Australian Government

Department of the Prime Minister and Cabinet
Office of Best Practice Regulation

Guidance Note

COMMUNITY ORGANISATIONS

February 2016

The Australian Government is concerned about the overall red tape burden on community organisations (COs).

Because COs function in different ways from commercial businesses, the impacts of a regulatory proposal on them may need to be considered separately in a Regulation Impact Statement (RIS). This guidance note explains factors specific to COs that may need to be taken into account in addressing the seven RIS questions listed in the *Australian Government Guide to Regulation*.

Definition

The *Guide to Regulation* defines 'community organisation' as 'any organisation engaged in charitable or other community-based activity operating under Australian law and not established for the purpose of making a profit'. This definition can include not-for-profit entities pursuing a range of 'for-profit' commercial activities. It can also include organisations engaged in advocacy or other activities that may not be primarily charitable in nature.

The Australian Tax Office provides a definition of non-profit organisations that can also considered when assessing impacts on COs:

> A non-profit organisation is one which is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up.

A few details on the community organisations sector

- COs make up a significant proportion of the Australian economy. An Australian Bureau of Statistics study indicated that at the end of 2006–07 COs employed around 900,000 Australians (8 per cent of total employment). Australia has around 600,000 COs, and around 4.6 million people volunteer.[1]
- In a 2010 report, the Productivity Commission noted that 'The diversity of the not-for-profit (NFP) sector makes any attempt to describe how NFP organisations behave challenging at best, and quite likely impossible.'[2]
- Around 90 per cent of COs are 'small, non-employing organisations that rely on the voluntary contributions of members (and others)'. The other 10 per cent are 'economically significant' COs that have an active tax role (this includes all employing COs)'.[3]

[1] Australian Bureau of Statistics, *Not-for-profit organisations, Australia, 2006–07*, re-issue, cat. no. 8106.0.

[2] See Productivity Commission, *Contribution of the not-for-profit sector*, research report, 2010, p. 14.

[3] Productivity Commission, *Contribution of the not-for-profit sector*, p. 53.

- The CO sector's main sources of funding are self-generated (50 per cent), government (33 per cent, which excludes indirect support, such as tax breaks), and donations (10 per cent).[4]
- COs exist in many sizes and legal forms. The size and legal form of a CO can give some indication of its ability to respond to changes in regulation.
- A large majority of COs are unincorporated organisations. Common examples are sports clubs, local community groups and churches. Such organisations tend to be small and have very limited ability to deal with changes in regulation.
- Companies limited by guarantee tend to have the greatest scope to deal with regulatory change. The size of these COs varies considerably. These COs also operate in a different manner from similarly sized for-profit firms.

What part of community organisations' operations fall under Regulatory Impact Statement requirements?

In considering the RIS requirements, the operations of COs that are relevant are the commercial activities or transactions of community organisations.

In most cases, this should be interpreted literally to cover commercial activities such as the selling of goods and services and partnerships with businesses. Many other activities of COs fall outside this definition, including attracting and collecting donations and participating in welfare activities.

The 10 per cent of COs that are 'economically significant' are the entities most likely to be engaged in commercial activities or transactions.

A RIS is required for all proposals to be decided by Cabinet. The RIS must quantify the cost of any regulation (or deregulation) on business, COs and individuals, and identify offsetting regulatory costs (where applicable) in line with the Regulatory Burden Measurement framework. The offsets should, where possible, affect the same group of stakeholders as the regulatory costs.

For non-Cabinet decisions relating to proposals affecting COs, the Office of Best Practice Regulation (OBPR) determines the need for a RIS on the basis of the significance of the regulatory impacts imposed on COs. Regardless of whether a RIS is required or not, your agency is required to quantify any changes in regulatory costs and associated offsets using the Regulatory Burden Measurement framework.

Regulatory costs and offsets must be reported to your portfolio Regulatory Reform Unit, which will report them to the Regulatory Reform Division of the Department of the Prime Minister and Cabinet as part of the quarterly self-reporting process.

Other considerations in assessing whether a RIS is required

COs are not driven by a profit motive, but by their organisation's mission.

[4] Productivity Commission, *Contribution of the not-for-profit sector*, p. 54.

If COs are likely to be affected by a proposed regulation, you should consider whether there is likely to be a disproportionate impact on the commercial activities of COs operating in that sector. The impacts of the regulation on the commercial activities of COs should be separately identified in assessing whether a RIS is required.

Departments and agencies, and the OBPR, need to consider the ability of COs to cope with regulatory change, as most are similar to small businesses and do not have the resources or skill base of large corporations. Many are run by volunteers. While a particular regulation may have a minor impact on businesses, it could have a significant impact on the commercial activities of COs.

