

UnitingCare Australia

Submission to the Senate Standing Committee on Economics

Inquiry into the Disclosure Regimes for Charities and Not-for-profit Organisations

Introduction

UnitingCare Australia welcomes the Senate Standing Committee on Economics' inquiry into the disclosure regimes relating to charities and not-for-profit organisations operating in Australia.

The Terms of Reference of the inquiry include the examination of:

- (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.

The background paper released by the Senate Standing Committee on Economics contained a number of questions for consideration.

UnitingCare Australia's experience is in the charitable sector and the following comments are based on this experience. They relate specifically to the charitable component of the not-for-profit sector.

UnitingCare Australia

UnitingCare Australia is an agency of the National Assembly of the Uniting Church in Australia (UCA). UnitingCare Australia represents the UCA's nationwide network of 400 UnitingCare community services, all of which have charitable status.

The UnitingCare network is one of the largest providers of community services in Australia, providing services to 1.8 million Australians each year, employing 35,000 staff and engaging 24,000 volunteers nationally.

The network provides services to older Australians, children, young people and families, Indigenous Australians, people with disabilities, the poor and disadvantaged, people from culturally diverse backgrounds and older Australians in urban, rural and remote communities.

Submission

The Uniting Care network across Australia is a large employer and provider of services. It is therefore vitally concerned with the future of the charitable sector. It is eager to ensure that the charitable sector is seen not only to be one that provides compassionate services but also is one that can retain the trust of both the community and governments, that its activities are professionally run and the use of funds is transparent. Whilst UnitingCare does not believe the issues that exist across the sector are intractable, the ability of the sector to continue to meet the increasing call on its services from the community is reliant on its ability to maintain a reputation for integrity and honesty. Given the increasing standards of governance now demanded in all institutions and organisations, it is important that the charitable sector be and be seen to be meeting these challenges.

Disclosure regime

As a major provider of services, UnitingCare agencies across Australia are in receipt of a large volume and quantity of grants from both Commonwealth and State governments. As such they are currently subject to a multiplicity of reporting regimes mostly connected to the bodies from which they receive funding. UnitingCare Australia is in favour of a national disclosure regime, provided it replaces the diverse and multiple existing reporting arrangements.

In addition UnitingCare Australia recommends that the disclosure requirements of charities operating in Australia are harmonised across the State, Territory and Federal Governments, and that these be rolled into a single national regime which replaces all other regimes.

Currently in Australia there are many different disclosure requirements being met by charities and not-for-profit organisations. These requirements differ based on activities (i.e. fundraising), legal status of an organisation or the nature of funding an organisation receives (i.e. government grants). Charitable organisations are subject to a heavy burden of reporting and regulation and there is just as much need to reduce 'red tape' in the charitable sector as there is in the business sector.

UnitingCare Australia recognises that for a single national disclosure regime to be implemented, there must be a clear understanding of what information is required to be disclosed and the purpose for which that information will be used so that the appropriate framework can be developed. Compliance with a national disclosure regime would be of assistance if it were accepted as evidence of legitimacy and competency by Governments and other funding bodies when making submissions.

Such a disclosure regime must be developed in consultation with the charitable sector. If such reform is to be welcomed by the sector, it must assist the sector to meet its needs and goals. If it is just imposed as an additional layer of reporting, it will be resented and will importantly have the adverse impact of further diluting the

percentage of dollars that are used for charitable purposes rather than diluting the dollars spent on administrative compliance.

UnitingCare Australia is committed to operating in a transparent environment, ensuring funders and donors and other interested parties are aware of the outstanding contribution the UnitingCare network makes across Australia to some of Australia's neediest people. Thus, UnitingCare Australia believes that a national disclosure regime will potentially assist organisations to improve accountability for their organisation, improve donor confidence and make compliance easier by removing the multiple disclosure regimes that organisations currently are required to address. UnitingCare Australia considers that there should be one national system. However it recognises that a national disclosure regime could impact smaller organisations in an adverse manner should the requirements be complicated or expensive to implement and comply with.

Accordingly UnitingCare Australia recommends that a national disclosure regime contains 'tiers' to ensure small organisations are not burdened with the more complex disclosure requirements of large organisations. UnitingCare Australia recommends that the tier structure be explored further in relation to accounting standards, fundraising reporting standards, taxation registrations and reporting requirements, government grant acquittal reporting and any other annual reporting / lodgement requirements.

