Resource Materials to Assist in Submission Preparation for the Senate Inquiry into the Disclosure regimes for charities and not-for-profit organisations

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Making a submission - understanding the context

On 18 June 2008, Senator Allison (Democrats) moved that the Senate note the report by CHOICE on charities, published online in March 2008. The report highlights the wide variability and inconsistency in the way that charities disclose information to the public and acknowledges that the 27 recommendations from the Inquiry into the Definition of Charities and Related Organisations, which reported in 2001, have not been implemented.

The Senate agreed to send the matter to the Senate Standing Committee on Economics for report by the last sitting day of November 2008. The Inquiry will examine:

1. the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;
2. models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises; and
3. other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance, standards, accountability, and transparency in its use of public and government funds.

To read more about the Inquiry and Disclosure regimes for charities and nonprofits see the Inquiry's website and the relevant Hansard edition. Submissions for the Inquiry close on Friday August 29, 2008.

The Parliamentary Joint Committee on Corporations and Financial Services has released a parliamentary report 'Better shareholders - Better company: Shareholder engagement and participation in Australia'. The report comes from left field, but probably picks up on the Victorian Government's report, 'Strengthening Community Organisations', which was released earlier this year.

One of the Parliamentary Joint Committees’ recommendations picks up a nonprofit organisation reform issue and says:

"3.120 The committee is also of the view that the broader issue of the framework for regulating small, closely held companies needs to be reviewed. The one-size-fits-all approach of the Corporations Act may be appropriate for large publicly listed companies with a diverse shareholder base with a considerable equity investment, but it places a significant regulatory burden on small companies and not-for-profit organisations for which the protection offered to investors by the Corporations Act is not as appropriate. The government should therefore begin to investigate an alternative regulatory framework for small incorporated companies and not-for-profit organisations.

3.121 The government should investigate an alternative regulatory framework for small incorporated companies and not-for-profit organisations."

The Parliamentary Report appears to draw heavily on Senator Andrew Murray's April 2008 report entitled 'A proposal for simplifying the legal form and regulation of small for-profit businesses and not-for-profit entities' and his earlier report 'One Regulator One System One Law'.

The ALP Election Policy, which goes under the title of "Social Inclusion," contains a nonprofit reform agenda and was launched at the ACOSS Conference by Julia Gillard. Senator Ursula Stephens, Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector has made a number of speeches on the issue of nonprofit regulatory reform.
Ten resources to assist in making a submission

1. The two reviews commissioned by the Victorian Government: the Stronger Community Organisations project, led by Professor Allan Fels, AO, and the Review of Not-for-Profit Regulation, led by the State Services Authority. Both reports contain recommendations to improve the regulatory framework of the nonprofit sector and are the most recent government work available in this area. These were well resourced and considered reports which both map many of the issues and point to the directions of feasible reforms.


See also:


3. Lyons, M. (2001). Third Sector: The Contribution of Nonprofit and Cooperative Enterprises in Australia, St Leonards, NSW: Allen & Unwin. This is an excellent introduction to the third sector in Australia and most of the broad current themes and issues

See also:

- The National Nonprofit Roundtable’s National Reform Agenda gives a broad view of the regulatory issues facing the third sector.


This report examines the appropriateness of existing corporate legal frameworks as they apply to not-for-profit (NFP) companies. It challenged the application of laws designed for companies with profit making objectives to NFP organisations. The project considered the issues of reporting and accountability to NFP stakeholders and how these stakeholders (and their needs) differ from those of stakeholders in 'for-profit' companies.

See also:

- A discussion paper on financial reporting by unlisted public companies prepared by the Federal Treasury.


See also:


See also:


- The Institute of Chartered Accountants in Australia. (2007). *Enhancing not-for-profit annual and financial reporting*.

