

blueprint for charities

With the new regulatory regime for charities and NFPs in the final planning stages, NFP's need to focus on being transparent and accountable.

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In January, the federal government released a scoping paper seeking stakeholder comment on the goals of national regulation for the not-for-profit sector, the scope of national regulation and the functions and form of a national regulator. More than 160 submissions were received. In July, the *Final Report: Scoping Study for a National Not-for-profit Regulator* presented the findings of the study and provided a blueprint to implement a national NFP regulator. The recommendations made in the final report should be of particular interest to governance, accountants, auditors and other stakeholders.

Since the implementation of a national regulator is dependent on the cooperation of the states and territories, the report sets out immediate and short-term options to improve regulation and reduce red tape at the Commonwealth-only level. The 84-page

document contains 44 recommendations in its 12 chapters that address the following topics:

- > Chapter 1 Introduction: the current NFP regulatory environment
- > Chapter 2 Goals of NFP regulation
- > Chapter 3 Scope of national regulation and a national regulator
- > Chapter 4 Registration
- > Chapter 5 Definition of charity
- > Chapter 6 Education and compliance
- > Chapter 7 Fundraising
- > Chapter 8 Reporting
- > Chapter 9 Information portal
- > Chapter 10 Governance, disclosure and compliance
- > Chapter 11 The form of the national regulator
- > Chapter 12 Funding of a national NFP regulator.

KEY RECOMMENDATIONS

While there are 44 recommendations, those of principal interest to governance, preparers, auditors and stakeholders are as follows:

1. The goals of NFP reform, as outlined in the initial consultation paper, should be used to guide the NFP reform process. Expect some further finetuning of the goals.
2. The scope of national regulation and a national regulator should include:
 - > Establishment of a single regulator for the purposes of governance, accountability and transparency of NFPs with the regulator, as far as possible, being responsible for regulating all NFPs
 - > Entities that are currently regulated by ASIC should be incorporated within the regulatory framework as soon as new reporting and governance frameworks are implemented. ASIC should retain responsibility for incorporation
 - > The regulator should administer a principles-based regulatory framework which

would apply broadly across the NFP sector, although regulation should be proportional and tailored to address the specific needs and size of NFPs

> The reforms which require the cooperation of the Commonwealth, states and territories should be progressed through the Council of Australian Governments (COAG) agenda, including the areas of incorporated associations and charitable trusts.

3. The NFP regulator should determine the NFP status of entities, including charities and public benevolent interests (PBIs). Initially, such determination should be accepted by every Commonwealth agency.

4. There should be a common definition of charity, harmonised across Australian jurisdictions with further consultation on the definition itself. The definition of a charity should be based on the 2001 *Charities Definition Inquiry*, noting the recommendations of the recent 2010 Senate inquiry and taking into account the findings of recent judicial decisions, such as *Aid/Watch Incorporated v Commissioner of Taxation*.

5. The regulator should produce educational materials for the sector, including a centralised portal of information for NFP entities, web-based training, how-to guidance materials, phone assistance, referral services for organisations requiring external advice and ongoing consultation with the sector. Where possible the regulator should leverage off the existing resources and expertise already provided to the sector by peak bodies and government agencies.

6. Issues common to both the national NFP regulator and NFP fundraising projects should be reviewed by the government, with coordination between a national NFP regulator and the Ministerial Council for Consumer Affairs' current consideration of fundraising issues.

7. The regulator should act as a central

EXECUTIVE SUMMARY

- > Federal government released *Final Report: Scoping Study for a National Not-for-profit Regulator* that contained 44 recommendations
- > Initial focus will be on consolidating requirements for NFP entities at the Commonwealth level
- > NFP entities that are currently regulated by ASIC should be incorporated within the NFP regulatory framework
- > Easier acquittal reporting requirements
- > Regulation should be proportional and tailored to address the specific needs and size of NFP entities
- > More graduated approach to roll out of the new regulatory regime with transitional provisions for enforcement.

