



***Response to the Treasury Department's
Scoping Paper for a National Not-For-Profit
Regulator***

February 2011



The Australian General Practice Network (AGPN) represents a network of 111 local organisations (general practice networks), as well as eight state and territory based entities. Collectively these organisations are known as the Network. More than 90 per cent of general practitioners and an increasing number of allied health professionals and practice nurses are members of their local GPN. The Network is involved in a wide range of activities, including health promotion, early intervention and prevention strategies, chronic disease management, medical education and workforce support.

Australian General Practice Network
PO Box 4308
MANUKA ACT 2603
AUSTRALIA

Telephone: +61 2 6228 0800
Facsimile: +61 2 6228 0899
Email: agpnreception@agpn.com.au
Web: www.agpn.com.au

AGPN gratefully acknowledges the funding support from the Australian Government Department of Health and Ageing for this program.

Table of contents

Background to AGPN and this submission	4
The Role and Responsibilities of a National NFP Regulator	5
The Goals of NFP Regulation	5
Scope of the national regulator	8
Functions the national regulator may undertake	9
Regulation and supervision	10
Establishing a national NFP regulator	11
Sector specific regulation of the NFP sector	11
Funding implications	11
Definitional issues	11

Background to AGPN and this submission

The Australian General Practice Network (AGPN) welcomes the opportunity to make a submission to the Treasury Scoping Study for a National Not-For-Profit Regulator.

AGPN recognises that the NFP sector makes an enormous contribution to the health, wellbeing and productivity of the Australian community. This occurs through action by volunteers and through the many and varied health, community, welfare and vocational services delivered on behalf of governments.

AGPN is the peak national body of the divisions of general practice, comprising 111 divisions across Australia, as well as eight state based organisations (SBOs). Approximately 90 percent of GPs and an increasing number of practice nurses and allied health professionals are members of their local division. Network Members (divisions, SBOs and AGPN) are essentially not-for profit small businesses (each member organisation operates as a small-to-medium-sized enterprise or SME) whose core activities are the delivery and organisation of primary care through general practice and broader primary care teams. Ultimately the Network is designed to deliver primary health care outcomes for the Australian population. These outcomes are achieved through the delivery of population health programs, health services and other activities that support:

- their members (general practices and, in some cases, practice nurses and allied health providers)
- their local communities, and
- the larger general practice network via contributions to policy advice and feedback on policy initiatives including advice based in de-identified clinical data.

Through this work the Network plays a pivotal role in ensuring all Australians can access a high quality health system.

Every Network Member (Divisions, SBOs and AGPN) are individually governed by a board of directors. Since 2005, the Network has also been required to report annually on a set of national performance indicators (NPIs) as part of the Department of Health and Ageing's (DoHA) National Quality and Performance System (NQPS).

Many programs implemented by Network Members at the local level are funded through the Australian Government Department of Health and Ageing. These programs include aged care, mental health, practice nursing, immunisation, rural palliative care, quality use of medicines, chronic disease management and eHealth. Many of these programs are supported at the SBO level through state networks and/or are coordinated at the national level through AGPN.

At a local level there are numerous instances of other innovative individual divisional programs that add value to the health system. Funding for these programs may be through a variety of means: state or area health funding brokered either directly or through the SBOs, local government funding, community grants, or private enterprise funding negotiated at a local level. In fact, Network Members are increasingly sourcing funding from alternative sources.

The range of services that the Network delivers requires ongoing engagement with an immense array of stakeholders at many different levels - local, state and national. Two important aspects to the work of the Network are therefore collaboration and linkage as well as consumer and community engagement.

Collaboration and linkage across the health sector helps patients experience a more unified system, as they move between general practice and other parts of the health and social welfare system. It also helps with efficiencies – through shared resources, streamlined approaches and fund pooling (where several different sources of small local

funds are combined to provide larger amounts to contribute to a positive community outcome).

Network Member's engagement and linkage with their communities is vital not only to ensure that services delivered are consumer focused, but also to ensure best use of government and other funds through the effective implementation and uptake of services at the local level.