- Flack, T. "The mandatory disclosure of cost of fundraising ratios: Does it achieve the regulators' purposes?" Working Paper No. CPNS 26. Brisbane: The Australian Centre for Philanthropy and Nonprofit Studies, QUT. This paper explores the question: "Does the mandatory disclosure of cost of fundraising ratios achieve the regulators' purposes?" and finds that there are serious practical and theoretical reasons why cost of fundraising ratios do not achieve the regulators' purposes. The paper goes on to suggest that regulators should be encouraging public fundraising charities to disclose a range of information about their achievements including financial and non-financial performance, so that the cost of fundraising can be put in context with other more useful information to donors and the public.

- "Public Trust and Confidence in Nonprofits," a *CPNS Podcast by Professor Adrian Sergeant*, from the Centre on Philanthropy at Indiana University, on charity costs and public trust and confidence in nonprofit organisations. For information on statistics mentioned in Adrian's podcast please see the *Charity Facts website*.


• From 1999 to 2004, researchers at the Urban Institute's National Center for Charitable Statistics (NCCS) Center on Nonprofits and Philanthropy and the Center on Philanthropy at Indiana University explored issues of nonprofit fundraising and administrative cost reporting known as the "Nonprofit Overhead Cost Study." These fact sheets are worth considering and I hope the Australian Press reads and reports on them one day soon.

i. What We Know About Overhead Costs in the Nonprofit Sector

Brief #1 summarises findings from IRS Form 990 data and overhead cost survey data, concluding that a surprisingly high percentage of nonprofit organizations (37%) with private contributions of $50,000 or higher reported no fundraising costs. The brief also discusses the staffing patterns of nonprofit organisations’ fundraising efforts and the fundraising.

ii. Who Raises Contributions for America’s Nonprofit Organisations?

Brief #2 summarises findings from the overhead cost study survey, conducted in the fall of 2001. It describes the recent growth of use of staff members whose primary responsibility is fundraising. Even in organisations with such a staff member, involvement of other staff, volunteers, and board members in fundraising is common. Additionally, some organisations receive fundraising support from partner organizations, either other community organisations that share their funds or professional solicitation firms that conduct fundraising campaigns. The brief is a summary of a longer paper.

iii. Getting What We Pay For: Low Overhead Limits Nonprofit Effectiveness

Brief #3 is the first of two that summarise results from detailed case studies of the financial management of nine nonprofit organizations. It focuses on the relationship between spending on administration and fundraising and the effectiveness of nonprofit organisations in carrying out their missions. Smaller organisations tended to invest less in organisational infrastructure, resulting in conditions that compromised their effectiveness. Part of the reason why these organisations invested less in infrastructure involved their reliance on grants with limits on how much could be spent on overhead costs.

iv. The Quality of Financial Reporting by Nonprofits: Findings and Implications

Brief #4 is the second of two briefs that summarise results from detailed case studies of the financial management of nine nonprofit organisations. It focuses on public financial reporting and addresses issues such as weak methods for allocating staff salary costs to program, administrative, and fundraising expenses; the need for greater sophistication in accounting for capital gifts and in-kind donations; and the effects of unique IRS reporting rules on overhead and fundraising cost ratios. This brief concludes that simplistic efforts to assess and compare public charities based on their public financial reports may lead to flawed conclusions.

v. The Pros and Cons of Financial Efficiency Standards
Brief #5 discusses the use of financial efficiency ratios to evaluate and compare nonprofit organisations. Recent technological advances have made nonprofit financial reports and electronic databases widely available to analysts, further popularising financial comparisons. In this brief, we summarise both the advantages and dangers of such analyses. The chief advantage is that managers and donors can productively use financial comparisons for decision-making. The chief disadvantage is that analysts tend to over-rely on these measures when making judgments regarding the effectiveness or donation-worthiness of nonprofit organisations.


- **BBB Wise Giving Alliance: Standards for Charity Accountability**
- **GuideStar: Why Ratios Aren't the Last Word**
- **Charity Navigator: Evaluating Charities: Why the Numbers Count**
- **Put Barber: Comment on Charity Navigator, The "Hardest Place in Nation to Raise Money?"**
- **NCNA and NHSA: Rating the Raters: An Assessment of Organizations and Publications That Rate/Rank Charitable Nonprofit Organizations (A personal favourite!)**


In June 2005, the Panel released a comprehensive series of recommendations intended to strengthen the ability of the USA's 1.3 million charities and foundations to serve as responsible stewards of the public's generosity. It is a watershed report in the USA which deals with nearly all the contemporary regulatory and accountability issues of that nonprofit sector.

