



We build strong **PEOPLE**  
strong **FAMILIES** strong **COMMUNITIES**

Submission to the Senate Standing Committee on Economics

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

August 2008

### (i) Introduction

YMCA Australia welcomes the opportunity to provide our input to the Senate Standing Committee on Economics *Inquiry into the Disclosure Regimes for Charities and Not-for-profit Organisations*.

YMCA Australia is a community-based not-for-profit organisation that delivers programs and services to help build strong people, strong families and strong communities across Australia. The YMCA operates in over 500 locations across Australia and during 2007 an estimated 2.2 million Australians accessed a YMCA facility or service.

As one of Australia's oldest and most well-established not-for-profit organisations, YMCA Australia has a continued and keen interest in all developments in the not-for-profit sector and the YMCA has provided previous submissions:

- to the *Inquiry into Definitions of Charities and Related Organisations, 2001*; and
- in response to the Exposure Draft of the *Charities Bill, 2003*.

In relation to this current inquiry, the YMCA also acknowledges the substantial body of work undertaken to date by the Australian Council of Social Service and other peak not-for-profit bodies in documenting and advocating the views of the community sector regarding proposed legislative and regulatory change.

YMCA Australia also welcomes this inquiry in the context of the Australian Government's Social Inclusion Agenda and expressed willingness to engage collaboratively and constructively with the not-for-profit sector.

**(ii) Summary of Recommendations**

- Recommendation 1: the Australian Government commence a process of legislative and regulatory harmonisation of Commonwealth and State/Territory legislation relating to the reporting requirements of not-for-profit organisations as an essential first step;
- Recommendation 2: efforts are made to ensure the above process of harmonisation incorporate reporting according to Australian Accounting Standards as a minimum requirement;
- Recommendation 3: in acknowledgement of the varying sizes, structures and operations of not-for-profit organisations, that national standardisation of reporting requirements be developed within a tiered framework in terms of the level and depth of reporting required, ensuring that an accepted minimum standard is adhered to;
- Recommendation 4: in the development of national reporting standards for not-for-profit organisations there needs to be differentiation between organisations that receive predominantly public donations and those that do not (where income is predominantly derived from government grants and or self-funding activities); and
- Recommendation 5: any nationalisation of reporting standards reflect the Federal Government's commitment to reducing the regulatory burden on the not-for-profit sector.
- Recommendation 6: the Australian Government initiates appropriate legislative measures to establish an independent national body to oversee the accreditation, regulation and administration of not-for-profit organisations and related entities;
- Recommendation 7: a national independent regulatory body be located outside Government and be separate from existing taxation authorities;

- Recommendation 8: any process of accreditation of not-for-profit organisations incorporates a Code of Ethical Conduct, encompassing:
- transparency of charities, including disclosure and publication of financial details;
  - a prohibition against performance-based payments to staff and directors, including bonuses and shares of fundraising revenues; and
  - a requirement for public involvement in management, and the disclosure of information about governance;
  - a prohibition against involvement in harmful activities.
- Recommendation 9: any development of an independent national regulator involves substantive and meaningful consultation and involvement from the not-for-profit sector.
- Recommendation 10: the Federal Government continues its commitment to the development of a 'Compact' between the Government and the not-for-profit sector;
- Recommendation 11: as part of the 'Compact' the not-for-profit sector makes a commitment to endorsing a National Not-For-Profit Code of Ethical Conduct;
- Recommendation 12: the Federal Government take appropriate steps towards implementing the outcomes and the 27 recommendations of the Report of the Inquiry into the Definition of Charities and Related Organisations (June 2001);
- Recommendation 13: the Federal Government commit to increased funding to support the development, training, resourcing and retention of not-for-profit Boards and to elevate public recognition of and increase participation on voluntary Boards.

## **Section 1: The relevance and appropriateness of current disclosure regimes**

### **The structure of the YMCA in Australia**

The YMCA in Australia operates under a federated structure overseen by a national body (YMCA Australia) with 34 independent YMCA Associations that operate in each State and Territory.

YMCA Australia is registered with the Australian Securities and Investments Commission (ASIC) as a Public Company Limited by Guarantee, is subject to the Corporations Act (2001) and is an Income Tax Exempt Charity (ITEC).