The Commonwealth Government is negotiating with State and Territory governments a raft of reforms to health care service delivery (both hospitals and primary health care). The reforms to primary health care are structured around a set of at least 57 new Primary Health Care Organisations termed Medicare Locals. The first 15 Medicare Locals are scheduled to roll out in July 2011 with a second group of 15 to roll out by January 2012, the remaining Medicare Locals will be implemented by July 2012. The objectives of Medicare Locals are to:

- Increase access through better, smarter coordination of services (i.e. through needs analysis, population planning, flexible funding etc);
- Integrate care across multiple disciplines including allied health, nursing, general practitioners, social care services and specialists through 'one stop shops';
- Increase integration between primary health care, acute care and aged care services;
- Place a greater emphasis on prevention and health promotion; and
- Promote quality and safety in primary health care delivery.

Given the primary health care reforms the Divisions network is operating in an environment of transition. Final detailed agreements between Commonwealth, State and Territory Governments for primary health care reform have not been reached. Boundaries of the new Medicare Locals are not finalised in all jurisdictions and arrangements for the establishment of these new organisations have not been initiated.

AGPN would like to draw to the attention of Treasury Department the new regulatory bodiesⁱⁱ that are being established in the context of national health and hospitals reform. Of particular note are the National Performance Authority and the Australian Commission on Safety and Quality in Health Care. Further information about the National Performance Authority is discussed below with regard to the Goals of NFP Regulation.

The Role and Responsibilities of a National NFP Regulator

The Goals of NFP Regulation

AGPN welcomes the government's proposed goals for simplifying and streamlining the regulatory environment for NFPs. The goals outlined in the scoping study will allow the dual purpose of public accountability and ensure NFPs are able to maximise the use of resources to meet community needs rather than service over-burdensome regulatory requirements. The intent to develop a national regulatory system which streamlines and consolidates requirements for NFPs across Commonwealth, State, Territory and local government requirements is applauded.

The first goal of regulatory reform, to minimise costs on NFPs to allow for better direction of resources to philanthropic objectives is a refreshing. Regulatory requirements are just one area that diverts valuable time and money from Network members (and presumably other NFPs) from delivering on their core mission. A good example of the time and effort needed to address regulatory issues is evident in the example provided in Box 1 describing Bayside General Practice Network's appeal to the High Court to challenge the Commissioner of State Revenue concerning payroll tax exemptions.

Box 1: Central Bayside v Commissioner of State Revenue re payroll tax

Central Bayside General Practice Association Limitedⁱⁱⁱ - now known as Bayside General Practice Network (BGPN) - was set up in 1993 with Commonwealth Department of Health funding (as part of the National Health Care Scheme), to encourage general practitioners to work together to promote the quality of local health care. BGPN was one of 123 Divisions that operated across Australia at that time.

In 2005, BGPN, sought exemption under sub section 10 (1) (bb) of the Payroll Tax Act 1971 (Vic) from payment of payroll tax as it was a charitable body engaged exclusively in the work of a charitable nature. The Victorian Civil and Administrative Tribunal determined that BGPN was not exempt from pay roll tax (on wages) as it was too close to being an arm of government to be an organisation whose objects come within the concept of charity. BGPN's appeal to the Supreme Court of Victoria was dismissed.

On appeal to the High Court of Australia, a decision was handed down on 31 August 2006 that BGPN was entitled to a payroll tax exemption because its constitution and purposes brought it within the legal definition of a charity. The High Court found that although BGPN, like many charities, had a purpose shared by the Commonwealth, this did not alter its essential character as a charity, even though the government was the source of its funds and even though BGPN consented to conditions being attached to those funds.^{iv}

