

Chapter 1

Background

Referral of the inquiry

1.1 On 18 June 2008, the Senate referred 'Disclosure Regimes for Charities and Not-For-Profit Organisations' to the Senate Standing Committee on Economics for inquiry and report by 27 November 2008. The committee was later granted an extension until 4 December 2008.

Terms of reference

1.2 Under the terms of reference, the Committee undertook an examination into the not-for-profit sector within Australia, with particular reference to:

- (a) the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;
- (b) 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
- (c) 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.

Conduct of the inquiry

1.3 In accordance with its usual practice, the Committee advertised details of the inquiry in *The Australian*. The Committee also made direct contact with a range of organisations and individuals to invite submissions to the Inquiry. The Committee received written submissions from 183 individuals and organisations, as listed at Appendix 1.

1.4 To assist interested parties with making their submissions, the committee secretariat published a background paper on its website (Appendix 3). The paper provided a brief overview of the issues with respect to governance and disclosure regimes for the not-for-profit sector which were raised in reports or related literature. The paper noted that it was not the intention of the committee to limit the Inquiry to the issues and questions raised in the paper, and welcomed any submission that addressed the terms of reference of the Inquiry.

1.5 Public hearings of the Committee for this Inquiry were held in: Rockhampton on 18 July; Canberra on 28 and 29 October and 11 November; Melbourne on 30 October; and Sydney on 31 October 2008. Details of the hearings, including a list of

witnesses who gave evidence, are shown at Appendix 2. In addition, the committee held a roundtable discussion on this matter on 29 October in Canberra.

1.6 The committee thanks all those who contributed to its inquiry by preparing written submissions or appearing before the committee. Their work has been of considerable value to the committee.

Background to the inquiry

1.7 This Inquiry was initiated by then-Senators Allison and Murray of the Democrats prior to their departure from the Senate on 30 June 2008. On Senator Allison's motion, the Senate noted an online article published by Choice magazine on charities, and acknowledged that most of the 27 recommendations from the inquiry into the definition of charities and related organisations have not been implemented.¹ The historical involvement of charities and other not-for-profit organisations in social services in Australia may account for the strong public feeling on this issue.

Philanthropy in Australia

1.8 Australian charities and other Not-For-Profit Organisations have a long and proud tradition of supporting the less fortunate in society. Up until the Second World War, the majority of social services in Australia were delivered by such organisations, and many of these were religious institutions. Australia's first Not-For-Profit organisation, a charity named the NSW Society for Promoting Christian Knowledge and Benevolence in these Territories and the Neighbouring Islands (which has since been renamed the Benevolent Society), was established in 1813, and worked towards the relief of poverty and distress. Within a handful of years:

...district nursing services started (1820), asylums opened for the poor, blind, aged and infirm (1821), maternity hospitals (1866) and the first Women's Hospital in Australia commenced (1901). In 1862, Sydney City Mission, "an unsectarian Christian organisation" began to address poverty, and soon similar missions were in Brisbane (1859) and Adelaide (1867). Vincent de Paul started its services in Sydney in 1881. Homes of Peace were established to provide palliative care by charities such as the Little Company of Mary and Homes of Peace Hospitals (now Hope Health Care).²

1.9 The conclusion of the war saw the increasing prominence of governments in providing social services to their citizens. However, given that Not-For-Profit Organisations were already providing these services, the Australian States and Territories chose instead to subsidise, rather than replicate, the work of these organisations. Legislation relating to Not-For-Profit Organisations was developed and

1 Senator Lyn Allison, *Senate Hansard*, 18 June 2008, p. 2729.

2 Dr Stephen Judd and Ms Anne Robinson, National Forum on Australia's Christian Heritage, *Paper 7*, August 2006, pp 1-2.

enacted piecemeal, rather than as nationwide policy; as a result, charities and Not-For-Profit Organisations lack the transparency and accountability that could have derived from a coordinated approach.

Choice Online Magazine article

1.10 Choice is the largest consumer organisation in Australia and aims 'for new ways to encourage a fair society where consumers are treated honestly, equitably and with respect'.³ This frequently occurs through product tests and research. Choice, the trading name of the Australian Consumers' Association, is itself a not-for-profit company limited by guarantee, and does not receive ongoing funding from governments or commercial organisations. Choice provides only limited financial information in its Annual Report to members.

