

Financial INSIGHT

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Not-For-Profit National Regulator proposal

1. Background

During 2010 the government outlined a commitment to reform in the Australian not-for-profit sector. It identified the need to deliver smarter regulation, reduce red-tape and improve the transparency and accountability of the sector. In January 2011 Assistant Treasurer Bill Shorten and Minister for Social Inclusion Tanya Pliibersek released the consultation paper, *Scoping study for a national not-for-profit regulator*. The paper seeks initial views via stakeholder consultation in order for Treasury to determine the role, function and feasibility of a not-for-profit regulator.

2. The current not-for-profit regulatory environment

The current regulatory environment imposes a high regulatory burden on many not-for-profit ("NFP") organisations which in some cases is not aligned with the level of risk the entities pose. In contrast there are also entities that have no or very poor regulatory oversight. The inconsistent regulation has been caused, in part, by the 170+ pieces of legislation involving numerous different agencies that apply to NFP entities. The entities that have been identified as overburdened with regulatory red-tape are, for example, those that:

- operate in more than one jurisdiction;
- have more than one purpose; and/or
- receive funding through grants from multiple government agencies.

The diverse range of legislation and agencies regulating the NFP sector has also led to inconsistencies in the treatment of NFP entities due to the fact that the applicable legislation may be driven by the type of legal entity rather than the function or activities. For example the following different reporting requirements apply to different entities:

- Small unincorporated entities claiming a tax concession for the receipt of donations may not be required to lodge accounts or reports and generally fall outside the NFP regulatory system. These are the majority of NFP entities.
- Companies limited by guarantee may be required to lodge audited accounts with ASIC each financial year.
- Some NFP entities may be formed under special statute or charters that may also fall outside the regulatory system.
- Entities may receive government grants which are subject to separate, and in some cases duplicated reporting requirements to specific government departments.

3. Goals and objectives of the proposed regulator

The consultation paper outlines seven main focuses of the proposed regulator, being to:

1. Place minimal costs on NFPs to allow better direction of NFP resources to philanthropic objectives
2. Remove current regulatory duplication
3. Streamline requirements, including reporting, so as to provide consistency and minimise compliance costs
4. Provide a 'one stop shop' for NFP entities, to assist all NFP entities to more easily access information that helps them understand and comply with their regulatory obligations
5. Be simple, transparent and flexible
6. Provide NFP entities with certainty as to their rights and responsibilities
7. Be proportional to the size and complexity of NFP entities, and to public monies and risks associated with NFP entities.

4. Scope and functions of the National Regulator

An option for the scope of the proposed regulator is discussed in the consultation paper as potentially including regulating entities that:

- receive public donations;
- are in receipt of tax concessions; or
- receive government grants and/or government funding.

The functions of the national regulator may include the assessment, granting and monitoring of tax concessional treatment which is currently regulated by the Australian Taxation Office ("ATO") at the commonwealth level; an educational role in assisting the NFP sector with governance, reporting standards and regulatory requirements; compliance and the central body for the collection of reports similar to that of ASIC for ASX listed entities.

5. Form of the National Regulator

The form of the regulator outlined which is envisaged to have the most benefits, is to create a new national body to act as a national regulator. This structure is preferred over the option of creating a new Commonwealth body to act as a regulator of Commonwealth law only, which will not reduce the overlap of reporting and compliance to the extent a national body will. Development, and or changes to legislation, will be a key to streamline the process, therefore, in the interim the paper suggests:

- establishing a new body "*established within, but structurally separated from, the ATO, to progress immediate taxation and regulation improvements at the Commonwealth level, while discussions between the Commonwealth, states and territories are progressed*"
- "*a new body initially established within ASIC.*"

6. Where to from here?

The consultation paper was seeking input from all stakeholders through the 31 consultation questions raised throughout the document. The paper provides discussion of options rather than draft changes so that a consultation process can be undertaken which will help shape future changes, legislation and regulatory body(s). The closing date for submissions was 25 February 2011. A total of 93 submissions were received by the Treasury which have now been made available on their website, www.treasury.gov.au.

We will keep you informed of any progress made in this important area.

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