The suggestion that the regulatory agency will provide an interface for government and NFPs is also welcome. AGPN and our member organisations enjoy a productive and robust relationship with the Australian Government Department of Health and Ageing. The proposal that the regulator will be positioned to help government better respond to emerging issues and to maintain a modern and adaptive framework will however only go some of the way to minimise the administrative burden on NFPs. Whilst regulatory reform is welcome, the majority of administrative burden which Network members face stems from the form and requirements of contractual arrangements with government funding agencies. Further information on the impacts of government contracts on Network members are included in AGPN's submission to the Productivity Commission's issues paper on the contribution of NFPs in 2009, AGPN would be happy to discuss any of these constraints with the Treasury Department. Some of the contractual issues which impede Network members to maximise efficiency include contractual constraints that affect engaging and retaining high quality staff, service continuity and flexibility for local adaptation, flow on effects of intellectual property clauses for future program innovation, limitations on NFPs in building up a cash buffer (working capital), inconsistencies in contract form and requirements from the same agency and individual program auditing requirements.

AGPN recommends that any consideration of regulatory reform includes a commitment to investigating how funding mechanisms and reporting processes can be simplified and standardised to achieve a significant streamlining of the administrative burdens faced by NFPs.

As the scoping paper acknowledges over the last 10 years the government has increasingly been funding health, welfare and community service delivery through charitable and NFP organisations. The Divisions Network, particularly in rural and remote parts of the country directly delivers critical public health and care services within local communities in addition to the myriad of support provided to primary health care teams. The Network is skilled in working in partnership with other NFP organisations as well as government service deliverers and the private sector. Treasury is commended on its focus to ensure any new NFP regulatory system will be flexible. The form in which any

flexibility is built into the system is an area that AGPN would particularly like the opportunity to discuss with the government during any further consultation phases.

AGPN acknowledges that monitoring and compliance of NFPs is critical in demonstrating accountable and transparent use of government funds as well as demonstrating the value of the sector and the services which it delivers to Australian communities. Limiting the monitoring and compliance function to the type of regulatory requirements that allow organisations to register for NFP status and to maintain that status. Considering the diversity of NFP types and functions it would be difficult to develop meaningful indicators to monitor the contribution of the whole sector. AGPN's own experience (see Box 2) with the introduction of the government's national performance indicators (NPIs) highlight the challenges in measuring the contribution even within one type of NFP organisation. AGPN believes that attempting to measure the whole sector would amplify this difficulty further.

Under the Government's National Health Reforms the National Performance Authority (to be established from 1 July 2011) will establish a National Performance and Accountability Framework. Under the Framework all primary health care organisations (Medicare Locals) will be required to deliver a Healthy Communities Report. These reports will reflect service and financial performance standards, any short to medium term goals and priorities as identified by COAG from time to time and selected clinical quality and safety measures from the quality and safety standards developed by the new Australian Commission on Safety and Quality in Health Care. Performance measures to be reflected in the Health Communities Reports will include access to services, quality of service delivery, financial responsibility, patient outcomes and/or patient experience. Reporting on performance measures will be quantitative.

AGPN recommends that the monitoring and compliance role of the new National NFP Regulator is limited to the statutory requirements of NFPs to gain and maintain their status and any associated reporting. Monitoring systems that measure the thematic (content specific) contribution of NFPs should continue to be the role of Government line agencies or authorities responsible for thematic areas such as health and education.

Box 2: Governance, accountability and performance measurement: The Network experience with the NQPS

AGPN and our member organisations have over the past six years been working within a National Quality and Performance System (NQPS) to promote continuous improvement and responsible use of its Government funding. From 2006-08, the NQPS included 51 National Performance Indicators (NPIs) across nine domains of performance: prevention and early intervention | chronic disease management | access (to health care) |(health) workforce | general practice support | quality support | integration | consumer focus | governance. The governance indicators were over time replaced by evidence that the Network members were accredited with an eligible accreditation agency. Economic penalties were applied to Network members that failed to become accredited within 12 months of the new requirement. The NQPS also included some optional local indicators to allow Divisions to report on innovative programs developed in local communities.

