



SUBMISSION

Joint Committee of Public Accounts and Audit

Inquiry into

***Public Governance, Performance and
Accountability Bill 2013***

22 May 2013

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1. Executive summary

UnitingCare Australia is the national body for the UnitingCare network of community and social service providers and is an agency of the Uniting Church in Australia. The UnitingCare network provides services to children, young people and families, indigenous Australians, people living with disabilities, the poor and disadvantaged, people from culturally diverse backgrounds and older people, in urban, rural and remote communities.

This submission provides our assessment of the Public Governance, Performance and Accountability Bill 2013 (PGPA Bill) and builds on the comments we made in our submissions on the Commonwealth Financial Accountability Review: Is Less More discussion paper¹ and Sharpening the Focus position paper². Additionally it also draws on our analysis of the Code of Best Practice for Engagement with the not-for-profit (NFP) sector³ developed under the National Compact.

UnitingCare Australia believes that the charitable community services sector is an important partner for government and other sectors in the delivery of services and support to some of the most vulnerable and disadvantaged members of our society. Many policy and legislative decisions, although not specifically targeted at our sector, impact on the Commonwealth's relationship with us.

Accordingly, this submission provides comment only on those elements of the PGPA Bill that we believe will impact on the UnitingCare network and makes suggestions as to how we believe the Bill can be further strengthened in those areas:

- UnitingCare Australia welcomes the overall direction of the Bill recognising that it is a framework for the proper use of public resources;
- While we acknowledge that Commonwealth agencies will be required to develop new rules and practices to meet the requirements of the Bill, we believe that the implementation of this Bill should include the participation of key stakeholders;
- We support the positive obligation on Commonwealth agencies to both recognise the importance of collaborating and partnering with non-Commonwealth entities and the need to take account of the impact of reporting and control requirements on non-Commonwealth entities; and
- While we support the need for the Commonwealth to explicitly address the issue of risk and control in this Bill, we hope that further guidance on this matter can be developed so as to ensure clauses 17 and 18 (*Duty to encourage cooperation with others* and *Duty in relation to requirements imposed on others*) can be achieved.

¹ <https://cfar.govspace.gov.au/files/2012/03/No.15-Uniting-Care-Australia.pdf> accessed 20 May 2013

² <http://cfar.finance.gov.au/files/2013/03/No-37-UnitingCare-Australia-comments-on-the-CFAR-position-paper-.pdf> accessed 20 May 2013

³ http://www.nationalcompact.gov.au/sites/www.nationalcompact.gov.au/files/files/UnitingCare_Australia.pdf accessed 20 May 2013

We believe it would be prudent to better identify non-Commonwealth partners within the Bill to further signal the importance of partnership and collaboration for Commonwealth agencies. Therefore, we recommend further consideration is given to amending the following Clauses:

- *Clause 5 - Objects of this Act* should include a note which clarifies the term 'others' in 5(c)(iv) to expressly acknowledge State and Territory government agencies and bodies, charity and not-for-profit entities as well as for-profit organisations; and
- *Clause 17 – Duty to encourage cooperation with others* as with Clause 5 it would be helpful to expressly acknowledge State and Territory government agencies and bodies, charity and not-for-profit entities as well as for-profit organisations.

2. Introduction

UnitingCare Australia represents the network of UnitingCare community services operating nationally across some 1,500 sites in metropolitan, rural and remote Australia. Our network is one of the largest providers of community services in Australia and we make a strong contribution to the Australian economy by providing services to over 2 million people each year, with an annual turnover in excess of \$2 billion, employing 35,000 staff and 24,000 volunteers nationally. We employ a holistic approach to supporting individuals and communities to access the resources and opportunities needed to live a decent life. We partner with governments, other organisations, communities and people of goodwill.

It is important to note that although UnitingCare Australia does not identify itself as the primary stakeholder in the Public Governance, Performance and Accountability Bill 2013 (PGPA Bill), we believe that the development of a more contemporary legislative framework for the governance, performance and accountability of, and the use and management of public resources by the Commonwealth offers the potential for government policy goals to be achieved through more effective collaborative arrangements with the charitable community services sector.

