC, and are restricted in operation to the state of incorporation.
- Charitable trusts. These are also regulated at the state/territory level and subject to statute and common law.

Other types of structures that are used by NFPs include joint ventures, co-operatives, religious entities and unincorporated associations, all of which are governed by legislation unique to that structure type or sector.

The presence of these various types of NFPs means that a complex matrix of structures currently exists, each accompanied by a set of statutory provisions. Given the fact that state-specific law deals with some of these structures, regulatory requirements often differ from state to state, presenting jurisdictional overlap and potential for confusion, and preventing a uniform approach which would standardise expectations and best practices.

The following sections provide an overview of the reform proposals presented in the consultation paper.

Responsible individuals' duties

Responsible individuals within an NFP will be defined by the ACNC legislation. The consultation paper predicts that the definition will include:

- directors/officers of a registered entity
- trustees of registered NFP entities (or a director/officer of a trustee of a registered entity)
- individuals with decision making stakes in registered entities
- individuals whose instructions are registered entity acts in accordance with
- receivers, managers and liquidators of an incapacitated NFP.

Any responsible individual who is also a receiver, manager, administrator, liquidator or trustee in bankruptcy of an NFP will have responsibilities to more than just the NFP, which would therefore need to be considered and complied with concurrently.

The consultation paper indicates that a range of standards of conduct would be applicable to responsible individuals under the reforms. However, in keeping with the government's broader thrust, the approach is principles-based and not prescriptive. As such, a responsible individual would be subject to standards of diligence proportionate to the size of the entity, the amount of public monies the entity receives, qualifications of individuals involved and their position in the NFP, and the level of risk the entity's activities carry.

The consultation paper presents an overview of duties for different types of NFPs under existing statutory regimes, suggesting that, based on these broad principles, responsible individuals of certain types of NFPs may then be subject to certain duties specific to their NFP structure. For companies limited by guarantee, these include duties of care, diligence, to act in good faith in the best interests of the entity, to not make improper use of position and information, and to disclose material personal interests. For incorporated associations these include fiduciary duties (a higher standard) to the same effect. The same applies to trustees of charitable trusts, which are also subject to common law court powers of removal and replacement when in breach of these fiduciary duties.

The consultation paper stresses that the key objective is the implementation of a unified and national principles-based approach; one guided by proportionality rather than detailed prescription. However, the considerable discussion of structure-specific duties which currently exist, combined with comparisons to other international jurisdictions (see below), suggests that some of these duties would continue to exist under the proposed reforms.

Disclosure requirements and managing conflicts of interest

The proposed reforms pertaining to reporting requirements aim to standardise and simplify the various extant obligations NFPs are subject to depending on their structure, jurisdiction and size. One of the imperatives for change noted by treasury is the duplicity and complexity of reporting requirements.

The consultation paper states that the legislation introduced as part of the NFP reforms will stipulate a 'tiered/proportional' system of reporting requirements. This is in line with a general approach favouring reporting and other obligations being proportionate to the size of the entity, whether it employs people and the volume of funds it deals with.

The ACNC Implementation Taskforce is still consulting on the reporting framework, and submissions in response to the relevant discussion paper will form part of that process. Nonetheless, the ED release was accompanied by several factsheets which shed considerable light on the possible direction.

The factsheet "*The ACNC Exposure Draft Reporting and Auditing*" explains that the government envisages a reporting scheme based on the size of the particular NFP entity, with each classed into small, medium and large, according (primarily) to revenue, but with indicators considered. The factsheet notes that "*The Final Report of the Scoping Study for a National NFP Regulator*" recommended this proportionate reporting system, where 'small entities should be required to provide no more than a postcard of information'. Medium and large entities would need to provide a financial report, with the depth of information required dependent on which of the two categories an entity falls in.

The key method of reducing the duplicity and complexity of existing reporting requirements as noted by the factsheet is that information submitted to the ACNC should constitute the 'totality of general reporting obligations'. By allowing other government agencies access to this information (save in the case where an entity requests certain information be granted confidentiality), the need for entities to provide information on a multiple basis would be removed.

The consultation paper makes reference to various existing disclosure standards and reporting requirements which apply to NFPs presently depending on their structure, including the Australian Accounting Standards Board (AASB) disclosure requirements, ASIC requirements, and those under state and territory legislation. It is likely that the national standards drafted might, for each of the three proposed categories of entities, be based in part on these existing standards, especially for large entities.

The consultation paper also seeks views on a conflict of interest policy. It suggests that under the new legislative regime responsible individuals will be required to avoid conflicts between the entity's and their own interests, will be required to disclose any such interests, will be forbidden from taking advantage of information gained as a result of their positions, and

might be required in certain circumstances to be subject to procedures such as refraining from voting and withdrawing from meetings.

