



ACOSS Submission | August 2008

Australian
Council of
Social Service

Submission to the Senate Standing Committee on Economics

Inquiry into the disclosure regimes for charities and not-for-profit organisations

ACOSS, August 2008

About the Australian Council of Social Service

The Australian Council of Social Service (ACOSS) is the peak council of the community services and welfare sector. Established in 1956, ACOSS is the national voice for the needs of people affected by poverty and inequality.

ACOSS' vision is a fair, inclusive and sustainable Australia where all individuals and communities have the resources they need to participate in and benefit from social and economic life. The aims of ACOSS are to reduce poverty and inequality by developing and promoting socially, economically and environmentally responsible public policy and action by government, community and business while supporting non-government organisations which provide assistance to vulnerable Australians.

Through its network of National Members, ACOSS links community and welfare services in every corner of Australia by bringing together:

- eight State and Territory Councils of Social Service which represent thousands of front-line community agencies;
- national peak organisations of consumers and service providers;
- national religious and secular welfare agencies; and
- low income consumer groups such as the National Council for Single Mothers and their Children and People with Disabilities Australia.

Introduction

ACOSS welcomes the opportunity to contribute to this historic inquiry - the first inquiry by the Australian Parliament into the unique needs of the Non Profit Sector (the Sector).

This submission focuses on two policy priorities arising from the inquiry terms of reference that are of particular relevance to non profit organisations operating in the community services and welfare sector:

1. Developing regulatory and legal frameworks that support the Non Profit Sector to thrive; and
2. Improving the operating environment for the Non Profit Sector by providing better financial regulation and oversight.

These issues are addressed below and a number of recommendations are made in relation to each.

Developing regulatory and legal frameworks that support the Non Profit Sector to thrive

The Non Profit Sector is a vital part of Australia's civil, social and economic life. The Sector provides a broad range of services and opportunities to Australians, including essential community services and representation and advocacy. Moreover, participation in non profit organisations provides many Australians with essential skills related to civic participation, which enhances our democratic strength.

The unique richness of the Sector's contribution to Australian life demarcates it from the commercial and government sectors. Non profit organisations arise out of shared commitment to a cause, exist for the public good, and are motivated by their mission, not by money. Most non profit organisations also rely heavily on volunteers, who expect no financial reward for their work.

The community values the contribution of the Sector and expects State, Territory and Commonwealth governments to help non profits to flourish through appropriate regulation and concessional treatment. This is reflected in current legislation and regulations, which aim to assist non profit organisations by reducing costs, providing protection for members and directors, and by increasing the confidence of the public to make donations.¹

Unfortunately, regulatory changes have not kept pace with changes in the operation of non profit organisations or the increased diversity of the Sector. The Non Profit Sector is heterogeneous, ranging from small unincorporated groups with no paid staff and minimal income, to large organisations with multi-million dollar budgets and hundreds of employees. The nature of the work undertaken by the Sector also varies; some organisations provide direct assistance, some work to achieve systemic change. Organisations can work nationally but employ relatively few staff, or be based in a local area and employ many. Some organisations receive government grants, most do not. Some organisations are eligible for concessions related to holding Public Benevolent Institution or Deductible Gift Recipient status, others are not.

The National Roundtable of Nonprofit Organisations estimates that there are around 700,000 Not-for-Profit organisations in Australia.² Around 41,000 of these organisations, or less than 6%, have an Australian Business Number.³

¹ National Roundtable of Nonprofit Organisations (2004), pg 2

² From the National Roundtable of Nonprofit Organisations' website:
http://www.nonprofitroundtable.org.au/AM/Template.cfm?Section=About_the_NFP_Sector&Template=/CM/ContentDisplay.cfm&ContentID=3771, accessed 8 August 2008

³ Australian Bureau of Statistics (2008) *Not-for-profit Organisations, Australia, 2006-07*, catalogue number 8106.0,
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Main+Features32006-07>, accessed 8 August 2008

These organisations operate in a wide range of areas, including:

