

Mr John Hawkins
Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Submitted by email: economics.sen@aph.gov.au

Dear Mr Hawkins,

Inquiry Into The Disclosure Regimes For Charities And Not-For-Profit Organisations

Thank you for the opportunity to make a submission to the Senate Inquiry into the disclosure regimes for charities and not-for-profit (NFP) organisations. ACFID is pleased to provide a response from its perspective as a peak body within the NFP sector and in the spirit of ongoing improvement of the efficiency and effectiveness to benefit the end recipients of these activities.

About ACFID

The Australian Council for International Development (ACFID) is an independent national association of Australian non-government organisations working in the field of international aid and development (NGDOs). Its membership includes 68 organisations, most of which are registered as charities and as Deductible Gift Recipients (DGRs) under the Overseas Aid Gift Deduction Scheme. A full list of ACFID member organisations is attached as Appendix 1.

The common purpose of ACFID and its members is to promote sustainable development and the eradication of poverty worldwide. ACFID assists the work of member organisations by fostering cooperation and coordination in aid programs, promoting best practice and self-regulation through the ACFID Code of Conduct and training programs and representing the views of NDGOs to government on policy issues.

The Australian public donated \$779.85 million to aid and development work through Australian NGDOs in 2007. This figure makes up around 81 per cent of the total funds

raised by agencies and includes funds raised from donations, fundraisers, bequests and company donations.

ACFID research indicates that 1.23 million Australians were donors to regular supporter programs (child sponsorship or regular donor programs) in 2007. In all, 1.6 million people were involved in supporting an overseas aid and development NGO – either as a regular supporter, by supporting a fundraiser or event or giving a one-off donation. More than 20,800 Australians volunteered their time and skills to the work of overseas aid organisations during the year.

ACFID's submission

This submission has been prepared by ACFID, in consultation with its member groups, to provide a sector perspective on the current disclosure and regulatory regimes for NFP organisations. It seeks to provide conclusions and recommendations for reform in line with the inquiry's terms of reference.

Kind regards

A handwritten signature in black ink, appearing to read 'P O'Callaghan', with a long horizontal flourish extending to the right.

Paul O'Callaghan
Executive Director
Australian Council for International Development

EXECUTIVE SUMMARY

The international aid and development sector is a national leader in the areas of accountability and transparency. The ACFID Code of Conduct was developed over ten years ago in order to strengthen the governance of the organisations in the sector and to enhance the confidence of the Australian public upon whom the sector relies for the greater portion of its funding.

However the regulatory environment for the sector, and indeed for all not-for-profit (NFP) organisations, remains fragmented and complex. Both NFP organisations and the Government would benefit from a regulatory regime which provided clarity and consistency in its application and interpretation.

ACFID's view is that a streamlined national regulatory and reporting regime for the NFP sector would ease the administrative burden for NFPs, and improve efficiency and transparency for the sector without compromising on accountability.

Furthermore, a regulatory regime that fosters transparency and accountability would contribute significantly to building public and government trust in the NFP sector. Trust is of utmost importance for the NFP sector and for charities in particular. Charities seek not only to attract donations from the Australian public but also to encourage volunteer participation in pursuing their causes.

The NFP sector has contributed substantial resources and energy to previous inquiries including the Industry Commission Inquiry of 1995 and the 2001 Inquiry into the Definition of Charities and Related Organisations.

Regrettably, little has resulted from these inquiry processes. Whilst the UK has been innovative in this field of policy making, the Australian environment has only become more complex over time.

The international aid and development sector seeks a commitment from the Government to use the outcomes of this Inquiry to improve the regulatory environment for the NFP sector in a comprehensive and long lasting way.

ACFID also urges the Committee to use this Inquiry to present a strong case to Government for greater clarity and predictability in the taxation system where it governs NFP organizations. In particular, we urge that the circumstances of charities in the aid and development sector are taken fully into account in any regulatory reform. ACFID sees the Inquiry's recommendations as being most relevant to the current taxation review by the Treasury Secretary.

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Terms of Reference

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.