UnitingCare Australia has engaged in the Commonwealth Financial Accountability Review process and our commitment to the transparent and accountable use of public monies and resources is unequivocal. We believe that the PGPA Bill can be a catalyst for achieving the desperately needed reform of the relationship between the Commonwealth and those charitable entities who deliver vital community services to vulnerable and disadvantaged people.

As such we believe that the PGPA Bill must appropriately balance risk with the need for flexibility in order for the Commonwealth and our sector to best respond to the diverse, complex and changing needs of individuals and communities.

It is through this prism that we provide our analysis of the Public Governance, Performance and Accountability Bill 2013 and Explanatory Memorandum.

3. Assessment of the Bill and Explanatory Memorandum

We have assessed the PGPA Bill against the same parameters applied in our assessments of the Commonwealth Financial Accountability Review: Is Less More discussion paper⁴ and Sharpening the Focus position paper⁵:

- Any new legislation/proposals need to be sufficiently robust to appropriately account for risk and to counter compliance creep;
- Any new legislation/proposals need to consider the implications (direct or indirect) on the independence of the charitable community services sector; and
- For the process/framework to enable the Commonwealth to continue to identify opportunities to reduce red-tape for all government and non-government entities.

⁴ <https://cfa.govspace.gov.au/files/2012/03/No.15-Uniting-Care-Australia.pdf> accessed 20 May 2013

⁵ <http://cfa.finance.gov.au/files/2013/03/No-37-UnitingCare-Australia-comments-on-the-CFAR-position-paper-.pdf> accessed 20 May 2013

It is our assessment that the PGPA Bill will likely yield positive action by the Commonwealth against each of the above parameters and therefore we are supportive of the Bill. Requiring the Commonwealth to work collaboratively with others to achieve common objectives (*Clause 5, 5(c)(iv)*) is critical to achieving the desired outcomes for the charitable community services sector. This Bill is important to our sector because it legislates a positive obligation for Commonwealth agencies to collaborate and partner with us where practicable to achieve common goals.

However, we recognise that there is an inherent tension between innovation and efficiency within the Bill which is balanced against the need to properly and transparently account for the use of public resources. It is our experience that such tension has lessened the appetite for risk within a number of Commonwealth agencies that work with the charitable community services sector, resulting in less opportunity for innovation and increased reporting and compliance requirements.

As such we are encouraged that the Bill explicitly requires Commonwealth agencies to consider the implications of compliance requirements placed on those entities with which they collaborate and partner.

As we see it, the challenge will be in the development and implementation of associated guidance material in relation to *Clause 16 - Duty to establish and maintain systems relating to risk and control*. Our primary concern is not the duty itself but how it will be interpreted by Commonwealth agencies in the context of reporting and compliance obligations for non-Commonwealth entities. It would be unfortunate if through the insertion of *Clause 16* we see a retreat from active management of risk to one of further risk avoidance.

Whilst there are a great number of transactional partnerships that Commonwealth agencies enter into which pose very little risk to the Commonwealth it is critical to understand that the charitable community services sector works to address deep and entrenched social problems that often require long lead times and innovative approaches. Addressing these social problems is inherently risky and progress is not always linear. Therefore it is essential that the Department of Finance and Deregulation develops appropriate guidance material for Commonwealth agencies which encourages them to work with their non-Commonwealth partners to appropriately manage risk and actively enable the necessary innovation to deliver on common objectives.

It is important to note that the relationship between the charitable community services sector is further complicated by the fact that the Commonwealth and State/Territory governments are a monopsony. This monopsony creates an imbalance of power between a government agency and the charitable community service provider it engages. Accordingly we have seen an increase in the reporting, compliance and control obligations placed on charitable community service providers. We are therefore heartened by the recognition in the *Explanatory Memorandum*⁶ which states that:

Clause 18: Duty in relation to requirements imposed on others

147....Shifting the compliance burden onto others, especially external service providers, may shift responsibilities away from where they are most effectively assessed and managed. Simplifying regulatory requirements can contribute to improved productivity...