- Welfare Services
- Environment
- Arts and Culture
- Sport and Recreation
- Charities
- Philanthropy
- Advocacy Groups
- Community Associations
- Health
- Housing
- Aged Care
- Children's Services
- Employment Services
- Family Services
- Disability Services
- Social Enterprises
- Aid Organisations
- Indigenous Organisations
- Voluntary Organisations

In 2006/07, the Not-for-Profit Sector accounted for around 8% of the Australian workforce and turned over around \$75 billion per annum.⁴

In 2006, more than 5 million Australians volunteered their time.⁵

Analysis by the Australian Centre for Philanthropy and Nonprofit Studies has found that:

- In Queensland an estimated 80% incorporated associations have fewer than 100 members with total assets and total annual turnover of less than \$50,000;
- In Victoria 26% of incorporated associations have fewer than 20 members and only 9% have annual revenue of \$200,000 or more and assets worth \$500,000;
- A New South Wales review of incorporated associations found that around 66% had an annual income under \$500,000; and,
- Deductible Gift Recipient endorsement returns indicate that 25% of eligible organisations nationally have an annual income of less than \$8,213 and 50% have an income of less than \$55,304.⁶

ACOSS urges the Committee to keep this heterogeneity in mind as the Inquiry progresses.

One thing that is common across all of these organisations is that each operates in a highly complex regulatory environment. The National Roundtable of Nonprofit Organisations has identified that there are more than twenty different ways to incorporate a non profit organisation in Australia; the rules covering fundraising differ across each State and Territory; and the definition of 'charity' urgently needs to be reformed. Perhaps the most complex area, however, relates to the taxation rules for non-profit organisations.⁷

⁴ Ibid

⁵ Australian Bureau of Statistics (2008), *Australian Social Trends, 2008*, catalogue number 4102.0, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter4102008>, accessed 8 August 2008

⁶ McGregor-Lowndes (2008a) on-line material accessed 12 August 2008

⁷ National Roundtable of Nonprofit Organisations (2004), pg 2

The result is an operating environment that is highly confusing and inequitable and which stymies non profit organisations. As a 2004 Review of the Non Profit Sector concluded, if we want a Sector that is 'transparent, accountable and credible' we need laws and regulations that are 'fair, consistent and clear'.⁸

The lack of simple, consistent and equitable regulation has a direct, negative impact on the Sector, resulting in higher compliance costs for no greater protection for stakeholders, including volunteers, donors and the broader community. As a consequence, resources that would have been best used to serve the community, including assistance provided to low income and disadvantages people, are drawn into unnecessary administration and compliance costs.

Existing poorly coordinated regulation constrains the development of the Sector, particularly smaller organisations, and fails to acknowledge the high standards of professionalism in the Sector. The lack of clear and simple regulation also increases the risk that members of non profit organisations may inadvertently break the law.

Reform is urgently needed. As successive governments have committed to reducing the regulatory burden on business, so it needs to give equal priority to working with the Non Profit Sector to reform its operating environment.

A substantial reform project is needed to address those issues raised above: the definition of charity; the overhaul of regulation related to incorporation and reporting; and the taxation and concessionary treatment of non profit organisations.

ACOSS believes that the following recommended reforms would support the Sector to flourish and help non profit organisations develop their capacity to adapt to change.

Recommendations

1. That the recommendations of the *Inquiry into the Definition of Charities and Related Organisations* be implemented.
2. That the introduction of a single, uniform national Act and the creation of a national regulatory body for the Sector be explored by a joint taskforce comprised of representatives of Government and the Non Profit Sector. The taskforce would:
 - consider the development of a single national uniform Act for non profit organisations;
 - consider an appropriate model for a national regulatory body, having regard to international best practice; and
 - consider an appropriate implementation strategy to support the introduction of both initiatives.

⁸ Woodward and Marshall (2004), pg 1

Defining Charities

In its submission to the *Inquiry into the Definition of Charities and Related Organisations* ACOSS noted that the outdated definition of charity and the lack of consistency in its application was a significant barrier to many non profit organisations thriving.

