

Inquiry into the Disclosure regimes for Charities and not-for-profit organisations

Submission from Community Information Strategies Australia (CISA) Inc

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Senate Economics Committee
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Closing date for submissions: Friday 29 August 2008.

On 18 June 2008, the Senate referred the Disclosure regimes for Charities and not-for-profit organisations to the Senate Standing Committee on Economics for report by the last sitting day of November 2008. The inquiry will examine:

- (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.

CISA BACKGROUND

1. Community Information Strategies Australia (CISA) Inc has operated in SA for over 27 years. It began with a key purpose of developing and maintaining a database of state-wide and regional community services organisations (and their services) and supporting community information providers in SA.
2. CISA is an incorporated nonprofit association registered in South Australia. It is managed by a community-based Board drawn from people with an interest and background in community information and technology. CISA currently has eight staff plus a contract book-keeper. In addition to the CEO, one staff member manages our community information projects www.sacommunity.info , one manages our communications and marketing, four are engaged in our technology information programs - Communit www.communit.info , Connecting Up www.connectingup.org , and DonorTec www.donortec.com.au - and one staff member is employed under a 2-year DBCDE Clever Networks project to increase broadband knowledge and usage in regional and remote SA nonprofits.
3. CISA has been continuously subsidised by successive State governments to carry out its SA community information tasks.
4. With the introduction of computers and electronic databases in the 1990's, CISA's role broadened to include the development of specialist directory software and providing basic IT support to community information providers and, later, the community sector in general on a national basis.

5. In May 2004 CISA conducted the first national conference on community sector IT issues, Connecting Up, and this has been repeated annually.

6. In 05-06 CISA was awarded a DCITA national consultancy to lead a consortium study on the possibility of establishing a National Nonprofit ICT Coalition. Unfortunately neither the previous government nor the current one has shown any interest in funding the recommendations arising from that report.

8. In 07-08 CIA launched the DonorTec technology donations program in partnership with US nonprofit TechSoup, which channels donations from technology donors such as Microsoft and Cisco to nonprofit organisations. To date technology donations to over 2000 Australian nonprofits have delivered savings in excess of \$26m to be used in other areas of their vital work.

9. In summary, we have consistently attempted to be pioneers and innovators in information and communications technologies focused on the nonprofit sector and the people they serve but we have been bedevilled by the lack of consistent funding from both State and Federal levels and the unwillingness of any particular Minister to 'own the issue', unlike the approaches taken in the UK and New Zealand.

Why a disclosure regime and reform of charity classifications is important in our view

1. The urgent need for a national database of nonprofits

It is extraordinary in 2008 that a sector that represents 4.7% of Australia's GDP cannot be measured. What cannot be measured cannot be:

- a) Made consistently accountable for the tax and donation dollars they spend (and for the taxes they don't pay).
- b) Assisted to increase its skills and capacity
- c) Researched to determine its activities and successes (or otherwise)

The absolute minimum building block for any real change is an accurate and rigorously maintained publicly-accessible national directory of nonprofit organisations. At a minimum, such a directory should be:

- Fully searchable by those seeking services
- Contain a unique identifying number (e.g. ABN) that must be used in all dealings with government, business and the public, as occurs in other countries

- Contain a minimum of full address and contact details, services/activities coded in a uniform manner, current senior staff and Board members, tax status, and financial details e.g. last annual financial statement prepared in accordance with a uniform national standard

- Legally compulsory for organisations to keep details current

We submit that the bulk of this data is already currently held by a range of Federal and State agencies, as well as organisations like ours with the SA community services database Infosearch www.infosearchweb.com , and that a concerted effort could create the core of such a project relatively quickly. CISA stands ready to assist in such a project.

2. The need to broaden the definition of charity for tax deductibility purposes

Unlike the US, UK, Canada and New Zealand, organisations on Australia have to be directly serving individuals to qualify for tax deductibility, which is a throwback to the days of alms-giving and one which does not reflect the needs of a modern society. Thus organisations like our own (and many others) who serve communities or other nonprofits generally are excluded from Deductible Gift Recipient (DGR) status. This leads to anomalies such as arts or sports or school groups serving a tiny minority of their communities achieving DGR status while an organisation providing information and support to a broad national audience cannot.