1.11 The Choice Online Magazine article noted in the Senate was published in March 2008⁴, and carries the tagline 'How much of your donation is gobbled up by fundraising fees and expenses?' The article followed a survey of Choice members in which 97 per cent of respondents said that it was very important or somewhat important to be informed about the effectiveness of the work that a charity they patronise does; and 94 per cent of respondents claimed that it was very important or somewhat important that they are informed about the charity's costs. The problems, according to Choice, are getting the information, which is sometimes not made publicly available, and comparing the information due to 'wide variability and inconsistency in the way they [charities] communicate key information to donors'.⁵

1.12 Choice compared financial information provided by nine charities to demonstrate the perceived lack of comparability across the sector. Fundraising ratios (simplistically, the number of cents spent in order to raise a dollar) are calculated inconsistently across the sector, taking different costs into account. This results from the fact that there is no obligation on charities to report in a consistent manner or a standard to guide them to do so.

1.13 Unlike countries such as the UK and New Zealand, Australia does not have a single, national body to regulate charities as legally defined; instead, there are numerous regulations and State/Territory and Commonwealth legislation with which charities must comply. This is discussed further in Chapters 5 and 6. Choice expresses

3 Choice., *Who we are – Social Responsibility Plan*, <http://www.Choice.com.au/viewArticle.aspx?id=101257&catId=100472&tid=100008&p=10&title=Who+we+are> (accessed 1 October 2008).

4 A paper version of this report appeared in the April 2008 issue of Choice magazine.

5 Choice Magazine, *Charities*, March 2008, <http://www.Choice.com.au/viewArticle.aspx?id=106240&catId=100268&tid=100008> (accessed 23 September 2008).

its support for such a national regulator if the result is 'improved transparency and disclosure for consumers'.⁶

Inquiry into the Definition of Charities and Related Organisations

1.14 On 18 September 2000, following a commitment made to the Australian Democrats, the then-Prime Minister announced an independent, public inquiry into definitional issues relating to charitable, religious and community service not-for-profit organisations. The inquiry, dubbed the Charities Definition Inquiry, was established in order to determine whether existing definitions were appropriate and to address issues of consistency for organisations within the sector. Under the terms of reference, the members of the Committee of the Inquiry sought submissions relating to:

- the implications of current social expectations and experience for defining charities and related organisations;
- existing definitions of charities and related organisations used in Australia;
- definitions used in overseas jurisdictions; and
- options for enhancing the existing definitions in Australia.

1.15 While the Inquiry considered definitions used in legislative and administrative practice, the terms of reference did not 'require the Committee to examine or provide options for the appropriate legislative and administrative treatment of charities and related organisations'.⁷ Consequently, it was outside the scope of the Inquiry to examine issues relating to the taxation or other legislative or administrative treatment of organisations within the sector.

1.16 References to 'charity' or related terms were found in 21 Commonwealth Acts and over 100 references were found in State and Territory Acts. The Committee of Inquiry succinctly defined the biggest problem in relation to definitions:

The terms [references to charity or related terms] appear in numerous Acts none of which attempts to define the terms, relying instead either on the common law or the definition of terms used by the legislature and given effect through judicial or administrative interpretation. Some Acts seek to clarify what is meant by the terms within the boundaries set by the common

6 CHOICE Magazine, *Charities*, March 2008, <http://www.Choice.com.au/viewArticle.aspx?id=106240&catId=100268&tid=100008> (accessed 23 September 2008).

7 Inquiry into the Definition of Charities and Related Organisations, *Issues Paper*, http://www.cdi.gov.au/html/issues_paper.htm#scope (accessed 16 October 2008).

law. Others seek to include or exclude particular entities without reference to the common law.⁸

1.17 The Inquiry considered over 300 submissions from the sector during the course of its investigations. The Final Report of the Inquiry was published in accordance with its terms of reference on 28 June 2001. It made 27 recommendations in the following categories: principles to define a charity; defining charitable purpose; application of the principles; other categories in the framework; and administering the definitions. The recommendations from the inquiry are at Appendix 4 and will be referred to from time to time within this report.

1.18 Only three of the recommendations of the 2001 report have been implemented to date. While the current Inquiry into Disclosure Regimes for Charities and Not-for-profit Organisations is not primarily focused on the definitions of charities and related organisations, the issue of disclosure regimes cannot be considered in isolation to the definitions used in the sector.

1.19 To avoid duplication in reporting, the committee commends the 2001 Final Report of the Inquiry into the Definition of Charities and Related Organisations to those who wish to gain an understanding of the history of charities.

Other reviews

1.20 Finally, in undertaking this Inquiry, the committee acknowledges that other reviews are underway that have the potential to affect Not-For-Profit Organisations (see Appendix 5). While the committee respects the expertise applied to those reviews, it remains aware of the fact that none are intended to encompass all aspects of the Sector.

8 Inquiry into the Definition of Charities and Related Organisations, *Chapter 8: Charity and Related Terms in Commonwealth and State Acts*, http://www.cdi.gov.au/report/cdi_chap8.htm (accessed 14 October 2008).