It is unfortunate that seven years later, the recommendations of the Inquiry are still to be addressed.

Modernising and simplifying the definition of charity must be an essential plank in any programme to improve the operation of the Non Profit Sector in Australia.

Single Act, single regulatory body

ACOSS notes international moves to establish single regulatory laws and bodies for the charitable and non profit sectors. For example, New Zealand recently established a New Zealand Charities Commission to:

- Establish and maintain a registration and monitoring system for charitable organisations; and
- Provide support and education to the charitable sector on good governance and management.

The key functions of the New Zealand Charities Commission include:

- Assessment of applications for registration;
- Monitoring of annual returns submitted by charities;
- Making recommendations to Government about charitable sector matters;
- Promoting public trust and confidence in the sector;
- Encouraging best use of charitable resources;
- Educating charities about matters of good governance and management; and
- Promoting research about the sector.

Research in Australia has identified a need for similar support among non profit organisations. In a survey in 2004, registered non profit companies nominated areas in which they wanted additional support services, including financial and taxation advice, including advice on audits; legal advice; governance training; and dispute resolution and mediation.⁹

ACOSS recommends that a Non Profit Commission be established in Australia. The purpose of the Commission would be to encourage the formation and effective running of non profit organisations and to improve the standing of the Sector. The Commission could further be tasked with administering a single Non Profit Act nationally.

⁹ Woodward and Marshall (2004), pg 2

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By advocating the exploration of a single national Act and a single regulating authority ACOSS is not advocating for 'one size fits all' policies and regulations. The Act and the authority would need to be responsive to the diversity of the Sector, particularly variations in purpose, numbers of paid and unpaid staff, and levels of income.

The idea of a single Act and regulatory body should be explored by a joint taskforce comprised of representatives of Government and the Non Profit Sector. The taskforce would:

- consider the development of a single national uniform Act for non profit organisations;
- consider an appropriate model for a national regulatory body, having regard to international best practice; and
- consider an appropriate implementation strategy to support the introduction of both initiatives.

The duties of the Australian Non Profit Commission could include:

- Improving the process of incorporation, ensuring that small organisations could experience the benefits of incorporation without facing high compliance costs;
- Developing guidelines and regulations around which organisations must incorporate, taking into account staffing levels, level and source of income and the organisation's operational focus;
- Providing guidance to boards and committees of management to allow them to fulfil their duties;
- Developing risk management processes that are commensurate to the risks involved; and
- Preparing plain language model replaceable rules for non profit organisations, supported by plain language guidelines.

Developing a Sector-specific regulatory body would be cost effective as it would streamline regulatory and compliance processes, make research on the Sector easier, and improve the monitoring of tax exemptions and other concessions available to the Sector.

Improving the operating environment for the Non Profit Sector by providing better financial regulation and oversight.

The terms of reference to the Inquiry include “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 provision of the right amount of reliable and accessible information is critical for non profit organisations to retain the trust and confidence of their stakeholders, which can include clients, members, donors, the broader community and government funding bodies. Quantity of information is not as important as providing the right information; the information must be relevant to the organisation’s stakeholders. Given the unique role of the Non Profit Sector it is unlikely that their disclosure requirements will be the same as that required of for-profit organisations. For example, non profit organisations need to be able to account to their members and donors and funders (where applicable) for how their activities have furthered their missions. A statement of accounts alone is insufficient for this.

Improving regulation, including requiring more transparent disclosure, will result in a welcome increase in donor confidence in the Sector. However, it will also have other, equally important outcomes. The National Roundtable for Nonprofit Organisations has identified other benefits of reform, including increased employment and volunteering, enhanced Sector capacity and integrity and increased efficiency.¹⁰

In relation to non profit organisations’ use of government funding, ACOSS rejects the suggestion that there is a lack of accountability. Community service and welfare organisations hold themselves to strict contractual and reporting requirements for funding they receive from governments and other sources of funding.