Unless of course they find out about the fact that some organisations can be specifically named by Parliament as having DGR status and can then cope with the fact that there is no information or guidelines anywhere as to how to go about achieving such a thing.

So why is DGR status important? While individual taxpayers are largely unconcerned with claiming deductions for their donations, the holders of substantial sums are very concerned indeed. Major companies and philanthropic trusts as a matter of policy and/or law do not support non-DGR organisations, thus locking out 70% of Australia's nonprofits from their support.

(Note – the proliferation of discretionary trusts following recent tax changes is worthy of a whole inquiry in itself – where is their accountability?)

3. Increasing the capacity for the nonprofit sector

The [NNIC 3-Step report](#), prepared by a consortium led by CISA in 2006, contains basic recommendations for increasing the technology capacity of the sector that remain current today. While the structures required to deliver such recommendations may need amendment in the light of current circumstances, including the enfolding of these into a broader capacity development strategy for the sector, the core issues remain, namely:

- The sector delivers a broad range of services on behalf of government and it should be required to maintain, and be funded to maintain, standards of information technology efficiency, public accessibility, and security commensurate with that required of governments
- Access to adequate broadband technologies, low-cost VoIP technologies and ongoing technical support is essential to achieve the above
- Strategic IT planning skills are lacking in senior nonprofit staff and in their Boards, and staff IT skill levels are poor, exacerbated by the lack of affordable IT skills development for the majority of organisations. This latter point is particularly noticeable in Indigenous organisations.

Of course capacity development must also address other key areas such as financial practices, governance, staff training and development etc

Models to achieve these outcomes exist in other countries (e.g. [UK Capacity Builders program](#)) and CISA has brought speakers from other countries here consistently to contribute to local debates, via its Connecting Up conferences and specialist senior management workshops, and CISA staff have travelled to the US, UK, South Africa, Hong Kong and New Zealand to study these schemes. The Federal and State governments have made modest contributions to these initiatives but have shown no willingness to commit to a comprehensive strategy. Again CISA stands willing to actively participate in discussions to activate plans suitable to our environment.

Responses to 'Questions for consideration' raised in the Background Paper

1. Are current disclosure regimes for not-for-profit organisation adequate?
No

If not, why not?

They do not provide sufficient accountability for funds derived from the public, either via direct donations or indirectly via government expenditure of tax-derived funds.

2. What would be the potential advantages and disadvantages for not-for-profit organisations of moving towards a single national disclosure regime? How might any disadvantages be minimised?

Advantages

- a) Minimise reporting requirements
- b) Australia-wide searching capacity
- c) Transparency and accountability

Disadvantages

Nil

3. Would a standardised disclosure regime assist not-for-profit organisations who undertake fundraising activities, and who operate nationally, to reduce their compliance costs if it meant that they would only have to report on fundraising to a single entity (rather than reporting to each state and territory)?

Yes. See above

4. If there was to be a nationally consistent disclosure regime, should it apply across all not-for-profit organisations or should different regimes apply to different parts of the sector? For example, should charities be treated differently than other not-for-profit entities?

Yes, where organisations are accepting public and/or government funds and/or receiving tax relief of any kind.

5. If different regimes were to apply to different parts of the sector, how would this be determined and why? For example, would it be based on classifications . i.e., as a charity or deductible gift recipient . or would different regimes apply to different organisations based on their annual financial turnover or staffing levels (or some other proxy for size and/or capacity)?

It should apply to all, irrespective of size. If an organisation is too small to be accountable it is too small to be operating. Exceptions could include State and Federal offices reporting on behalf of essentially volunteer-based subsidiaries e.g. service clubs, Scouts etc

6. Does there need to be regulatory reform of the not-for-profit sector?

Yes

7. Are there alternative (non regulatory) measures that might be taken by government and the not-for-profit sector to address some of the concerns raised by groups such as *Choice* about the governance, standards, accountability and transparency of not-for-profit organisations who use public and/or government funds?

In addition to, not instead of, regulation there should be voluntary codes of conduct and standards agreed to across the sector.