9. Two UK sites are worth considering:

- **The Office of the Third Sector** and particularly the **Review** which established the Office and its **Better Regulation Review for the Third Sector**.
- **The Charity Commission of England and Wales**.

See also:


10. **New Zealand**

New Zealand has recently established a **Charity Commission**. It is responsible for registering and monitoring charitable organisations in New Zealand, as well as providing support and education to the charitable sector on good governance and management.
Myles's ten relatively easy, specific measures that would provide benefits far in excess to their direct and indirect costs

If you had a magic wand that came with one wish to fix up some annoying piece of federal legislation or administrative arrangements, what would you wave it at? Maximum points to those irritating small matters that can be quickly and cheaply altered for the better.

1. Place the section or item number of a Deductible Gift Recipient or charity on the publicly available Australian Business Number Registry lists to prevent innocent mistakes of illegal distributions by Prescribed Private Funds and Ancillary Funds to ineligible organisations.

2. Break the impasse in Overseas Aid Organisations tax definition "mismatch between the ATO/Treasury ("solely for the relief of people in a country") and AusAid ("Development is a process where a community of people work together to break the cycle of poverty and dependence so that their fundamental needs are met and the quality of their lives is enhanced."). How anyone gets endorsed in this tax classification is one of the little mysteries of life.

3. Include nonprofit licensing issues (eg fundraising regulation and charitable gaming [IC R 19]) in the Council of Australian Government (COAG's) recent agreement to work towards mutual recognition of licensing standards - why should plumbers and electricians get mutual recognition ahead of fundraisers?

4. Include nonprofit stakeholders and issues in COAG's Standard Business Reporting projects - why should business have their paperwork burden reduced and not nonprofits as well? Where is the level playing field?

5. Introduce a standard chart of accounts for Commonwealth grant submissions and acquittals to cut paperwork compliance costs and increase the usability of information as well as provide funding to produce the necessary specific nonprofit accounting standards to allow for meaningful financial accounts to be mandated.

6. Act on successive FACSIA, Institute of Health and Welfare and CPNS Red Tape reports and issues papers to cut red tape in service contracts. Let's follow Victoria's lead and actually do it, rather than just promise it!

7. Clarify the issue of nonprofits and "constitutional corporations" created by the Work Choices policy.

8. The ABS should receive long term funding to compile and update baseline data on the whole of the nonprofit sector. This provides an essential part of the evidence base for policy making. (IC R 29).

9. Peak Council funding needs to be reviewed to enable capacity to engage in the reform process as meaningful partners and stakeholders (IC R 31).

10. Require Treasury and Departments to improve their analysis and reporting of nonprofit tax expenditures and regulatory impact statements accompanying proposed legislation involving nonprofit organisations.
Ten matters to consider when designing improved nonprofit regulation for Australia

By Professor Myles McGregor-Lowndes

There are numerous issues to be considered in creating a better regulatory environment for Australia’s nonprofit organisations. Here are some suggestions and please send in your comments or additions to the list. Once again the usual CPNS chocolate frogs will be 'snail mail' dispatched to contributors

1. All nonprofit organisations should be considered in regulatory reform - not just community welfare or charitable organisations. The focus of the regulation should not be based merely on legal forms, tax status or activity alone, but the essential characteristics of nonprofit organisations.

2. A strong and robust political champion is required to operate across whole of government and provide leadership to largely disinterested and myopic government departments and state governments.

3. Australia has fallen behind globally converging regulatory standards for nonprofit organisations and a strategy of incremental reform is a fast diminishing option. Paradigm shifts will be required with significant costs and consequences, if reform opportunities are not taken soon.