Overview of Recommendations

In relation to the first term of reference ACFID recommends that:

- 1A. A new nationally consistent portfolio of legislation and regulations be developed to replace existing arrangements across all levels of Government and across federal and state jurisdictions;
- 1B. The regulatory response be shaped to suit the unique characteristics of NFP organisations. This should include the establishment of an appropriate financial reporting regime designed specifically for the NFP sector;
- 1C. The design of the proposed regulatory regime should meet the needs of both small and large NFP organisations. Different regimes or reporting requirements could be based on a clearly determined benchmark such as annual financial turnover;
- 1D. Funding be made available to the Australian Accounting Standards Board to develop an appropriate set of accounting standards that respond to the special needs of NFP organizations;
- 1E. Sector-specific accounting standards for annual reporting be endorsed to allow more emphasis on the narrative account of how organisations are delivering their mission and services and achieving their stated objectives;
- 1F. A Standard Chart of Accounts be developed for use with all government funding agreements with NFP organisations;
- 1G. A single, national, independent regulatory body be established for all NFP incorporated entities (i.e. companies limited by guarantee and incorporated associations) as well as non-incorporated NFP organizations;

In relation to the second term of reference ACFID recommends that:

- 2A. A cooperative compliance model be established between the NFP sector and the proposed independent regulatory body using the ATO Compliance Model as its framework;
- 2B. The cooperative compliance model be used in conjunction with a tiered regulatory structure, with the small and emerging entities being able to enter the regulatory environment with a relatively low burden of compliance and reporting expectations;
- 2C. The proposed regulatory body should focus on supporting and educating small and emerging NFP entities to implement adequate governance structures and on providing education and support to its Directors and board members;

In relation to the third term of reference ACFID recommends that:

- 3A. An additional category for Non Government Development Organisations be created within the Section 57A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) alongside other categories under S57A;
- 3B. Precise criteria for eligibility for the proposed new category be specified within the Section 57A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- 3C. A contemporary definition of a charity be defined;
- 3D. The unique needs of charities in the aid and development sector be specifically recognised within the proposed national regulatory body for NFP entities;
- 3E. The means employed by the proposed regulatory body for NFPs to determine charitable status are objective, consistent, simple to administer and flexible in response to changing social demands on charities.

1. The relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;

Situation

The variety of legislation and regulation that currently applies to NFPs is unnecessarily complex and fragmented. Companies limited by guarantee are governed by the Corporations Act and incorporated associations are regulated under state-based legislation which varies widely between states and territories. Those NFP organisations that conduct fund raising activities, must also comply with a myriad of state-based laws which make it difficult to operate across more than one state and/or territory ⁽ⁱ⁾.

The complexity of such fragmented regimes imposes substantial unnecessary administrative burdens on organisations ⁽ⁱⁱ⁾, resulting in the inefficient use of scarce NFP resources and increases the risk of non-compliance.

The Australian Accounting Standards Board (AASB) has recently summarised the key characteristics of NFP entities. These characteristics, included in Appendix 2, distinguish them from for-profit organizations ⁽ⁱⁱⁱ⁾. NFP entities clearly have different objectives and reporting environments to for-profit entities, highlighting the need for a sector-specific regulatory framework shaped to suit these unique characteristics.

The objectives of financial reporting and governance for the NFP sector are different to that of the for-profit sector as NFPs focus primarily on the delivery of their mission and services rather than on the generation of a return for shareholders. As such the current financial reporting requirements, which are primarily designed for for-profit entities, are inappropriate for application to the not-for-profit sector. Furthermore, they do not encourage NFP organisations to communicate to their stakeholders the narrative of their achievements beyond the financial aspects.

The Institute of Chartered Accountants in Australia (ICCA)'s publication "Enhancing Not-for-Profit Annual and Financial Reporting" ^(iv) recommends that NFPs provide more information in their annual reports regarding their mission, their objectives, an explanation of activities to achieve those objectives and how they are funding those activities.