In supplying goods and services, some COs 'face demand that is independent of the funding stream' and, 'in the absence of price as a rationing mechanism, demand will generally exceed supply'.[5]

When does a government proposal constitute regulation?

Clearly, black-letter law can constitute regulation. However, many of the other ways the Government typically influences the CO sector can constitute regulation, depending on how proposals are implemented. Examples include quasi-regulation, industry codes, purchaser–provider arrangements, accreditation schemes, guidance notes, grant programs and subsidies.

For RISs, red tape burdens imposed by the Commonwealth's procurement, grants and cost recovery frameworks and processes are now included in the definition of regulation. Changes to overall grant, procurement and cost-recovery frameworks and arrangements trigger the requirements for a RIS where the proposal has a more than minor impact on COs (and businesses and individuals). See the *Commonwealth programmes* guidance note for more information on costing these changes.

Purchaser–provider arrangements can be considered regulatory if the contract includes clauses that do not relate to the procurement of the service. In such cases, the Government can be using the procurement of a particular good or service to implement regulatory change. For example, in 2009 the Government of the day announced that 'All government contractors in the textile, clothing and footwear industry must be accredited or be seeking accreditation with the Homeworkers' Code of Practice'. This constituted regulation because homeworkers in that industry who are employed by government contractors needed to comply with the Homeworkers' Code of Practice for *all* the work they did, not just the work for government contracts. In other words, such purchaser–provider agreements constituted industrial relations regulation.

Subsidy arrangements can effectively constitute regulation and therefore potentially trigger a RIS. For example, if the Government were to raise the requirements for aged care providers receiving government subsidies, COs providing care with the help of a government subsidy will have little choice but to comply with the new requirements. They would also have little scope to absorb any costs associated with the new requirements. Instead, they would be likely to scale back other parts of their operations. Changes to subsidy arrangements can affect both the CO and other parties. Subsidies paid directly to COs are captured under RIS requirements.

When assessing health care proposals, it is important to consider whether the service is bulk billed. If so, it is unlikely to be regulatory, as the Government is simply specifying details of the service it is purchasing. If the service requires co-payments, then the proposal may be regulatory.

---

[5] Productivity Commission, *Contribution of the not-for-profit sector*, p. 26.

Accreditation schemes can also affect COs in a regulatory manner. For example, a change in requirements for child-care centres to retain their government accreditation would affect some COs—potentially more significantly than it would affect for-profit organisations.

A guidance note can be considered regulatory if there is an expectation of compliance, particularly if compliance with the guidance affects future dealings with government.

In any case, changes in regulatory costs associated with any of the above examples, regardless of whether a RIS is required, need to be quantified using the Regulatory Burden Measurement framework, and any increases in regulatory costs must be fully offset by reductions in existing regulatory costs.

Action after RIS requirements are triggered

Once the RIS requirements are triggered, departments and agencies need to look at the broader impacts of the regulation, including all of the impacts on the CO sector.

While the requirements are most likely to be triggered on the basis of expected impacts on the 'economically significant' COs, your analysis of significant impacts should capture all relevant COs, including the regulatory effects on small bodies.

The RIS should acknowledge the need for COs (that manage public funds) to be accountable and transparent. Regulatory changes that change accountability and transparency should also be highlighted in the RIS.

Regulatory changes are likely to affect COs in different ways from for-profit firms. In many cases, a CO will not be able to pass an increase in regulatory costs on to its customers. Instead, it may need to reduce its level of service or output in other areas. Stating this impact in units of the output or in terms of staff time (as was done in the RIS for the Australian Charities and Not-for-profits Commission[6]) can help to give a sense of the scale of the impact. It is also important to note whether the recipients of this output have any alternative providers.

You will need to tailor your consultations when a proposal has impacts on COs. In comparison to corporates, many COs may require a longer time to respond, and staff (or in some cases volunteers) may not have expertise in commenting on regulatory impacts. Additional time may also be required because many COs will be required to seek agreement of their board before finalising their submission. One method for consulting with COs is to present not only the proposed change, but also your view of the potential impacts on COs.

Further information

If you have any questions about this guidance note, email OBPR at helpdesk-OBPR@pmc.gov.au or call (02) 6271 6270.

Your portfolio Regulatory Reform Unit is also a useful source of information.

Further information on the RIS process is in the *Australian Government Guide to Regulation*.

[6] See Treasury, *Establishment of the Australian Charities and Not-for-profits Commission Regulation Impact Statement*, 2011.