4. A central independent regulator, whatever its form, will need significant resources: an under resourced body will be worse than the present situation. Everyone calls for more sector regulation, but no one puts up their hands to pay for it.

5. Regulatory response needs to be proportionate, particularly at the large and small end of the nonprofit environment - no one size fits all.

6. Any attempt to rationalise the chaotic regulatory landscape will produce winners and losers, particularly in relation to taxation concessions and exemption from regulation.

7. The definitional issues of Public Benevolent Institutions have largely been driven by Fringe Benefit Tax (FBT) salary sacrifice concessions and not donation tax deductibility. Vested interests (with much to gain or lose in salary concessions) often argue the case using the proxy of ‘donation deductions’, thus hiding the underlying policy issue of poor remuneration of sector workers.

8. In relation to annual reports, sector specific accounting standards are required which mesh with broad standards and more emphasis needs to be placed on the narrative account of how organisations are achieving their stated objects.

9. The Australian Bureau of Statistics (ABS) requires assured long term funding to compile and update baseline data on the whole of the nonprofit sector; this provides an essential part of the evidence base for policy makers.

10. The governance body (e.g. board, trustees, management committee and the membership forum - if any) should be the central focus for ensuring appropriate behaviour of organisations.
1. All nonprofit organisations should be considered in regulatory reform - not just community welfare or charitable organisations. The focus of the regulation should not be based merely on legal forms, tax status or activity alone, but the essential characteristics of nonprofit organisations.

Efficiency and effectiveness would be promoted in regulatory design, meta-policy development and community understanding if there was a whole of government approach to non-government and non-business organisations. The regulatory framework should not be defined by government departmental silos, organisational purpose or activity alone. At the margins the definitions of nonprofit organisation/third sector organisations will be contested, but there is significant agreement on the core as demonstrated by the ABS Satellite Accounts project. Such an approach permits a central regulator to be charged with building the public's trust and fidelity of such organisations, whatever their purposes, which avoids constraining missions such as protecting the taxation base (Australian Taxation Office), financial investors (ASIC) or a specific industry (e.g. arts/sports/health). The community needs protection from those who would abuse the nonprofit constraint.

2. A strong and robust political champion is required to operate across whole of government and provide leadership to largely disinterested and myopic government departments and state governments.

Jurisdictions which have moved beyond piecemeal, ineffectual reforms have been characterised by a strong political champion who can bring different parts of government together to focus on broad issues, provide integrated solutions and mediate powerful community stakeholders concerns. The limited implementation of previous reports is evidence of this requirement.

3. Australia has fallen behind globally converging regulatory standards for nonprofit organisations and a strategy of incremental reform is a fast diminishing option. Paradigm shifts will be required with significant costs and consequences, if reform opportunities are not taken soon.

In comparison to England, Wales, Ireland, Canada, New Zealand and Singapore, Australia is now lagging in its nonprofit regulatory environment. The direct result is that in the global market for philanthropic funds, Australian organisations are at a competitive disadvantage because of the confusing and ineffective regulatory framework.

The current regulatory framework constrains the ability of nonprofit organisations to provide an effective and efficient alternative to government or for-profit organisations. The current regulatory environment also hinders the ability of nonprofit organisations to provide goods and services, create social capital and contribute to civil society.

In addition, Australia's recent history of failure to act in any meaningful way to reforms as suggested by the failure to act on the recommendations of the Charities Definition Inquiry, compound the problems as others move rapidly ahead.

4. A central independent regulator, whatever its form, will need significant resources: an under resourced body will be worse than the present situation. There may be some savings in a transition. Everyone calls for more sector regulation, but no one puts up their hands to pay for it.

The 2007/08 expenditure of the Charity Commission of England and Wales which supervises about 190,000 organisations with 471 staff has a budget of £33.5 million. The New Zealand Charity Commission regulates about 25,000 organisation with a budget of approximately $NZ7.3 m. The US Internal Revenue Service (IRS) has 316 full time equivalent staff, 159 of who are engaged in audits. In comparison Australia's largest nonprofit regulatory agency is the Australian Taxation Office (ATO) with approximately 60 staff. Moreover, incorporated
associations and fundraising offices at the state level are chronically understaffed and do little effective pro active regulation.