Risk management and internal/external reviews

The consultation paper emphasises that management of various risks is important due to the vitality of maintaining public confidence in NFPs and ensuring the entity does not 'slowly drift away from its mission without realising it'. It explains that the draft legislation is likely to include measures aimed at ensuring entities mitigate, and have procedures in place to counter, specific risks. These include those risks resulting from conflicts of interest, dispute resolution, ensuring safe work practices and preventing fraud.

The consultation paper also outlines the importance of internal and external review procedures. Internal procedures pertaining to small, day-to-day matters are said to enhance public confidence, whereas external procedures (as to their applicability and precise nature) are likely to depend on the classification of an entity into small, medium or large.

While the consultation paper does not articulate precise thresholds for the boundaries between these three categories, it is likely that this matter will be settled after the consultation process. Relevantly, the three types of companies limited by guarantee that currently exist in the *Corporations Act* are outlined and discussed in notable depth, as are the differences in audit and review obligations each type of entity is subject to. While the consultation paper does not expressly so indicate, it is possible that such a model might be retained for risk review and audit requirements placed upon NFPs under the new system.

Minimum requirements for an entity's governing rules

Of the different reform areas addressed in the consultation paper, the least indications as to the potential legislative direction which might eventuate are given for the governing rules. This appears to be a consequence of the government treating this as the primary area of consultation.

Reference is made in the consultation paper to governing documents that exist for a range of bodies existing in various NFP sectors, including incorporated entities (which use standard templates available on state government websites), corporations (which can choose to use model 'replaceable rules' in their constitutions), and indigenous corporations (which can use a standard 'rule book' to provide for default rules).

Without being definitive as to whether such a standard would be applied under the new legislation, the consultation paper discusses the current threshold applied by the Commissioner of Taxation (the Commissioner) in determining whether to accept an entity as a NFP. Presently, this threshold is satisfied when the Commissioner accepts that an entity's constitution or governing documents prevent it from distributing profits or assets for the benefit of particular people.

From statement of mission to detailed setting out of procedures, the consultation paper is seeking views on all matters related to governance of NFPs and how governing rules can best be documented to encourage confidence and trust in NFP entities.

Relationships with members

In keeping with its broader goal of adopting a regime that will encourage continued community and donor confidence and trust in NFPs, the Government has also identified the particular entity's relationship with its members (if any) as one area where standardisation is required.

Encompassed by this area of consultation are matters including meeting requirements and whether they should be included in governance documents, minutes of meetings and whether these need mandating for entities generally or those

of certain sizes and structures, whether annual (or periodical) meetings need to be made compulsory, and generally whether there needs to be any other formalisation of the entity-member relationship.

International comparisons and potential models for Australia

An Appendix to the consultation paper refers to experiences and legislative enactments in several countries for the purposes of comparison and consideration by those who might make submissions in the consultation period. The areas of comparison chosen are by and large those in which the government is seeking submissions, including possible high-level governing principles, appropriate risk management procedures, potential audit requirements and the size of entities that might be subjected to the same, and reporting requirements upon NFPs to relevant regulatory bodies and how duplicity of reporting obligations might be reduced.

The consultation paper's discussion of the Charities Commission of England and Wales (UK Commission) principles-driven NFP governance model is relevant in light of the purposes of the current reform proposals. The citation of the six high-level principles contained in the UK Commission's "*Good Governance: a Code for the Voluntary and Community sector*" seems resonant of its broader effort to adopt a principled, rather than prescriptive, approach. These six principles address board member responsibilities in the NFP, maintenance of organisational purpose, training and development within NFPs, legal and regulatory compliance, organisational integrity and open/accountable leadership.

The consultation paper also specifically surveys audit requirements under the English/Welsh models, which contain an income threshold below which account lodgement is not compulsory. The UK Commission's regulations set out a tiered audit reporting system which can be 'altered over time to reflect societal expectation and requirements'. This is not unlike the existing model for companies limited by guarantee under Australia's *Corporations Act* which the consultation paper summarised in some depth, as mentioned above. Given the consultation paper's proposal to adopt a three-tiered system for audit and reporting purposes, and the fact that a principle-led approach is the driving force, a similar mutable standard is likely to be adopted in these reforms.

Reference is also made to New Zealand's Charities Commission (NZ Commission) established in 2005 and in particular to the way in which the commission satisfies itself as to the charitable nature of an organisation. This is particularly relevant for potential tax concession purposes, and in New Zealand the determination is made not by the use of any strict words in NFP governance documents (such as the entity constitution), but the satisfaction of certain criteria adopted by the NZ commission as to the nature of a charity.