The NQPS mainly collected qualitative data and as a result it was difficult to monitor improvements over time for the same Network member. Benchmarking against other members was also difficult – although because of the diversity of Network member communities, benchmarking at those levels was not very meaningful. All Network members did undergo accreditation as a result of the NQPS, although this has proved a costly process for most members – average accreditation costs are \$5,000.

After two years, in response to feedback from the Network, the NPIs were reduced to 10. All Network members report against the same NPIs, including the SBOs and AGPN. The abbreviated number of NPIs is an improvement and has more focus on health outcomes. However, there are still issues in finding ways of capturing all that the Network does, including measuring local innovation and finding meaningful ways of measuring the contribution from different levels of the Network. Arguably, AGPN needs to be measured on different NPIs than Divisions^{vi}. AGPN has also developed its own draft set of performance measures that specifically capture the breadth of work that the Network does and that can be used to help Network Members embrace more of a continuous quality improvement approach to performance monitoring.

Scope of the national regulator

Legal Form

Divisions all operate as independent legal entities with varying business structures despite offering similar services to their primary health care members and local communities. Resulting from their differing legal forms, Divisions are affected by inconsistencies between jurisdictions over tax regulations, ambiguities in tax law relevant to NFPs and inconsistencies in the application of tax and other financial regulations to different types of NFP. Thus depending on their legal status, despite their similar operations, neighbouring Divisions may be entitled to different benefits. A national NFP regulator is welcome, the issues created by different regulations (and therefore different entitlements) as determined by different jurisdictions must be resolved or at the least minimised by such a national body, without this ability NFPs will make only minimal efficiency gains from dealing with a national regulator as well as state and territory bodies.

Jurisdictional variation and inconsistency adds complexity and administrative burden to organisations such as those within the Network whose resources are often already stretched and so do not have the time or money to seek all the necessary legal / financial advice they may need. Funding agreements do not often provide resourcing to allow Divisions to seek the appropriate legal and financial advice, thus diminishing the potential for the most efficient use of public monies should tax exemptions and other entitlements be appropriate for Network members to pursue.

Given at least part of the variation in entitlements available to NFPs is dependent upon legal entity status it is appropriate that any National Regulator for NFPs covers the spectrum of legal forms NFPs can take. It would be useful for the Regulator to offer a no or low cost legal and financial advice service to assist NFPs in deciding the most appropriate form for their individual functions. Such a service would help to ensure that NFPs access appropriate exemptions and benefits and therefore maximise public benefit of their financial resources.

Incorporated associations

AGPN supports the idea to moving the range of legal entity types including incorporated associations, to a national regulator. We expect that this will establish consistent arrangements for NFPs depending on the type of legal entity. Should there be a residual role for states and territories AGPN suggests that all jurisdictions agree to the same requirements, responsibilities and benefits for NFPs and introduce legislation to formalise these conditions. This would remove any residual inconsistencies between incorporated associations operating in different jurisdictions.

A poignant example of the issues that arise with inconsistencies across jurisdictions is the experience of the Bayside General Practice Network in seeking payroll tax exemption as outlined in Box 1.

Functions the national regulator may undertake

Access to taxation concessions

Simplifying and streamlining mechanisms for applying and maintaining concessional tax status will lift some administrative burdens from Network members and help to keep NFPs competitive in the skills market and most importantly ensure that funding is directed towards delivering on core responsibilities and services. Improvements to taxation arrangements will bring certainty to NFPs at least for an agreed period. Being able to undertake comprehensive financial management, plan organisational output and flow money to programs requires a concrete and reliable understanding of taxation concessions available to the organisation, particularly income tax exemptions. NFPs need to be able to undertake medium to long term financial management planning so tax exemption status must be clear and reliable, subject to no change in the constitution of companies.

The current complexity of the taxation framework necessitates Network members engaging high level tax professionals to write the required submissions to the tax office. Applying for taxation concessions is a slow process, it is difficult to see how a new regulatory body will be able to speed up this process.

Taxation benefits such as Fringe Benefits Tax arrangements are used by Network members to help attract high quality staff despite their funding restrictions resulting in lower salaries and insecurity of tenure.

