

## Submission from Positive Solutions

As Directors of Positive Solutions we have significant experience as managers and consultants of not for profit organisations, in particular those in the arts and cultural sector in the UK and Australia. The comments are made from this perspective as consultants, trainers and board members in the not-for-profit (nfp) sector. David Fishel has worked in the nfp arts and cultural sector for 30 years, has been involved in board training and development across a range of fields within the nfp sector for 15 years, and authored The Book of the Board (Federation Press, Sydney, 2<sup>nd</sup> edn 2008). Cathy Hunt is a cultural strategist working in policy development for all levels of government and business planning for arts and cultural organisations, including Indigenous nfp organisations. Our comments are not supported by quantitative data.

### Focus of the study

We are very pleased that such a study is being undertaken and that the contribution of not for profit organisations to the economy and their role within the community as a whole is being recognized. However, if a key purpose of the study is to provide governments with an enhanced understanding of not for profit organisations we feel the study should not simply be focused on the role of these organisations in the delivery of government funded services.

### Framework for measurement

We endorse the need for a framework to provide a clearer basis for discussion. However, the current draft framework:

- does not distinguish between areas where the nfp is the unique provider of services and where it is one approach amongst several (where government or the commercial sector may also be active). Measurement of value may need to take this market context into account
- does not specifically identify the value/benefit derived by the supplier-participants themselves (the volunteers and board members behind the service delivery) from their engagement
- does not recognise the primacy of mission which drives most nfp organisations – it speaks in a bureaucrat/economist language, not in a language that nfp participants would recognise as reflecting their motivations and actions

As Mark Lyons and others have identified, the nfp world is not a 'sector' but a wide range of different industry sectors. Moreover, there are very distinctive dynamics separating the world of the nfp organisation with no staff, with one or two staff, or with hundreds of staff. Measuring value and strengthening not for profit organisations in all sectors requires fine-grained responses to this diversity.

Where measurement occurs currently it is focused almost exclusively on inputs and outputs. Outcomes or impacts are rarely measured, either at the level of the individual nfp organisation or on a sector-wide basis. Individual organisations do not have the resources (or perhaps motivation in some cases) to commit to the expensive, longitudinal, qualitative research needed to understand the impacts of their work. And governments have been hampered by the short-termism encouraged by election cycles and changing Ministers with their changing policy enthusiasms. It is difficult to see how these challenges can be overcome without a significant, coordinated commitment at a COAG level or similar. In the UK the role of grant

making trusts and foundations has been significant in undertaking such research, for example the work of the Calouste Gulbenkian Foundation in considering the impact of the arts in education.

In terms of the specific value of arts and cultural organisations - our area of specialism - it is necessary to define and consider measurements for long term cultural impacts as well as social and economic impacts on the individual, community and the nation. We suggest when articulating the contribution of not for profits, the cultural as well as economic, social and civic outputs and outcomes are considered. We understand that the Statistics Working Group of the Cultural Ministers Council is currently working on a range of indicators for the impacts of cultural activity and engagement which will be useful to the sector in the future.

McKinseys proposed a further, interesting addition to the scope of possible success measurements in the nfp field. They proposed measurement of outputs, outcomes, and 'capacity'. The latter focuses on how the organisation strengthens itself to be in a position to deliver more or better services tomorrow than it is able to today. This could encourage nfp organisations to think more carefully about how they improve their systems, their staff, their boards, their market knowledge.

## **Efficiency and effectiveness**

### Human Resources

In the commercial sector much emphasis has been placed in the last couple of decades on the importance of ensuring an appropriate level of skill and diligence in the boardroom. This has not been equally matched in the nfp sector – perhaps partly because of the absence of a single responsible body (like the UK's Charity Commission, or peak bodies such as the National Council for Voluntary Organisations in the UK or Boardsource in the US); but also for lack of attention or follow-through by Government in establishing standards or expectations. Getting it right 'at the top' is essential for long-term organisational effectiveness (hence the splendid titles of Bob Garratt's two books on this subject, The Fish Rots from the Head and Thin on Top).

The skills of managers and committee/board members in many nfp organisations would benefit from support, training and development. But programs such as those provided by the AICD or established business/management schools are not focused on the needs of nfp organisations (and AICD has shown very little interest in the nfp sector), and are too expensive for most nfp organisations. There is a case for seeking ways of stimulating further and more wide-ranging provision in leadership and governance development for nfp organisations. There may also be a case for establishing voluntary governance standards which communicate expectations of committee/board members, echoing the principles articulated by the ASX for listed companies.

One barrier to efficiency and effectiveness is the challenge of identifying and attracting appropriate board members. This results partly from inadequate recruitment processes, partly from the almost universal convention of unpaid board membership in the nfp sector (even in many large organisations), and partly from the concern by many prospective board members regarding the unquantifiable risks to

which they may be exposed. The assessment of risk and personal liability is highly subjective, and appears to be based on personal comfort zones rather than any rational evaluation. Reflecting this, the boardroom debate on whether to take on Directors and Officers Liability Insurance tends to be unstructured, other than in nfp organisations where the hazards and the consequent possibilities of litigation are clearly evident (e.g. the health sector or contact sport organisations).