i State and Territory fundraising alone in Australia is governed by many different Acts, including: Collections Act 1966 (Qld), Collections for Charities Act 2001 (Tas), Collections for Charitable Purposes Act 1939 (SA), Charitable Collections Act 2003 (ACT), Charitable Collections Act 1946 (WA), Charitable Fundraising Act 1991 (NSW), Fundraising Appeals Act 1998 (Vic)

ii National Roundtable of Nonprofit Organisations, (2007) 'The assessment of charitable status in Australia: Current practice and recommendations for improvement'

iii The Australian Accounting Standards Board (2008) 'Application to Not-for-profit Entities in the Private and Public Sectors' July 2008. Available at: <http://www.aasb.com.au/admin/file/content102/c3/NSS-4%20Comment%20Document%20on%20Phase%20A%20ED%20and%20Phase%20D%20DP%20-%20FINAL.pdf>

iv Institute of Chartered Accountants in Australia (ICCA) (2007), *Enhancing Not-for-Profit Annual and Financial Reporting*, Available at: <http://www.charteredaccountants.com.au/A118424100>

Furthermore, in contrast to Canada and the US, where accounting standards for NFP entities have been issued, there are no accounting standards for NFP entities in Australia that specifically address the preparation of financial reports, although the AASB and the CPA^(v) have both undertaken considerable research on this issue.

Although accounting standards should be broadly similar for both not-for-profit and for-profit sectors, there are opportunities to simplify and standardise financial reporting for NFPs, in particular for the smaller and emerging organisations. CPA Australia and the AASB would ideally work together in this regard to develop a single national disclosure regime and set of accounting standards for the NFP sector.

In addition, the dependence of NFP organisations on grants from all levels of government imposes further disclosure obligations which replicate and compound the overall reporting regime^(vi) and which contribute to a common failure to manage and acquit grants properly.

Conclusions

The Australian Government, at the Commonwealth, State and Territory levels, do not have a coherent set of policies that recognize the NFP sector as a distinct sector in recognition of its contribution to the economy, society and politics^{vii}.

We advocate that a one-size-fits-all approach is inappropriate for the NFP sector. Any new reporting and disclosure regime must also give consideration to those small and emerging NFPs that are administered by very few staff and/or volunteers. The response needs to be proportionate, and may seek to develop a tiered approach for NFPs or to exempt large organisations such as churches which may be regulated under a separate regime.

Grants management and disclosure should also be considered in such reporting reform.

Consistency of regulation for NFPs could be achieved by developing an independent federal regulatory body similar to that recommended by the 2001 *Inquiry into the Definition of Charities and Related Organisations*^(viii) for charities. This would require the Commonwealth to seek the agreement and cooperation of all State and Territory Governments.

The essential characteristics of such a body would include:

- Adequate resourcing;
- Funding by the Government. The alternative of operating the body on cost recovery or user-pays basis would make no economic sense as the NFP sector would inevitably need to fund such a cost from either a reduction in program expenditure or from an increase in government or donor funding;

^v CPA Australia (2003) *Financial reporting for not-for-profit entities policy paper* Available at: http://www.cpaaustralia.com.au/cps/rde/xchg/SID-3F57FECB-8E2566E6/cpa/hs.xml/28_3067_ENA_HTML.htm

^{vi} CPA Australia (2007) *Grants in Australia; Management and accountability made easy for not-for-profit organizations*. Available at: http://www.cpaaustralia.com.au/cps/rde/xchg/SID-3F57FECB-8E2566E6/cpa/hs.xml/28_23011_ENA_HTML.htm

^{vii} Lyons, M and Passey, A. (2006) 'Need Public Policy Ignore the Third Sector? Government Policy in Australia and the United Kingdom' *Australian Journal of Public Administration* 65(3):90-102 September 2006.

^{viii} Report of the Inquiry into the Definition of Charities and Related Organisations, June 2001.

- Independence from, but with accountability to, the Government similar to the ASIC model;
- Be designed to suit the unique characteristics of the NFP sector;
- Ability to also focus on education and information sharing and dissemination;
- Ability to assist NFPs to navigate the regulatory system and enhance mechanisms of self regulation.