Moreover, the Canadian model is highlighted for its requirement on NFP company directors to disclose certain interests in order to preserve the integrity of an NFP corporation, as well as the strong emphasis on registered charities filing an annual information return to the Charities Directorate. The Canadian model makes tax exemption status contingent on the proper filing of information in a timely manner, with revocation of this status if a delay of 6 months occurs. The consultation paper makes constant reference to the tax benefits enjoyed by NFPs and raises consultation questions in regards to how filing of required information should (if at all) impact on tax and other concessions under the reforms.

While the United States has a system far more complex than any of these mentioned jurisdictions, the consultation paper nonetheless makes mention of an aspect of NFP governance in the United States that might have relevance to Australia with view to maintaining public confidence and trust in the NFP sector. This is the audit regime provided for in the *Sarbanes-Oxley Act*, which regulates and strictly bans the involvement of engaged audit firms in non-audit activities of an NFP (including bookkeeping, financial information systems, appraisal services, actuarial services, management or human resource services, investment advice, legal services, and other expert services unrelated to the audit).

KPMG Australia comment

Government have stated that it is the aim of the NFP reforms led by the governance consultation paper and ACNC ED initially to centralise and simplify existing arrangements which would assist in reducing red tape and minimising the compliance burden for the NFP sector whilst improving the level of transparency in reporting.

For some years KPMG Australia has called for the establishment of a separate dedicated regulator for the NFP sector and support in principle the reforms outlined in the consultation paper. In particular, given the diverse nature of the sector, we support a principles-based approach to the regulation of governance of NFP entities. The stated objective of reducing duplication and red tape is commendable, but is sometimes in conflict with the increased accountabilities for a number of NFPs.

It is clear that the level of reform intended will have a key impact on the sector as a whole. As such, KPMG Australia raises the following specific concerns and areas requiring more clarity:

Deadline for submissions

Even in recognition of the most recent extension for submissions on the governance consultation paper and ACNC ED to 27 January 2012, this requires immediate attention and allows little potential for discussion across the sector in order to raise any queries/concerns effectively in advance of the deadline. It is important given the nature of the potential reforms that there is a sufficiently strong 'voice' providing a fair representation of the NFP sector to be given appropriate and timely consideration by Government.

Implementation timeframe

Whilst the new reporting regime will be mandatory for years ending 30 June 2013, this means that any additional requirements are effective from 1 July 2012 which could be a strain on a number of NFP organisations in terms of resources, logistics and IT; in order to meet regulations and reporting requirements in an efficient and effective manner. It is also likely to result in greater costs in the initial implementation. Additionally, the government is currently reviewing the statutory definition of a charity to be placed in legislation from 1 July 2013, thereby increasing the risk for those organisations which may be determined as a charity at this date as it is unclear whether they would be required to meet potentially onerous reporting requirements for the previous year, as well as the requirements for those organisations that no longer meet the definition.

Transition to new regime

It would appear from the draft proposals that a level of clarity is required with respect to companies limited by guarantee as to whether these entities will still have to comply with the Corporations Act requirements where requirements are not covered by the new ACNC bill. There is also likely to be duplication of requirements for a number of charities during the transition period given the matters yet to be resolved between the federal and state governments, together with the implementation timeframe. This overlaps with the concerns in relation to reduction in red tape and cooperation of the states and territories.

Pressure of reporting deadline

It is proposed that all charities will be required to submit the relevant financial information to the ACNC by 31 October for a 30 June year-end. This may place significant pressure on the smaller charitable organisations which do not possess the level of resource or budget to respond to this deadline.

Reduction in red tape

Whilst in the long term this key objective may be achieved, it is our view that one of the major concerns that results in onerous reporting in the sector for many large organisations are the various levels of reporting i.e. general purpose financial

statements, fundraising reporting under state charitable legislation, acquittal reporting for individually government funded programs, etc. an issue which is not being specifically addressed at the current time.

Conversely for smaller NFP organisations the draft proposals would imply that in some cases there could be a significant increase in the level of reporting required to submit to the ACNC given the minimal level of disclosure currently prepared in some cases.

Co-operation with states and territories towards national regulation

Whilst there is a working group in place to progress this issue, it is our view that as highlighted by the above concern, this should be given additional weighting in the same timeframe as the current reforms to achieve the overall aim by government to reduce red tape for the NFP sector.