Any move to a central independent regulator requires a well resourced agency or it will fail and place the nonprofit sector, organisations and the community in a worse position than the current regulation framework.

Private donors, government funders and the media on behalf of the general public all call for greater reported detail on nonprofit organisational accounts and activities. However, at the same time they express a strong desire for less expense on administration and fundraising and do not wish any of their contributions to go towards such expenses. Such measures are not costless, even when performed by volunteers. A paradox that needs to be solved.

5. Regulatory response needs to be proportionate, particularly at the large and small end of the nonprofit environment - not one size fits all.

Mature nonprofit regulatory regimes are characterised by different regulatory tools and exemptions at both ends of the spectrum. For example, small organisation are largely exempt in Englandand Wales [1] (under £10,000 and likely to be increased to £25,000) and IRS threshold in the United Statesis $25,000.[2] Of the one million organisations registered with the IRS in 2004, approximately 63 percent had annual revenues of less than $25,000 and were not required to file with the IRS. Of those obligated to file with the agency, nearly 63 percent reported total budgets of less than $200,000.

In Queensland it is estimated that 4 out of 5 incorporated associations have less than 100 members with total assets and total annual turnover of less than $50,000. In Victoria, 26.23% of incorporated associations have fewer than 20 members with only 9.3% having at least $200,000 in annual revenue and $500,000 in assets.[3] In New South Wales a sample of 5,000 incorporated associations found that approximately 66% of organisations had an annual income under $500,000.

At the other end of the scale there are some very large organisations with complex branch structures. However, some very large organisations (e.g. churches) are actually made up of many small organisations. We need to understand much more about the characteristics of nonprofit organisations before we can with any confidence design proportionate regulation that details exempt or excepted bodies.

In the UK, large organisations or those with special regulation are either exempt or excepted bodies,[6] for example large educational institutions, cultural bodies and religious bodies. In the U.S the IRS has “group rulings and exemptions” for religious bodies with large branch structures. [7]

6. Any attempt to rationalise the chaotic regulatory landscape will produce winners and losers, particularly in relation to taxation concession and exemption from regulation.

It is to be expected in an undisciplined policy environment which has been lacking any evidence base, that privileged anomalies will have risen, particularly in relation to taxation exemption and concessions. The move to a simpler, rational, evidenced based regulatory framework will have winners and losers. Leadership is required by all stakeholders to find a way to move out of the swamp.
7. The definitional issues of Public Benevolent Institutions have largely been driven by Fringe Benefit Tax (FBT) salary sacrifice concessions and not donation tax deductibility. Vested interests (with much to gain or lose in salary concessions) often argue the case using the proxy of 'donation deductions', thus hiding the underlying policy issue of poor remuneration of sector workers.

The debate about the fate of PBIs would be more rational if it was based on the central issues of various stakeholders, rather than upon often inconsequential issues which are easier to promote. The issue of inadequate remuneration for sector staff, professionals and management needs to be debated openly and all options for resolution of the underlying issue need to be canvassed. The tax expenditures tools via the PBI FBT exemption is probably not the best device for rectifying the remuneration issue given the distortion it causes in other areas.

8. In relation to annual reports, sector specific accounting standards are required which mesh with broad standards and more emphasis needs to be placed on the narrative account of how organisations are achieving their stated objects.

The call for financial accounts to inform the public about the relative worth of organisations is growing. Standards that enable a sensible financial comparison to be attempted need to be devised and applied. The current regime of 'vanilla business accounting standards' are inappropriate and out of step with the rest of the developed world.

Further, financial reports as used in for-profit markets are an incomplete and perhaps misleading tool for nonprofit organisations. More emphasis should be placed on an annual narrative which explains the mission of the organisation, how it intends to achieve that mission and how much it has achieved in the period. A good example is the Charity Commission's SIR (Summary Information Return).