8. Who should be responsible for progressing and/or funding these measures?

The Federal Government, as it does with ASIC and other regulators.

9. How might the uptake of any such measures be monitored?

Via the requirement of an annual return reporting on measures taken e.g. an organisation would either attest that it complies with 'Industry Standard 123' or report on how else it meets an equivalent or greater standard.

10. What should be the objectives of reform?

- a) Increase the capacity of nonprofit organisations to be compliant with measures introduced, though training, funding for appropriate technology etc

b) Increase the confidence of the Australian public that investments they make are subject to appropriate accountability mechanisms.

11. Are their minimum requirements that must be met in order for a national regulatory system to be worthwhile?

- a) It must be universal and compulsory
- b) It must link with the Australian Business Register
- c) All activities must be traceable via an organisation's ABN or a unique Charity Number.
- d) The details need to be publicly available at no cost (as distinct from being sold off to a private company that charges for access, as in the US)

12. Should regulatory reform apply to the whole not-for-profit sector, or only to segments of the sector? For example, to charities; to bodies receiving public funds, whether through grants or tax concessions; to bodies with a financial turnover above a specified threshold etc?

Yes, the whole sector.

13. Where should the impetus for reform come from? Who should drive reform?

It can only come from the Federal Government. The sector has no true body that can legitimately speak on its behalf across all types of nonprofit activities (and that includes the Nonprofit Round Table).

14. What sort of consultation should be conducted on the nature of any regulatory reform? How could input be facilitated from across the broad range of organisations who comprise the not-for-profit sector?

A set of firm proposals should be published online and in print and submissions invited. Peak bodies should be required to consult with members and make joint submissions if they choose. The bottom line is that this should not require a major roadshow or extensive timelines. The core of what is required has been readily agreed by most people for years and is happily in place in three other Commonwealth countries and the US. It is difficult to understand why Australia is unique in its lack of need for accountability.

15. Are their particular models of regulation and/or legislative forms that would be useful, in the Australian context, in improving governance and management of charities and not-for-profit organisations and in catering for emerging social enterprises? What are the perceived advantages and/or disadvantages of these models?

Strong consideration should be given to examining the Capacity Builders model in operation in England www.capacitybuilders.org.uk. Their site sets out the history of the development of their model for building capacity in the nonprofit sector, while linking to Treasury imperatives at the same time.

<http://www.capacitybuilders.org.uk/content/AboutUs/OriginsofCapacitybuilders.aspx>

Their work should also be seen in the context of the [UK Charities Commission](#) reforms of 2006.

16. Should there be a single national regulator for the not-for-profit sector?

Yes

17. Should a national regulator be responsible for the entire not-for-profit sector or only the charitable sector?

The entire sector.

18. Should the regulator be independent of government?

Yes.

19. Where would the regulator be best located? For example, as a stand-alone agency or located within an existing institution, such as the Australian Securities and Investment Commission.

As a stand-alone agency i.e. a Charities and Nonprofit Sector Commission.

20. What would be the role of a national regulator? For example, should it have an:

- educative/advisory role?

Yes

- enforcement role?

Yes

- mediation/dispute resolution role?

Only in relation to disputes involving other regulatory agencies e.g. ATO, ASIC etc

21. Should a national regulator be responsible for making decisions about charitable status?

Yes

22. How should any national regulator be funded? For example, by the federal government, by federal, state and territory governments, on a cost recovery basis?

By the Federal Government. Costs should only be recovered in instances of non-compliance e.g. late fees.

23. Should there be a single, specialist, legal structure for the not-for-profit sector?

Yes

24. If so, would this be best achieved through:

- a) A national legislation scheme, whereby current national and state and territory laws relating to the not-for-profit sector are harmonised into uniform law?

No

or

- b) The referral of powers from the states and territories to the Commonwealth, allowing for incorporation of current laws relating to the regulation of the not-for-profit sector, for example, incorporations Acts and fundraising Acts, into Commonwealth legislation?

Yes

- c) What should be the minimum features of any legal structure?

A Board of Governance or Commission chosen for both its expertise and commitment to the nonprofit sector as the vital third element on society.