⁶ <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation/billhome/r5058%22> p. 21 accessed 22 May 2013

Over time it is expected that fulfilling this duty will make Commonwealth entities more responsive when dealing with third parties and reduce the compliance burden for third parties....

Again it will be essential that the Department of Finance and Deregulation develop appropriate guidance material for Commonwealth agencies on this matter.

UnitingCare Australia has been a long-time advocate for more effective measures of performance in the area of social services and as such we welcome the fact that this Bill considers performance and accountability in terms beyond simply finances. As outlined in the *Explanatory Memorandum*⁷:

Clause 38: Measuring and assessing performance of Commonwealth entities

243. Clause 38 requires an accountable authority to measure and assess how well its Commonwealth entity has performed in achieving its objectives and purposes..... The focus will be on exchanging the quality and integration of performance information required by Government and the Parliament to assess actual against planned results...

Measuring and evaluating performance, particularly over the longer-term, requires an ongoing commitment to the program/project itself and sufficient resources to undertake proper evaluation. The short-term nature of many funding agreements, while mitigating risk to the Commonwealth, limits the capacity for a proper assessment of their effectiveness. Further, funding for evaluation is often not provided within the funding agreement and as such assessments of the project are centred on the more easily measurable outputs. The PGPA Bill therefore will pose an interesting challenge to Commonwealth entities seeking to comply with their obligations outlined in *Clause 38* should issues such as the length of agreements and funding of evaluations not be addressed.

The PGPA Bill references the importance for the Commonwealth of increased collaboration and partnership with non-Commonwealth entities. Although we believe that this will send a positive signal that the Commonwealth values its relationship with our sector we believe the message can be strengthened. We anticipate this would likely be achieved by amending the following clauses:

- *Clause 5 - Objects of this Act* should include a note which clarifies the term 'others' in 5(c)(iv) to expressly acknowledge State and Territory government agencies and bodies, charity and not-for-profit entities as well as for-profit organisations; and
- *Clause 17 – Duty to encourage cooperation with others* as with Clause 5 it would be helpful to expressly acknowledge State and Territory government agencies and bodies, charity and not-for-profit entities as well as for-profit organisations.

Finally, there is still an outstanding issue which we believe the Bill has not adequately addressed. The perennial issue for the charitable community services sector in partnering and collaborating with the Commonwealth is that the issues we deal with do not fit neatly into the portfolios of any single Commonwealth agency. For example, while Government policy to address homelessness might sit within the Department of Families, Housing, Community Services and Indigenous Affairs portfolio, we know that the cause of homelessness includes

⁷ Ibid p33

unemployment, mental health, access to education, etc. which clearly goes beyond the one portfolio. Further, because we operate a people-centred model it means that we must blend or pool funding from different sources to deliver seamless support to individuals. While this process delivers better support to the individual it creates a significant workload for charitable community service providers because we are required to deconstruct our reporting on funding and outcomes to meet individual program/project requirements. This is not simply an administrative red-tape challenge but it also inhibits innovation and service delivery because of controls which are often inflexible around how we can pool funding from different programs to best meet the complex needs of individuals. As such it would be very helpful if there was provision within the PGPA Bill to address this issue.

4. Conclusion

UnitingCare Australia believes that the Public Governance, Performance and Accountability Bill 2013 is a defining piece of legislation for the creation of a modern framework to strengthen the governance, performance and accountability of, and the use and management of public resources by, the Commonwealth.

The PGPA Bill is the foundation of that framework. As such we believe that further and careful consideration needs to be given as to how the Bill can ensure that the policies and processes that flow from it facilitate greater collaboration and partnerships between the Commonwealth and charitable community service providers that are based on common goals, appropriate risk-management and which preserve transparency and accountability in the use of public resources for the betterment of our society. Therefore we believe that implementation of the Bill must necessarily include the participation of non-Commonwealth stakeholders, particularly the charitable community services sector.