TIMELINE

- > In **January 2011**, the federal government released a consultation paper *Scoping Study for a National Not-for-profit Regulator*
- > In the **May** federal Budget, the Treasurer named the regulator Australian Charities and Not-for-profit Commission (ACNC)
- > In **May**, the federal government also released a discussion paper *Better Targeting of Not-for-profit Tax Concessions*
- > An ACNC implementation taskforce will operate from **1 July 2011**
- > The ACNC will be established by **1 July 2012** and initially be responsible for determining charitable, public benevolent institutions and other NFP status for all Commonwealth purposes
- > The federal government will also begin negotiations with the states and territories on national regulation and a new national regulator for the sector
- > A statutory definition of charity applicable across all Commonwealth agencies will apply from **1 July 2013**
- > In **July**, Assistant Treasurer Bill Shorten announced the released *Final Report: Scoping Study for a National Not-for-profit Regulator*, the appointment of Susan Pascoe, as chair of the implementation taskforce for the ACNC and the exposure draft consultation paper on restating the 'in Australia' special conditions for tax-exempt entities.

reporting coordinator of financial and other information and as such should:

- > Be responsible for the Standard Chart of Accounts (SCOA)
- > Harmonise reporting requirements between Commonwealth, state, territory and local governments
- > Determine the form of the financial report in consultation with the NFP sector and government agencies.

8. Each entity should provide information for reporting purposes but the content should be proportional to the size of entities, risk factors and level of sector and government assistance. Small entities should be required to provide no more than a postcard of information. No specific recommendation was made to publish financial information on the information portal but the benefits of such publication were noted.

9. The AASB should continue to ensure that Australian accounting standards take account of NFP issues and identify any gaps in this area. The regulator should work with the AASB to provide guidance on NFP accounting issues.

10. Acquittal reporting should be outcomes-based. It should not include financial reporting or reporting related to organisational governance. Consideration should be given to bringing acquittals reporting within the regulator's report-once, use-often framework where possible. Consideration should also be given to utilising Standard Business Reporting (SBR) for NFP reporting.

11. The government should proceed with a public information portal for registered entities which should be established and maintained by the regulator. The information

to be displayed on the portal could include information on issues such as sphere of operation, income and expenditure, financial history, contact details of persons managing the entity, governing documents, annual reports, trustees' reports and summary information returns. NFPs should be able to make qualitative statements about their activities and performance.

12. The report notes that while some NFPs have effective policies in place, most NFPs do not. The recommendations include:

- > Organisational governance rules should be proportional to the size of entities, risk factors and receipt of public and government assistance

- > The regulation of service provision should remain with existing entities

- > Governance contracts should no longer mandate organisational governance requirements for NFPs

- > Treasury should undertake a review to determine what, if any, should be the core organisational governance principles applying to registered NFPs

- > Over the long term, the regulator should be provided with powers regarding asset protection, the suspension and/or removal of responsible persons, registration and deregistration, the enforcement of governance rules, investigative processes, enforcement powers, including civil penalties and the imposition of fines, proportional compliance activities and dispute resolution processes.

13. In relation to governance frameworks, the report notes that where possible any regulator should consider the existing frameworks applied by ASIC and the ATO and the rules governing trusts.

14. The Commonwealth should pursue

the long-term objective of a single national regulator and regulation for the NFP sector, noting that the Commonwealth does not have the constitutional power to implement this alone. The Australian government should seek agreement with the states and territories on a single national regulator through COAG. As setting up a national regulator will take time, the government should improve Commonwealth regulation for the sector in the interim, ensuring that regulatory overlap at a Commonwealth level is removed.

15. The government should consider whether or not to collect a supervisory co-contribution, as NFP entities are brought within the new regulatory framework and once it is possible to replace existing fee and, if a supervisory co-contribution is adopted, it should be tiered to reflect the resourcing constraints of smaller NFP entities.

WHAT SHOULD NFP ENTITIES DO NOW?

The developments regarding a national not-for-profit regulator beg the question of what should NFP entities do now? The answer is simply stay informed and be proactive.

- > Understand the key elements of both the initial and final reports on *Final Report: Scoping Study for a National Not-for-profit Regulator* and related tax proposals
- > Monitor the activities of implementation taskforce for the Australian Charities and Not-for-profits Commission and participate in the consultation processes
- > Monitor Council of Australian Governments (COAG) agenda, including the areas of incorporated associations and charitable trusts
- > Watch out for separate developments on fundraising through the Ministerial Council for Consumer Affairs
- > Understand the AASB financial reporting requirements including the Reduced Disclosure Regime and other specific NFP developments.

CONCLUSION

The final scoping study states: "In the context of the significant level of public support provided to the sector, it is vital that the sector is well regulated, transparent and accountable." Given that the new regulatory regime is still in the planning stage, NFP entities may wish to turn their attention to what they can do to ensure that their activities are transparent and accountable now, such as governance, education and reporting. This may make the passage to the new regulatory regime a little easier. ☺

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