Alignment of AASB and ACNC

The AASB is currently working on a revised ED, discussing primarily income recognition and disclosure requirements for the NFP sector with the aim to respond to the sector's previous submissions in that a sector-specific standard is required. However, the timeline for this ED does not align with the formation of ACNC, thereby potentially increasing the reporting burden for smaller NFPs by the likelihood of reporting under existing standards for the first time and then implementing accounting standard changes in subsequent years. It also raises the questions whether there will be any points for contradiction particularly in relation to disclosure when both are released and the issue as to the efficiency of the process.

Transparency of information

There are currently a large number of NFP organisations which are not required to make their annual financial report available to the public. From our experience of the sector, transparency of operations is encouraged and supported particularly with a focus on information pertinent to the public in relation to the relevant fundraising and government-funded activities of that organisation. There is a concern therefore, particularly for smaller organisations, that whilst there would be an increase in financial information made available to the public, focus on relevant data to stakeholders may be overshadowed.

In light of the potential issues to be faced by numerous NFP organisations across the sector, KPMG Australia would encourage NFPs to review the proposals highlighted in the document and submission of key questions/concerns where relevant.

Appendix A

Review of not-for-profit governance arrangements:

Consultation questions upon which government is seeking comments

1. Should it be clear in the legislation who responsible individuals must consider when exercising their duties, and to whom they owe duties to?
2. Who do the responsible individuals of NFPs need to consider when exercising their duties? Donors? Beneficiaries? The public? The entity, or mission and purpose of the entity?
3. What should the duties of responsible individuals be, and what core duties should be outlined in the ACNC legislation?
4. What should be the minimum standard of care required to comply with any duties? Should the standard of care be higher for paid employees than volunteers? For professionals than lay persons?
5. Should responsible individuals be required to hold particular qualifications or have particular experience or skills (tiered depending on size of the NFP entity or amount of funding it administers)?
6. Should these minimum standards be only applied to a portion of the responsible individuals of a registered entity?
7. Are there any issues with standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC?
8. Are there any other responsible individuals' obligations or considerations or other issues (for example, should there be requirements on volunteers)? That need to be covered which are specific to NFPs?
9. Are there higher risk NFP cases where a higher standard of care should be applied or where higher minimum standards should be applied?
10. Is there a preference for the core duties to be based on the Corporations Act, CATSI Act, the office holder requirements applying to incorporated associations, the requirements applying to trustees of charitable trusts, or another model?
11. What information should registered entities be required to disclose to ensure good governance procedures are in place?
12. Should the remuneration (if any) of responsible individuals be required to be disclosed?
13. Are the suggested criteria in relation to conflicts of interest appropriate? If not, why not?
14. Are specific conflict of interest requirements required for entities where the beneficiaries and responsible individuals may be related (for example, a NFP entity set up by a native title group)?
15. Should ACNC governance obligations stipulate the types of conflict of interest that responsible individuals in NFPs should disclose and manage? Or should it be based on the Corporations Act understanding of 'material personal interest'?

16. Given that NFPs control funds from the public, what additional risk management requirements should be required of NFPs?
17. Should particular requirements (for example, an investment strategy) be mandated, or broad requirements for NFPs to ensure they have adequate procedures in place?
18. Is it appropriate to mandate minimum insurance requirements to cover NFP entities in the event of unforeseen circumstances?
19. Should responsible individuals generally be required to have indemnity insurance?
20. What internal review procedures should be mandated?
21. What are the core minimum requirements that registered entities should be required to include in their governing rules?
22. Should the ACNC have a role in mandating requirements of the governing rules, to protect the mission of the entity and the interests of the public?
23. Who should be able to enforce the rules?
24. Should the ACNC have a role in the enforcement and alteration of governing rules, such as on wind-up or deregistration?
25. Should model rules be used?
26. What governance rules should be mandated relating to an entity's relationship with its members?
27. Do any of the requirements for relationships with members need to apply to non-membership based entities?
28. Is it appropriate to have compulsory meeting requirements for all (membership based) entities registered with the ACNC?
29. Are there any types of NFPs where specific governance arrangements or additional support would assist to achieve in better governance outcomes for NFPs?
30. How can we ensure that these standardised principles-based governance requirements being administered by the one-stop shop regulator will lead to a reduction in red tape for NFPs?
31. What principles should be included in legislation or regulations, or covered by guidance materials to be produced by the ACNC?
32. Are there any particular governance requirements which would be useful for indigenous NFP entities?
33. Do you have any recommendations for NFP governance reform that have not been covered through previous questions that you would like the government to consider?