9. The Australian Bureau of Statistics (ABS) requires assured long term funding to compile and update baseline data on the whole of the nonprofit sector; this provides an essential part of the evidence base for policy.

Australia lacks the evidence base to model policy impacts on the sector. The impact statement in relation to the introduction of GST and capping of certain FBT exemptions provide compelling case studies of the price paid for such ignorance. Smart regulation requires an extensive evidence base; we as a country know how many cattle there are from week to week, but have no idea of the number of nonprofit organisations from decade to decade.

10. The governance body (e.g. board, trustees, management committee and the membership forum - if any) should be the central focus for ensuring appropriate behaviour of organisations.

Those who have the direct responsibility for 'monitoring, judging and influencing' organisations should be the focus of the regulatory effort to ensure the fidelity of the sector as a whole. Better organisational governance at this level will translate into better esteem of the whole sector. 'Stick and carrot' regulatory strategies are required.

The excesses of the reliance on 'contracts' by government departments has led to an over emphasis on the 'stick' and created many 'risk averse' boards. Government departments have marginalised boards by interference in management decision making and excessive management reporting. Imposition of 'quality standards', forced disclosure of management records, with forensic restrictions on expenditures, take away the responsibilities of boards for the achievement of their organisation's mission.


You are invited to submit your favourite piece of odd, strange, ineffectual, twisted or plain stupid piece of Australian nonprofit regulation. Once again, contributors will receive a CPNS chocolate frog in the mail for published contributions.

Suggestions or comments can be emailed to CPNS (cpns@qut.edu.au)

Comments and suggestions will then be uploaded to the CPNS Wiki

Comments (as of August 04 2008)

Myles McGregor-Lowndes says:

Dal Pont argues that the "antiquity of the legislation in some jurisdictions" and the lack of uniformity of fundraising legislation demand wholesale reform.[1] An example of this antiquity is the cloning of parts of the English Metropolitan Streets Act 1903 that have only recently been repealed in the Western Australian legislation and Queensland legislation. The provision was that "No collector shall use a box or other receptacle at the end of a pole intended to reach upper windows or the roofs of conveyances." This related to London stagecoaches and terrace houses both of which are uncommon in both Brisbane and Perth.[2] In the age of Internet solicitation, such quaint regulations of a century ago serve to illustrate the gap between the present regulation and regulation that facilitates fundraising in the new economy.


Aug 03, 2008 07:40Updated by Anne Overell (Permalink)

Myles McGregor-Lowndes says:

Section 5 Collections Act 1966 (QLD) "appeal for support", used in relation to any purpose, means any invitation (expressed or implied, and whether made verbally, or by writing or conduct, or by any advertisement), to the public, which is designed to obtain money or articles for that purpose, including---

(a) any collection for that purpose;

(b) any advertisement of any art union or the selling or offering for sale of any ticket or
chance in any art union promoted or conducted for that purpose;

(c) any notification to the public expressly or impliedly indicating that any proceeds of, or any moneys from, or any collections at, any dance, concert, social entertainment, bazaar, fair, fete, carnival, show, sport, game, or other diversion, activity, or function (whether of the classes previously enumerated or not) are intended or are to be appropriated for that purpose;

(d) the holding of any dance, concert, social entertainment, bazaar, fair, fete, carnival, show, sports, game, or other diversion, activity, or function (whether of the classes previously enumerated or not) any proceeds of which, or any moneys from which, or any collections at which are appropriated or intended for that purpose;

(e) any notification to the public expressly or impliedly indicating that any proceeds of, or any moneys from, the sale of any articles or the supplying of any service are intended or are to be appropriated for that purpose;

(f) the sale of any articles or the supplying of any service, any proceeds of, or any moneys from which are appropriated or intended for that purpose;

(g) any notification to the public, expressly or impliedly indicating that the whole or part of any fees for membership of any association are intended for or are to be appropriated for that purpose;

(h) anything prescribed to be an appeal for support."