The Network relies on a skilled and effective workforce to support the complex needs of primary health care and to engage with the broader health care sector. Staffing includes the executive and administrative staff required in any business, additionally the Network offers positions for specific health program and clinical staff work. These staff include nurses, dieticians, psychologists, occupational therapists, health educators and many others who have the special skills required to deliver and/or coordinate health programs, provide health promotion, or directly provide services to consumers. Divisions also employ, as well as support, GPs although employment is often on a sessional basis. The total number of staff employed across the Network in June 2008 was 3,000 staff (representing 1,988 FTE) vii this was an additional 363 staff compared to the previous year.

Centrally regulating taxation concessions will not be the only answer to the ability of NFPs to recruit and sustain high quality staff. Although Network Members (Divisions, SBOs and AGPN) receive core funding for certain activities, the majority of government funding consists of project and program based funding delivered through fixed term contracting mechanisms. These contracts are often short-term with no certainty of renewal. They are also often under priced in comparison to equivalent services in the for-profit sector and/or do not keep pace with increases in state or commercial payment awards for similar services nor do they adequately reflect indexation. This leads to difficulty both attracting and retaining good staff because wages cannot be offered commensurate to the for-profit sector and public sector and there is lack of job security – tenure cannot be offered. AGPN acknowledges the goal of a National Regulator for NFPs to allow better direction of NFP resources to philanthropic objectives but notes that without the security of consistent funding streams NFP organisations will continue to compete with for profit organisations and the public sector for skilled workers. This is a critical area that a national NFP regulator cannot address and must be taken into account when measuring NFPs efficiency and effectiveness in spending public monies.

To some degree, the Network can overcome the wage issues through salary packaging options available to NFPs through their charitable status and FBT exemptions. Despite these benefits, it can still be difficult to attract staff when advertising lower wages, especially where NFPs, the public sector and For Profits are competing for the same

workforce. There is also a legitimate view that even with salary packaging, salaries are generally not on a par with market rates and that ideally, salaries should be determined at real commercial rates, irrespective of salary packaging options.

Regulation and supervision

Education and compliance

Centralising education initiatives including a web based portal for information on regulatory requirements, web-based training, new guidance materials, phone assistance and referral services for external advice would be a practical and useful role for the Regulator. It would be useful to channel information through one portal as much as possible so that there is one interface for searching for information as well as reporting. The ability to offer factual information that is packaged in an easy to understand format and is aimed at guiding NFPs through their opportunities in relation to exemptions and other benefits, as well as their regulatory and legislative responsibilities is welcome. Due care and diligence must be put into structuring and administering any education and compliance role for the Regulator, if this is not undertaken carefully this role will get weighed down by arguments about what messages should be marketed and how this will be implemented.

AGPN recommends that consideration be given to how national regulatory platforms interact with state and territory regulatory requirements to ensure that information sources are comprehensive and allow access to all the information that NFPs need.

Reporting

Grant acquittal, contractual reporting requirements and individual program audit requirements do impose a significant burden on time and resources. In AGPN's experience even within one Government department different program based reporting requirements can differ significantly. Program reports are required in addition to reporting on core funding, annual reports, special event reporting and exceptional reports. Theoretically within one government department one annual audit could be undertaken to cover all funds provided through that agency, this is not the case as often separate audits are required for each contract.

The Standard Business Reporting (SBR) mechanism is not an attractive tool given it's currently not able to cover the requirements of state and territory government agencies. To date, reporting on the SBR has been voluntary and uptake of this tool has suffered from criticism of the SBR system. However, consolidation of regulatory reporting requirements to provide for a one-time reporting process may save some time and money from administrative budgets of NFPs. Should the government enforce SBR reporting by NFPs any requirement to upgrade or change accounting software so that Network Members are able to implement SBR can only be imposed if core funding to NFPs is increased to cover the costs of such software upgrades and staff training in the use of new software systems.

