
Trustee Corporations Association of Australia

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

**Submission to Senate Standing Committee
on Economics**

September 2008

Introduction

The Trustee Corporations Association (TCA) is the peak representative body for the trustee corporations industry in Australia.

It represents 17 organisations, comprising all 8 regional Public Trustees and the great majority of the 10 private statutory trustee corporations (see Attachment).

We are pleased to provide comments to the Senate Economics Committee in respect of its Inquiry into the Disclosure Regimes for Charities and Not-for-Profit Organisations.

Background

Our members have a long history of involvement in and promotion of the philanthropic sector.

They bring considerable professional expertise and resources to the trustee role, which includes investment management, assessing grant applications and making distributions.

They are subject to various governance and accountability obligations under common and statute law (the *Trustee Companies Act*, *Public Trustee Act* and *Trustee Act* in the various States and Territories)¹.

Trustee corporations carry heavy fiduciary responsibilities and must exercise the care, diligence and skill of a prudent person engaged in the business of managing other people's financial affairs.

TCA members currently act as trustee (or co-trustee) for about 2,000 charitable trusts and foundations with aggregate assets worth about \$3.7 billion.

The charitable trusts and foundations that they manage are mainly what might be called 'accumulation' Deductible Gift Recipients. Those vehicles have been established solely to provide private monies for charitable purposes and generally do not engage in public fundraising.

¹ In March, the Council of Australian Governments (COAG) agreed that the Commonwealth would assume responsibility for regulating private trustee corporations. The two approaches being considered are a 'consumer protection and disclosure' model under ASIC or prudential supervision under APRA.

They do not deliver goods and services themselves – rather, they make cash distributions to charitable organisations, or ‘doing’ DGRs, which actually deliver particular goods and services to beneficiaries (eg shelter and food for the homeless)².

During 2006/07, TCA members made distributions totaling over \$280m to a wide range of worthy causes.

In order to prudently carry out their grant-making function, trustees need access to relevant information about the governance and financial standing of prospective recipients.

The NFP sector

The NFP sector plays an important role in society and, as a consequence, enjoys significant tax concessions.

The availability of those concessions, and the fact that many NFPs also accept donations from the public, warrants appropriate standards of governance, disclosure and accountability for the sector.

As noted in the Committee’s background paper, the sector is made up of a very large number of diverse entities, subject to differing regulatory regimes.

We feel that there clearly is scope to ‘tidy up’ the structure of the sector, with a view to facilitating better community insight into NFP operations and more consistent, efficient and equitable regulation.

However, while a single legal structure for NFPs might be seen as desirable, we do not see that such an approach is necessary or practical, provided an appropriate reporting and disclosure regime is applied to the sector.

Governance and disclosure

Irrespective of the allowable legal structures, we suggest that the NFP sector could be divided into 2 categories, for the purpose of setting appropriate

² Prescribed Private Funds are a relatively new type of accumulation DGR. They are designed to promote private philanthropy and are not obliged to seek donations from the general public. PPFs are required to provide an annual information return to the ATO, which has released aggregate annual data on PPF donations received, distributions (broken up into several categories of recipients) and closing value of those funds. That data do not allow an assessment to be made of the performance of individual PPFs.

governance and disclosure requirements, based on the nature of their activities, ie:

1. community groups such as gardening clubs, sporting clubs etc, which operate mainly on the basis of their members' subscriptions with minimal public fund raising.
2. charitable organisations, which have a 'social investment' purpose and usually engage in regular public fundraising.

We acknowledge that there would be some 'grey' areas in terms of placing particular entities in either Category 1 or 2, but this should not prove insurmountable.

It is suggested that higher governance standards and greater disclosure should apply to Category 2 entities, given their role and their public fundraising activities.

Donors (and potential donors) to charities generally should have access to relevant information about how they are being run, including how donations are being spent, and an indication of their impact, ie: the extent to which they are achieving their goals.

In addition, in order not to impose unreasonable compliance burdens, consideration could be given to each of those 2 categories being further divided into 'small' and 'large' entities, eg based on their assets or annual revenue / expenditure. More stringent obligations should apply to the larger entities.

We agree that there would also be merit in a specific financial reporting regime being developed for NFPs, as against the framework that has been designed for corporations in general.

A consistent accounting standard for the sector would underpin the 'differential' disclosure approach suggested above.

National approach

We believe that, from an efficiency perspective, it would make sense to move to a national approach to NFP regulation, replacing the various pieces of inconsistent regional legislation with one piece of Commonwealth legislation.

A national regime would, of course, require the cooperation of the State and Territory governments, which has been forthcoming in other areas of regulatory reform.

In addition, we support the concept of a national regulator to oversee such a national scheme.

We understand that the ATO does not wish to take on this role.

Some of our members suggest that this role could be added to ASIC's functions (this option would avoid the creation of another regulator).

Other members support the option of a specialist independent Charities Commission, as has been established in NZ and the UK for example.

The NZ and UK bodies act as registrar and regulator of charities and seek to promote confidence in the sector by ensuring that charities:

- meet the legal requirements for being a charity
- are being run for public benefit
- observe sound governance practices
- maintain proper records and accounts
- make available to the public information on their activities and (subject to a size threshold) their finances

We do not believe that an Australian Charities Commission would need to be a large organisation.

Attachment

TCA Members

- ANZ Trustees Ltd
- Australian Executor Trustees Ltd
- Elders Trustees Ltd
- Equity Trustees Ltd
- National Australia Trustees Ltd
- Perpetual Ltd
- Public Trustee for the ACT
- Public Trustee New South Wales
- Public Trustee for the Northern Territory
- The Public Trustee of Queensland
- Public Trustee South Australia
- The Public Trustee Tasmania
- Public Trustee Western Australia
- Sandhurst Trustees Ltd
- State Trustees Ltd
- Tasmanian Perpetual Trustees Ltd
- Trust Company Ltd