In some nfp organisations performance appraisal prevails at most levels in the organisation – but not at the top. Board self-assessment is by no means a thoroughly established practice, although some interesting initiatives are occurring in this field to encourage good practice (e.g. at QUT's Centre for Philanthropy and Non-profit studies, and the work of BoardConnect – see below). Performance appraisal of the CEO is also patchy. The latter may be partly a result of the particular dynamics of many nfp organisations – where the CEO is engaged by a volunteer board, whose members may not have a high level of knowledge of the industry sector in which the nfp operates. This can lead to a lack of confidence on the part of board members, a concern they are not 'competent' to appraise the CEO – compounding the common fear that appraisal may lead to tensions or even confrontation.

### Financial Resources

Regarding access to financial resources the issues paper refers only to government grants and philanthropy. It does not question how the current legal framework (primarily the Associations Incorporation Acts and the Corporations Act) constrain access to other sources of finance. The absence of dividend distribution precludes the possibility of securing equity – as there is no financial motivation for investors. Moreover, most nfp organisations operate with a negligible asset base, which also precludes the opportunity to secure loans. In Queensland, Foresters have turned their attention to this specific problem by working with nfp organisations to strengthen their asset base and increase their financial independence.

There is a growing expectation that nfp organisations should be more entrepreneurial, but often without the tools or investment required for successful enterprises.

Because the nfp sector comprises a very large number of small and micro organisations, and a few large organisations, disseminating good practice and innovative approaches is challenging. In some other countries there are a larger number of peak bodies which take on this role – the NCVO and Charity Commission in the UK, and various nfp industry peak bodies and advocacy bodies in the US. These structures are not as well developed in Australia.

Some of the current impediments to sector efficiency and effectiveness include:

- inherent constraints of small scale organisations (e.g. lack of specialised staff)
- lack of communication and coordination between organisations of different scale and across different sectors
- lack of shared industry services (research, training, advocacy)
- lack of career structure, and of formal training/qualifications structures in some sectors
- inconsistent standards of governance

- widespread use of Associations model rules which do not encourage best practice in governance and management for professionalised incorporated associations
- possibly, lack of corporate structures such as Community Interest Companies or umbrella agencies to provide greater flexibility
- the short term and hence insecure nature of some government funding programs
- costs of compliance. e.g. public liability insurance

In relation to taxation issues, many submissions have already been made to the Henry Review on Taxation in relation to changes required to assist not for profits. In relation to not for profits in the cultural sector we would particularly endorse the ideas in the submission made by the Australia Council for the Arts relating to not for profit arts organisations including:

- Enhancing tax concessions for private support for the arts
- Changing the FBT status for arts organisations
- Increasing the tax deductibility of the cost of attending fundraising events and
- examining the treatment of material benefits for donors
- Enabling charitable trusts, foundations and Prescribed Private Foundations to disburse to individual artists and non-DGR arts organisations. We believe a new independent fund should be established for such a purpose

### **Trends in service delivery**

With a trend towards market-based or contract-for-services focused funding arrangements it is important not to lose sight of the limitations of this model. For some areas of activity delivery through nfp organisations is not an 'option' but inherently the only framework which can nurture the activity concerned. For example, in the arts and cultural sector community based or small scale businesses constituted as not for profits may be the only structure within which such activities evolve. Their autonomy and flexibility are a precondition for their creativity and innovation. In other countries – notably the UK and US - even large cultural institutions such as major venues are more likely to be managed by independent not for profit companies, partly because this protects artistic autonomy and encourages creativity.

In relation to the specific question of how contract arrangements or funding agreements might be improved, it would assist if there were:

- longer-term funding agreements to provide security and encourage good planning practice
- greater harmonization of funding agreements/contracts across jurisdictions
- collating of data from funding acquittals, with feedback to industry participants to assist in learning and to disseminate benchmark data
- more regular embedding of targets and evaluative mechanisms when Government policy programs are rolled out through nfp providers (or others). Too often, no such mechanisms are established alongside the launch of policy initiatives

## **BoardConnect: Assistance for the boards of nfp organisations**

In response to some of the governance issues outlined above Positive Solutions established BoardConnect in late 2008, with support from the Queensland Government. BoardConnect's initial program, focused on the boards of arts and cultural organisations, includes:

- confidential [help-line](#) support to provide individual advice on board-related issues, attracting contact regarding over 30 specific issues to date
- free brokering service for further advice, consulting services, and specialist trainers, including both pro bono and fee-paid sources of support, attracting 5 in-kind corporate supporters and 5 not-for-profit industry partners to date
- a regular schedule of [workshops, seminars and round-table forums](#) for board members and CEOs/Artistic Directors, with 2 of 10 events being repeated to meet demand, and engaging representatives of over 40 arts companies
- an online Board Health Check self-evaluation survey, with follow up analysis, reporting and action plans delivered by BoardConnect consultants, attracting 9 participating companies in the 3 months since this service's rollout
- incremental board development programs for emerging arts companies, currently servicing 2 companies
- introductory presentations to assist companies to identify their immediate and medium-term support needs, taken up by 19 arts companies to date, and induction sessions and materials for new board members
- online resources, including topic-specific fact sheets (approx 30 published to date), links to publications and web sites, and a regular e news service
- ongoing development of new services and resources in response to board development needs identified by Queensland arts companies

Through these services, BoardConnect has already engaged over 100 CEOs and board members, representing connection with 57 (85%) of Queensland's funded arts and cultural organisations since the pilot's inception.

Further information on BoardConnect can be found at [www.boardconnect.com.au](http://www.boardconnect.com.au)

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