An NFP Sector Portal is more attractive than the SBR mechanism. Portals are a useful tool, AGPN suggests that their functionality should include the ability to:

- Download clear information on regulatory requirements for NFPs;
- provide a communication channel for NFPs to lodge queries and have them responded to;
- deliver a mechanism for NFPs easily view information on their own regulatory status; and
- lodge reports and other documentation.

AGPN supports an NFP Sector Portal being used as a tool for the public to seek regulatory related information on NFPs.

Review and appeal procedures

Allowing commonwealth agencies, state, territory and local governments to appeal the decision of the regulator to register an organisation as a NFP will create problems where the organisation operates across multiple jurisdictions. There will also be problems if similar organisations in other jurisdictions are given NFP status but in one jurisdiction organisations cannot receive that status because of appeals made by that jurisdiction. This will perpetuate the existing situation whereby similar organisations are not able to access the same benefits (such as payroll tax exemptions) as peer organisations in other jurisdictions.

Establishing a national NFP regulator

The form of the national regulator

AGPN urges the government to make every attempt to work with state and territory governments to ensure that the new national regulator reduces all possible regulatory duplication between jurisdictions. Should negotiations with states and territories fail and a Commonwealth only regulator be established this would be only of minimal benefit to NFPs. A significant degree of regulatory burden exists between different states and territories limiting the ability of NFPs to work across borders.

Sector specific regulation of the NFP sector

While the Network does work in partnership with Aboriginal Community Controlled Health Organisations no Network members are currently registered with ORIC as Indigenous corporations. Our members are not working in the housing sector.

Funding implications

In principle AGPN has no objection to paying a regulatory contribution fee to replace the current fees and charges paid to ASIC and state or territory regulatory fees. A differential fee based on the size of NFPs is appropriate. It will be critical for the Regulator to be clear about exactly what services the fees paid by NFPs will purchase for them if the current user pays system is reformed.

AGPN does however recommend and request that any such fee is set at reasonable levels and that any changes in fee structure are announced with sufficient warning as core funding budgets are constricted and may be negotiated with funders several years in advance.

Definitional issues

A nationally agreed statutory definition of charity would achieve the goals of greater certainty and administrative efficiency in relation to the determination of charitable purpose. Such a definition could then be used to determine an organisations ability to access the full range of taxation exemptions and other such benefits. The current ambiguity in the definition of a charity would be resolved should the Parliament be tasked with defining this through legislation rather than relying on common law arrangements that have led to current ambiguous definitions. This will however be a difficult and contentious issue to legislate for. A significant consultation process will be required to ensure all NFPs are able to contribute to any definition.

AGPN recommends that should the Parliament decide to introduce legislation to clarify the definition of charity, that a considerable consultation process with current NFPs be undertaken to inform a modern definition of charity and charitable purpose.

ⁱAn SME is an organisation defined as having fewer than 200 employees. Small enterprises: 5 to 19 employees; medium enterprises: 20 to 200 employees. CSIRO Small and Medium Enterprise Engagement Centre: <http://www.csiro.au/solutions/SMEEngagement.html#3> Last accessed February 2011.

ⁱⁱ For further information on the new national authorities please refer to the COAG National Health and Hospitals Network Agreement

ⁱⁱⁱ Formerly known as Central Bayside Division Of General Practice Ltd

^{iv} ATO Non-Profit News Service No. 0151 – High Court decision in Central Bayside Division of General Practice Ltd

<http://www.ato.gov.au/nonprofit/content.asp?doc=/Content/77820.htm> Last Accessed May 2009

^v AGPN also draws the Treasury's attention to the existing National Health Performance Framework and the work of the Australian Institute of Health & Welfare developing indicators across the whole health and aged care system.

^{vi} After negotiation with the DoHA, AGPN now still reports against aggregated NPI results but includes additional reporting against work more specific to AGPN's role.

^{vii} Primary Health Care Research and Information Service (PHC RIS) Annual Survey of Divisions 2007-08. Accessed on 2 February 2011 at: http://www.phcris.org.au/products/asd/results/07_08.php