



*everyone's family*

## **The Smith Family's submission to the *Review of not-for-profit governance arrangements***

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## **Background on The Smith Family**

The Smith Family is a national, independent children's charity committed to increasing the educational participation and achievement of Australian children and young people in need. Our **vision** is a better future for young Australians in need. Our **belief** is every child deserves a chance and our **mission** is to create opportunities for young Australians in need, by providing long-term support for their participation in education.

The Smith Family provides holistic and long-term support from pre-school, through primary and secondary school and on to tertiary studies. In 2010-11, The Smith Family supported over 44,000 children, young people and parents/carers through its suite of *Learning for life* programs, including around 33,000 young people on an educational scholarship, approximately 4,500 of whom were of Aboriginal or Torres Strait Islander background. A further 73,000 children, young people and parents/carers participated in programs facilitated by The Smith Family, such as the Commonwealth Government's *Communities for Children* initiative.

The Smith Family has a strong focus on sustainability and draws its income from a range of sources. In 2010-11, its annual income was just over \$68.5 million. Just under a quarter of this was sourced from Government funding, over 60% from fundraising (donations and corporate support) and bequests, around 8% from the VIEW (Voice, Interests and Education of Women) Clubs of Australia and just over 3% from The Smith Family's commercial enterprise.

The Smith Family was established in 1922 and is a company limited by guarantee. It has Public Benevolent Institution and Deductible Gift Recipient status and is an Income Tax Exempt Charity.

## **Reform in the not-for-profit sector**

The Smith Family welcomes the opportunity to provide some brief comments on the *Review of not-for-profit governance arrangements* Consultation Paper. The Smith Family is cognisant that the review is part of a large suite of not-for-profit reforms and will also be making a submission to the related exposure draft of the *Australian Charities and Not-For-Profits Commission Bill 2012*. The sector has historically enjoyed strong public confidence as evidenced in part by their significant community fundraising and volunteer base. One of the reasons that governments, of all political persuasions, have increasingly contracted out to the not-for-profit sector a diverse range of services previously provided by government, is in part, the public confidence and trust in which the sector is held. The sector is now working across an increasingly broad range of areas and is growing at 7% per annum, in part because of the increasing service delivery role being asked of the sector by governments. This increasing diversity within the sector requires governance arrangements that are able to support that diversity without compromising on governance standards.

Central to the large scale platform of reforms that is currently occurring, has been an affirmation from government of the critical role the charitable and not-for-profit sector plays in the economic and social wellbeing of individual Australians and the nation as a whole (see for example the *A definition of charity*

Consultation Paper (Treasury, 2011) and the *National Compact: working together* (PMC, 2011)). The Smith Family strongly supports the Department of Prime Minister and Cabinet's commitment to building a relationship with the not-for-profit sector that is based on 'mutual respect and trust' and to the reduction of red tape and streamline of reporting (PMC, 2011: 7).

### **Principles underpinning reform in the NFP sector**

The Smith Family believes that fundamental to reforms in the sector should be the complementary principles of:

- Transparency and public accountability;
- Certainty, consistency and workable compliance regimes; and
- Maximising the contribution of the charities and not-for-profit sector to the Australian community.

### **Governance principles for the NFP sector**

The Smith Family affirms the contextual analysis and its emphasis included at pages 1 to 3 of the Consultation Paper. This analysis outlines the need for core, high-level governance principles that are supported by good practice guidelines rather than an overly prescriptive approach, given both the diversity of the sector and the range of governance arrangements already in place in much of the sector. The latter includes for example: constitutional requirements and self-regulatory practices of individual governing boards; statutory requirements (such as those under the *Corporations Act 2001*); jurisdictional regulatory frameworks (e.g. *NSW Charitable Fund Raising Act 1991*); and codes of conduct (e.g. *Risk Management – Principles and Guidelines, ISO 31000-2009*).

A principles based approach will be both more effective and efficient than having a large number of mandated requirements and will provide the flexibility required by the large and diverse sector. An overly prescriptive approach, particularly when it is embedded in legislation, is likely to lead to onerous reporting requirements and non-compliance, which is at odds with the aims of the reforms.

A principles based approach suggests that these principles should be applied to **all** organisations across the sector, with the Australian Charities and Not-for-Profit Commission providing guidelines to support their application across the sector, and the actual detail of **how** they are implemented and operationalised being left in large part to organisations themselves. Public reporting on how organisations are operationalising principles of good governance should be strongly encouraged by the ACNC. Such an approach is likely to result in considered and thoughtful approaches to governance being taken by organisations, rather than generating a 'tick box' response to a highly mandated compliance approach.

In line with the recommendation that the governance **principles** developed for the sector should apply to all organisations, The Smith Family shares the concern raised by Philanthropy Australia regarding paragraph 102 of the Consultation Paper. This paragraph simultaneously endorses a principles-based approach while proposing that the standard of care and diligence required by a 'responsible individual'

should vary with a range of factors, including the size of the organisation, the quantum of public money received, the qualifications of the individual and the risk of the activities undertaken. As Philanthropy Australia has indicated, the **level** or **standard** of care and diligence required by directors/persons responsible ought not to be seen as variable, but that what can and should vary is the amount of **reporting**, including financial reporting, which is required of organisations. The standard of care and diligence must apply to 'persons responsible' regardless of whether the individual is a paid employee or volunteer and be commensurate with their level of responsibility. The factors identified in paragraph 102 should be considerations for the **type** and **amount** of reporting required by organisations but not the standard of responsibility of individuals taking key roles within NFPs.

The Smith Family also endorses the proposal than any new uniform governance arrangements adopted by the Commonwealth under the ACNC replace, rather than be in addition to, existing requirements such as those in the *Corporations Act, 2011*.