Independent Associations of the YMCA are Incorporated Associations and are subject to their respective state or territory legislation. In 2000, every YMCA Association was confirmed by the Australian Taxation Office as an income tax exempt charity. While YMCA Australia (national body) does not have Deductible Gift Recipient (DGR) status, some smaller YMCA Associations do and some are also classified as Public Benevolent Institutions (PBI).

Each independent Association is licensed to operate as a YMCA and as such is required to adhere to a range of strategic, governance and financial reporting standards.

### **The YMCA – current disclosure regimes and reporting requirements**

Under the Corporations Act (2001) YMCA Australia is required to provide annual audited accounts and is required to report according to Australian Accounting Standards.

While independent YMCA Associations are subject to various state and territory legislation and are therefore not required to adhere to a standardised reporting regime, YMCA Australia stipulates that each Association report according to Australian Accounting Standards. In this respect, YMCA Australia is committed to developing and maintaining good governance standards and practices ensuring that a high level of transparency and accountability is upheld by all YMCA Associations. This often means that YMCA Associations are reporting according to higher standards than would be expected by current state or territory legislation.

The size of YMCA Associations differs greatly in terms of staff and turnover. The largest YMCA Association has over 3,800 paid staff and an annual income of over \$100 million compared with one of the smallest YMCA Associations which has four paid staff and an annual income of \$160,000.

In acknowledgement of these significant differences across the organisation, YMCA Australia has made some exceptions in terms of reporting requirements and some of the smaller and less established YMCA Associations are exempt from a number of reporting elements.

## **Our current concerns**

YMCA Australia's concerns regarding current disclosure regimes include, but are not limited to:

- a lack of consistency across state and territory legislation and regulation in relation to disclosure requirements;
- a concern that current legislation does not (for the purposes of reporting) distinguish between not-for-profit organisations that derive the majority of their funds from public donations and not-for-profit organisations that derive the majority of their funds from government grants and/or self-funding activities;
- a concern that while placing additional reporting requirements regarding the use of public donations or gifts may increase the level of transparency and public accountability for some charitable organisations, placing similar requirements on other not-for-profit bodies organisations that do not rely on public gifts or donations would result in an additional level of regulatory burden that may detract from or diminish the delivery of programs and services; and
- a concern that this inquiry may result in further regulation of the not-for-profit sector at a time when the Federal Government has indicated a strong willingness to reduce the regulatory burden on the sector as part of its Social Inclusion Agenda.

## **Recommendations**

In relation to the above concerns, YMCA Australia recommends that:

- Recommendation 1: the Australian Government commence a process of legislative and regulatory harmonisation of Commonwealth and State/Territory legislation relating to the reporting requirements of not-for-profit organisations as an essential first step;
- Recommendation 2: efforts are made to ensure the above process of harmonisation incorporate reporting according to Australian Accounting Standards as a minimum requirement;
- Recommendation 3: in acknowledgement of the varying sizes, structures and operations of not-for-profit organisations, that national standardisation of reporting requirements be developed within a tiered framework in terms of the level and depth of reporting required, ensuring that an accepted minimum standard is adhered to;

Recommendation 4: in the development of national reporting standards for not-for-profit organisations there needs to be differentiation between organisations that receive predominantly public donations and those that do not (where income is predominantly derived from government grants and or self-funding activities); and

Recommendation 5: any nationalisation of reporting standards reflect the Federal Government's commitment to reducing the regulatory burden on the not-for-profit sector.

## **Section 2: Regulatory Reform**

As discussed in the previous section, YMCA Australia is supportive of a process of regulatory reform in the not-for-profit sector that does not impose additional or undue administrative burden that may diminish the capacity of organisations to deliver programs and services to the community.

### **Our current concerns**

YMCA Australia has expressed concern in the past about:

- the role of Commonwealth and State taxation authorities in regulating the charitable or PBI status of not-for-profit organisations and determining the eligibility of organisations to certain tax concessions;
- the inherent conflict of interest for taxation authorities in determining the legitimate eligibility of not-for-profit organisations to be recognised with charitable or PBI status and the desire of the taxation authority to protect its revenue; and
- the level of duplication and inconsistency that occurs when Commonwealth and State authorities independently apply the same definitions to the same organisations for different purposes.