Regulatory reform

There are currently diverse legal structures for the not-for-profit sector. This could be streamlined.

Most UnitingCare agencies operate primarily as part of Church structures. Some UnitingCare agencies are unincorporated, some agencies are incorporated at the state level and some are registered as companies with Australian Securities and Investment Commission . This diversity even within UnitingCare illustrates the point that there is not currently a single regulatory structure that suits the diversity even of our own services agencies.

Given the magnitude of government funding including the concessions available under various federal and state revenue statutes together with the extensive fund raising activities (large and small) from the community at large it is only wise that there be appropriate regulation of the sector's activities.

The sector, whilst being asked to deliver more services to more people, is also under increasing financial pressure with staffing costs generally being the single largest cost faced by the organisations. Sustainability therefore requires not only access to more funds in the future but also notable improvements in the way the sector is managed and run. An appropriate regulatory framework is required if sector sustainability is to be achieved. This framework should be applied to all those organisations that are entitled to receive benefits from the public through the taxation system.

Conceptually well considered and clear sets of common and guiding principles for reporting and governance are preferable to lengthy and complex legislation, as demonstrated by the success in increasing the governance standards for publicly listed companies following the introduction of the Australian Stock Exchange's Principles of Good Corporate Governance and Best Practice Recommendations. Given the diversity of not for profit organisations in Australia this approach is more likely to be successful as opposed to the one size fits all legislative framework. Equally self regulation is not an appropriate model for a sector with a wide landscape of participants and competencies.

UnitingCare Australia would support a review of the legal structure / environment surrounding charities and not-for-profit organisations. In principle UnitingCare Australia supports the development of a single national regulator for the charitable sector. We are not in a position to comment on whether this should be applied to the whole not-for-profit sector, but suggest that a national regular should at least in the first instance be for the charitable sector.

It would be beneficial if the current State and Territory based incorporation rules were harmonised and over time integrated into a single national regulator. This will result in consistency and reduced compliance costs for organisations whose activities cross state and territory borders.

The national regulator needs to be independent of the Federal Government and have the jurisdictional power to bind the States and Territories of Australia with its determinations.

UnitingCare Australia does not believe the national regulator should be located within an existing institution such as the Australian Taxation Office or the Australian Securities and Investment Commission. The national regulator also needs to be independently funded from appropriate Government sources.

UnitingCare Australia also believes that such a body should be responsible for making decisions about charitable status. The report of the Inquiry into Definition of Charities (2001) raised concerns about the current role of the Australian Taxation Office. UnitingCare shares the concerns raised in this report. The report recommended that the Government establish an independent administrative body for charities and related entities. This should be implemented. A national regulator, such as an independent Charities Commission could undertake this role. UnitingCare Australia recommends the national regulator be charged with the task of reviewing the definition of what is a charitable institution in today's society and making appropriate recommendations to the Federal Government on its findings.

In reviewing the definition of charitable status, it is imperative that, having established that a primary purpose of an entity is charitable, the national regulator recognises that charities are increasingly required to raise income from a variety of sources and that the means by which this occurs must not put at risk their charitable status. This is a complex area. The ATO are not best placed to undertake this role as

their primary purpose is to raise revenue for the Federal Government. The issue of charitable purpose should be established by a body that is not conflicted in its role.

For a national regulator to be successful, the regulator will need to have the full co-operation of all levels of Government in Australia and be appropriately funded. The regulator will need to ensure its operations are meaningful and that its actions build the capacity of the Australian not-for-profit sector through the improved confidence in the sector by the Australian public. This will be a true measure of its success.

UnitingCare Australia believes the role of a national regulator needs to be comprehensive and cover:

- Education
- Compliance (including determination of charitable status of organisations)
- Enforcement
- Dispute resolution
- Reporting / disclosure regime development and management
- Appropriate governance standards.

Its emphasis should be on capacity building of the sector in recognition of the major contribution of the sector to the Australian community.

UnitingCare Australia recognises this task is extremely important and should be undertaken in consultation with the sector and reference should be made to previous inquiries and their findings such as the Board of Taxation's 2003 report.

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For further information about UnitingCare Australia's submission to the Senate Standing Committee on Economics please contact Lin Hatfield Dodds, National Director UnitingCare Australia, on 02 6249 6717.