### **The emphasis of the questions raised in the Consultation Paper**

The emphasis of many of the questions raised in the Consultation Paper is at odds with the paper's contextual analysis and its emphasis on **principles** and guidelines. The direction and volume of questions suggest instead, a more prescriptive approach and this is generally not supported. The Smith Family is concerned that the prescriptive approach implied by many of the questions in the Consultation Paper, including to issues such as governing rules, conflicts of interest, relationships with members, and finance and accounting practices, would equate to a very complicated system of mandatory practices. These practices, if implemented, would unnecessarily direct attention away from the key fiduciary responsibilities and constitutional missions of not-for-profit organisations and in particular the focus of their directors. Such an outcome would detract from the sector's core business and its capacity to maximise its contribution to the Australian community.

### **Qualifications of directors/persons responsible and their role in the mission of the organisation**

Equally, while guidelines around the experience/qualifications of directors may be useful, given the diversity of NFPs and their individual organisational requirements, as well as the challenge some in the sector experience in securing directors, it is not desirable to insist on particular qualifications for directors. A mandated approach to the required skills and experience of directors and board members would place an unnecessary additional burden on the recruitment and retention challenges already faced by the not-for-profit sector. Such requirements may also limit the potential participation of 'consumers/clients' as directors of NFPs, which many in the sector see as important. It is unclear how any mandated requirements regarding the responsibilities, qualifications, experience, or skills of directors and board members could adequately account for the broad ranging sets of skills, experience and responsibilities required in the sector.

The Consultation Paper makes a number of references to the mission of NFPs and the possibility of 'mission drift' (see page 23). It is quite clearly the responsibility of the directors of a NFP to safeguard an

organisation's mission, rather than that of the ACNC. There are currently a number of opportunities available for directors to receive training/education on their roles and responsibilities and over time the ACNC may add to this. The ACNC should play an **educative** rather than prescriptive role regarding the relationship between directors and their organisation's mission.

### **Disclosure: Fundraising ratios and remuneration**

As identified above, The Smith Family strongly supports the principles of transparency and accountability within the not-for-profit sector. The Smith Family recognises the value of NFP organisations reporting on fundraising ratios as part of good governance and for encouraging charitable donations from the public, and reports on this on a regular basis. The Smith Family is also aware that this topic is one which is often discussed within the public domain, including through the media. There is currently significant variability in the ways in which ratios are calculated and reported in the sector and this does not lead to the desired level of transparency and accountability that would best serve both the sector, and more importantly, the wider community. The Smith Family therefore urges that the ACNC play a leadership role in developing guidelines for the calculation and reporting of fundraising ratios for the sector. Such reporting needs to be sophisticated enough to reflect the importance of building organisational capacity and the role investments in this area have in the long term effectiveness and sustainability of organisations. It also needs to be able to reflect the diversity of client groups and the operating environments of organisations across the sector.

The Consultation Paper notes (on page 21) that 'given that NFP entities are often in receipt of public monies, and receive various concessions, such as tax concessions, consideration needs to be given to some level of disclosure' (regarding remuneration of management and Board members). The Smith Family however, would urge significant caution be exercised regarding any additional mandated requirements for the disclosure of remuneration packages of management or board members (the latter are typically unpaid). There would be substantial work required to ensure comparable calculations of remuneration across the sector given, for example, that some organisations are able to offer a range of benefits due to their PBI status. More importantly, one of the keys to strengthening the sector and its contribution to the wellbeing of Australia is for it to have an increasing focus on reporting on the **outcomes** of its work (ie what difference did an organisation's work make to the intended beneficiaries) rather than its **inputs**. The much more significant question for donors – whether they be private or public – is not on the specifics at a micro level of how these monies were spent, but rather what was achieved with those monies. Building on the work of the Productivity Commission and many organisations across the sector, it is hoped that over time one of the key areas that the ACNC can contribute to is supporting a stronger sector focus on outcomes.

*If* remuneration disclosure is considered essential, reporting should be at the aggregate level as is currently the norm with financial reporting under the *Corporations Act, 2001*. For example, The Smith Family reports the total remuneration bill for the executive in these reports. Such reporting, *if* considered necessary, should only occur for those organisations where the Board/Executive is of a sufficient size to anonymise the specific payments received by individuals.

## **Concluding remarks**

The Smith Family, like many organisations within the sector, is strongly supportive of reform which takes a principles-based approach to governance. There are a number of areas raised in the Consultation Paper that would benefit from the development of guidelines by the ACNC but in The Smith Family's view, a highly prescriptive legislative approach will defeat the core goals of the broader reform agenda and is likely neither to increase public understanding and knowledge of the sector nor to ease the compliance burden on NFPs. In considering potential guidelines or codes of practice, consideration should be given to the body of governance documentation and good practice that already exists across government and the not-for-profit and for-profit sectors.

The Smith Family also supports significant effort being made by the ACNC to promote the alignment of jurisdictional requirements, in order to reduce the burden of reporting on the sector, particularly for those organisations which work across jurisdictions. Notwithstanding the inherent challenges of this goal, it is one which The Smith Family and many within the sector would warmly welcome as an early priority for the ACNC.

The Smith Family welcomes the not-for-profit reform initiative that aims to work with the sector to strengthen relationships, reduce red-tape and implement more uniform regulatory arrangements across government. We look forward to working closely with the Government on these endeavours.

## **References**

PMC (Dept of Prime Minister and Cabinet; 2011), *National Compact: working together*, PMC, Canberra.

Treasury (2011) *Definition of a charity: consultation paper*, Australian Government, Canberra.