Appendix B: Snapshot of NFP reforms

The consultation paper on the governance framework represents one of several areas of reform being undertaken in the lead up to the establishment and launch of the ACNC. These areas of reform include:

Restating and standardising the special conditions for tax concession entities

The government released exposure draft legislation relating to the 'in Australia' special conditions for tax concession entities on 4 July 2011. These are aimed at ensuring that tax exempt entities operate in Australia and for the benefit primarily of the Australian community. A second ED is expected to be released for consultation in early 2012.

Co-operation with states and territories towards national regulation

Since the 2011-12 Federal Budget announcements pertaining to the ACNC, the commonwealth, states and territories have formed the Council of Australian Governments (COAG) NFP Reform Working Group, which aims to 'progress the national NFP reform agenda and consider the harmonisation of regulation for the NFP sector across Australia'.

Better targeting of NFP tax concessions

As part of the 2011-12 Federal Budget, the government announced it planned to introduce revised NFP tax concessions aimed at ensuring that relevant concessions are utilised to further the purposes for which they were provided, rather than to support unrelated businesses.

These measures were applicable from 1 July 2011 and are being administered by the Australian Taxation Office (ATO), but will not impact on the ACNC's determination as to whether an entity is a charity or an NFP entity. The government released a consultation paper titled "*Better Targeting of Not-For-Profit Tax Concessions*" addressing this particular issue on 27 May 2011, submissions for which closed on 8 July 2011.

Reducing regulatory duplication

As part of the reform process, commonwealth agencies are undertaking a review of all commonwealth level NFP regulation. The government aims for duplication of regulatory responsibilities between existing regulators to be reduced to the point that the ACNC ideally becomes a 'one-stop shop' regulator.

Review of governance arrangements

This newsletter deals with the government's budget announcement as to the appropriate governance obligations to be imposed on NFP entities. The relevant consultation paper was released on 8 December 2011 and submissions close on 27 January 2012. The government is seeking views in relation to reform proposals concerning the duties and minimum standards of responsible individuals, disclosure requirements, risk management procedures, minimum standards of governing rules and relationships between members of NFPs. The consultation paper addresses some important issues that have existed in the NFP sector for some time, including the formation of a nationally universal high level principles-based approach to good governance.

Introducing a statutory definition of charity

The government aims to introduce a statutory definition of charity for all commonwealth purposes effective on 1 July 2013. The definition will build on and consolidate the common law principles pertaining to charities. The ACNC will be responsible for registering charities under the reform package.

Consultation on an initial consultation paper titled "*A Definition of Charity*" closed on 9 December 2011. An exposure draft on the proposed definition is likely to be released in mid-2012. KPMG produced a brief on this particular issue.

ACNC Taskforce Discussion Paper: Implementation Design

An "ACNC Implementation Design Discussion Paper" released on 9 December 2011 is currently seeking feedback on the design of administration systems within the ACNC. This includes reporting frameworks, the ACNC's educative role in the community and what public information will be available through the ACNC (through its websites and other such resources). The discussion paper asks fifteen discussion questions about the practical implications of the suggested operations of the ACNC and requests input on these (e.g: Will the information collected...be adequate? Is there additional information that should be collected and provided to the public? Are there barriers to online reporting or registration?). Submissions in response to the discussion paper are due by 27 February 2012. It is to be noted that this is separate to the governance "Framework Consultation Paper", which is the subject of this newsletter.

Exposure draft: ACNC Bill

An ED of the legislation establishing the ACNC, along with explanatory memoranda, was released on 9 December 2011, with submissions on the same due on 27 January 2012. The ED relates to the details of the ACNC and its practical function, including its status as a statutory office, its objectives, responsibilities, and the responsibilities of registered NFP entities.

Consultation paper: Review of fundraising regulation

The government also announced in the 2011-12 Federal Budget that negotiations would be conducted with states and territories to minimise reporting and other regulatory requirements through coordinated national arrangements. A notable part of these arrangements will deal with a proposed national approach to fundraising regulation for charities. A discussion paper canvassing proposals for a new national approach is expected for release in early 2012.

Consultation paper: Review of companies limited by guarantee

The government announced it would conduct a review of the 'company limited by guarantee' structure and questions as to its appropriateness for NFP entities. A discussion paper will be released for consultation in early 2012.

Exposure draft: AASB standard for accounting for income of NFP entities

In response to submissions made in light of the June 2009 ED 180 income from non-exchange transactions, the AASB is currently working on a different approach, based on performance obligations when considering appropriate recognition of income for NFP entities. An ED of this approach is expected during 2012. Additionally, the AASB is considering information needs of users of NFP financial reports to determine appropriate disclosure requirements.

Why select us

KPMG has extensive experience in the provision of practical solutions to business issues in the not-for-profit sector.

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