The real challenge for improving the use of Government funding is changing current Government practice. The imposition by Government of poorly formulated reporting and accountability frameworks limit the capacity of non profit organisations to innovate and introduce best practice. For example, organisations are offered contracts that focus rigidly on outputs, instead of outcomes, and include performance indicators that bear little or no relationship to the nature of the work undertaken by the organisation.¹¹

The impact of poor contracting was recently illustrated in the Australian Government’s 2008 Review of the Job Network.¹² The Review acknowledged:

“inflexibility... is as much a result of contractual and other requirements imposed on providers, as it is about the model itself”

“administrative burden and red tape... and an over-emphasis on processes rather than outcomes reduces the capacity of providers to service job seekers”

¹⁰ National Roundtable of Nonprofit Organisations (2004), pg 3

¹¹ For a detailed look at the deficiencies in current contracting arrangements, see McGregor-Lowndes (2008b)

¹² Australian Government (2008), pages 6-8

“current contract arrangements and incentives skew employment provider behaviour”

The effect of unnecessary and overly restrictive limitations being placed on organisations’ use of Government funding was well summarised by one submission to the Review, cited in the report:

Over the last 10 years program guidelines have become more prescriptive and rigid as the degree of micro-management has grown and innovation has been stifled. Contract management has increasingly focused on the fine detail of service providers’ processes in contrast to the original premise of relying on the skills and innovation of the private and community sectors. The financial cost of this excessive prescription and reporting is borne by government and providers and is obvious.

Less tangible but equally important is the limitation on the overall effectiveness of employment services attributable to the throttling of innovation.¹³

This illustrates well the danger of confusing increased rules with increased efficiency or effectiveness.

It is vitally important that proportionality is maintained between the level of risk to the Government and the public, and the level of oversight required. For example, federally funded organisations have recently been asked to comply with new departmental finance reporting rules that have effectively doubled some organisations’ auditing costs.

Any recommendations related to reporting and disclosure made by the Committee must be sensitive to differences in size and professionalism within the Sector.

ACOSS refers the Committee to the findings of the Australian Centre for Philanthropy and Nonprofit Studies, cited above, which show that the great majority of non profit organisations are small and completely reliant on volunteer labour. It is estimated that less than half of the Sector is incorporated¹⁴ and less than 6% employ staff.¹⁵ The input of Australia’s volunteers is extremely valuable - in 1999/00, this work was estimated to contribute \$8.9 billion to non profit organisations.¹⁶ We cannot waste this resource through compliance with unnecessarily onerous red tape.

In terms of funding, ACOSS members have identified barriers related to raising capital funding and pooling operational funding that place its long term viability at risk. This could be addressed through the proposed Australian Non Profit Commission.

¹³ Australian Government (2008), page 8, citing the Jobs Australia submission to the Review

¹⁴ From the National Roundtable of Nonprofit Organisations’ website (undated):
http://www.nonprofitroundtable.org.au/AM/Template.cfm?Section=About_the_NFP_Sector&Template=/CM/ContentDisplay.cfm&ContentID=3771, accessed 8 August 2008

¹⁵ Australian Bureau of Statistics (2008a), online document accessed 8 August 2008

¹⁶ Australian Bureau of Statistics (2008b), online document accessed 8 August 2008

ACOSS disagrees that standards of governance in the community services and welfare sector are below that of the corporate and government sectors. Our sector offers models of some of the most effective governance in the country, especially for inclusive and democratic decision making. Of course, there is always room for improvement and it would be the role of the proposed Australian Non Profit Commission to help foster an environment of high standards and ethics, coupled with sensible compliance.

Recommendations

3. That a Non Profit Sector Red Tape Reduction Programme be developed by the Commonwealth, State and Territory Governments, in cooperation with the Sector, to improve contractual and reporting processes. This could form part of a work plan under the proposed Compact between the Government and the Non Profit Sector.
4. That the Non Profit Commission, proposed above, work with the Non Profit Sector to identify ways to improve the Sector's access to capital funding.

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Australian Council of Social Service
Locked Bag 4777, Strawberry Hills, NSW, 2012
Ph (02) 9310 6200 Fax (02) 9310 4822
info@acoss.org.au www.acoss.org.au