### **Recommendations**

To address these above concerns, YMCA Australia recommends that:

- Recommendation 6: the Australian Government initiates appropriate legislative measures to establish an independent national body to oversee the accreditation, regulation and administration of not-for-profit organisations and related entities;
- Recommendation 7: a national independent regulatory body be located outside Government and be separate from existing taxation authorities;
- Recommendation 8: any process of accreditation of not-for-profit organisations incorporates a Code of Ethical Conduct, encompassing:
- transparency of charities, including disclosure and publication of financial details;
  - a prohibition against performance-based payments to staff and directors, including bonuses and shares of fundraising revenues; and
  - a requirement for public involvement in management, and the disclosure of information about governance;
  - a prohibition against involvement in harmful activities.
- Recommendation 9: any development of an independent national regulator involves substantive and meaningful consultation and involvement from the not-for-profit sector.

### **Section 3: Additional measures to improve governance, standards, accountability and transparency**

#### **YMCA Standards of Governance**

YMCA Australia is committed to high standards of governance, accountability and transparency within our own organisation and we strive for continued improvement in this area. In this respect, we believe the licensing and review model we apply to each of our 34 independent member Associations is a highly effective and unique measure to ensure the adherence to acceptable standards of management, governance and service to the community.

This process of Membership Review involves:

- (i) conducting a review of each member Association every three years (or at an earlier juncture if required or requested);
- (ii) examining the operations of each member Association according to three focal areas: mission focus, social/community relevance and institutional/financial viability which may include (but is not limited to) ensuring that:
  - the YMCA mission and values are reflected in services and programs;
  - there are formal mechanisms to guarantee accessibility to all people in the community;
  - the Association Board is acting in accordance with its constitution and fulfilling all legal responsibilities;
  - members of each Association Board have maintained YMCA Reporting Compliance Requirements;
  - programs and services accurately reflect the diversity, demographic and social needs of the local community;
  - a process of strategic planning is undertaken regularly;
  - all programs and services are compliant with Commonwealth and State legislation, industry and YMCA best practice;
  - adequate and appropriate data is collected about program and service delivery;
  - all Associations adhere to Commonwealth and State legislation regarding human resources management;
  - an annual financial audit is completed by a registered auditor;
  - the Association has endorsed the National Risk Management and Occupational Health and Safety Policies (OHS) or an approved equivalent;
  - the Association has endorsed and fully implemented a Safeguarding Children and Young Person Policy (Child Protection Policy); and
- (iii) making a recommendation that membership continue, that membership continue with certain conditions or that membership of YMCA Australia be suspended or terminated.

We believe this process of review and internal audit is an essential component in ensuring that YMCA Australia remains accountable to the community and to government.



## Recommendations

YMCA Australia believes that a range of measures may be implemented by both Government and the not-for-profit sector which would enhance standards of governance, accountability and transparency. With respect to this, YMCA Australia recommends that:

- Recommendation 10: the Federal Government continues its commitment to the development of a 'Compact' between the Government and the not-for-profit sector;
- Recommendation 11: as part of the 'Compact' the not-for-profit sector makes a commitment to endorsing a National Not-For-Profit Code of Ethical Conduct;
- Recommendation 12: the Federal Government take appropriate steps towards implementing the outcomes and the 27 recommendations of the Report of the Inquiry into the Definition of Charities and Related Organisations (June 2001);
- Recommendation 13: the Federal Government commit to increased funding to support the development, training, resourcing and retention of not-for-profit Boards and to elevate public recognition of and increase participation on voluntary Boards.

#### **Section 4: Conclusion**

YMCA Australia is encouraged by both the content and timing of this inquiry in terms of the broader process of reform for the not-for-profit sector and relationships between the “third sector” and Government.

We hope the outcomes of this inquiry will reflect a genuine willingness and commitment on the part of the Federal Government to enhancing the strength of the not-for-profit sector and increasing public confidence in and recognition of the critical contribution the not-for-profit sector makes to the Australian community.

YMCA Australia looks forward to the outcomes of this inquiry and would welcome further discussion with the Committee on any aspects of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Cox', with a small flourish at the end.

Nick Cox, Acting CEO  
YMCA Australia