Recommendations

In terms of the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations ACFID recommends that:

- 1A. A new nationally consistent portfolio of legislation and regulations be developed to replace existing arrangements across all levels of Government and across federal and state jurisdictions;
- 1B. The regulatory response be shaped to suit the unique characteristics of NFP organisations. This should include the establishment of an appropriate financial reporting regime designed specifically for the NFP sector;
- 1C. The design of the proposed regulatory regime should meet the needs of both small and large NFP organisations. Different regimes or reporting requirements could be based on a clearly determined benchmark such as annual financial turnover;
- 1D. Funding be made available to the Australian Accounting Standards Board to develop an appropriate set of accounting standards that respond to the special needs of NFP organizations;
- 1E. Sector-specific accounting standards for annual reporting be endorsed to allow more emphasis on the narrative account of how organisations are delivering their mission and services and achieving their stated objectives;
- 1F. A Standard Chart of Accounts be developed for use with all government funding agreements with NFP organisations;
- 1G. A single, national, independent regulatory body be established for all NFP incorporated entities (i.e. companies limited by guarantee and incorporated associations) as well as non-incorporated NFP organizations;

Benefits to Government and NFP sector

Revised disclosure regimes for charities and all other not-for-profit organisations in line with the above recommendations would:

- Improve the efficiency and best use of resources for NFPs and Government;
- Provide a consistent reporting system for NFP organisations;
- Provide a single national disclosure system for NFP organisations to replace the current complex and fragmented reporting framework;
- Improve public confidence and trust in the NFP sector.

2. 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.

Situation

Whilst harmonized legislation and disclosure regimes would certainly improve the regulatory environment for the NFP sector, it is also important to recognise and enhance the contribution and influence of professional networks and codes of conduct within the sector that can have significant impact on sectoral behaviour.

Industry self regulation regimes, such as the ACFID Code of Conduct for the aid and development sector, can have a significant impact through establishing best practice financial reporting standards as well as expectations of transparency and accountability. Such self regulation models could be used in tandem with a cooperative compliance relationship with the proposed NFP regulator.

ACFID recommends that the ATO Cooperative Compliance Model^(ix) (The Model) could be used as a template for developing a cooperative compliance relationship based on mutual respect and responsibility between the NGO sector and its respective regulatory body. The Model promotes the use of tailored responses to different groups based on their compliance risk levels and histories. These responses range from support and assistance through to targeted enforcement measures, such as audits, sanctions and prosecutions.

Regulation can be seen as a spectrum and this model could be used to explain a mosaic approach to a new regulatory framework including:

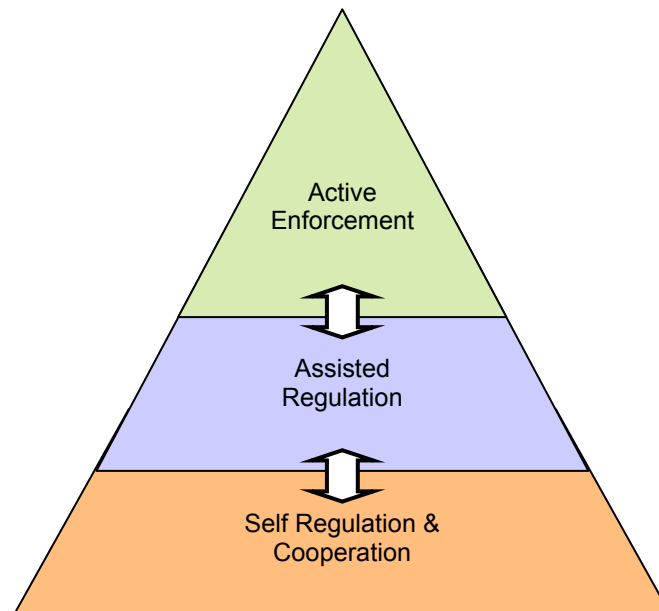
1. Self regulation and cooperation;
2. Assisted regulation;
3. Active Enforcement: Legislation.

The compliance pyramid (Figure 1) demonstrates how cooperative compliance works. The base of the pyramid – characterised by a cooperative, self-regulatory approach – is the most desirable area of operation for the regulator and for organisations/sectors. The diagram shows how cooperative compliance allows for movement both up and down the pyramid, from active enforcement measures at the top down to self-regulation and cooperation at the base. It provides a pathway to design and improve regulation based on lessons learned from compliance activities.

The Model could be a useful conceptual framework for regulatory change in the NFP sector. This is the main model used by the Federal Government with the business sector and is considered by ACFID to be an ideal model for building a new relationship between the NFP sector and a new administrative/regulatory body.

^{ix} Australian Taxation Office: Available at:
<http://www.ato.gov.au/large/content.asp?doc=/content/22630.htm&pc=001/009/031/003&mnu=&mfpr=&st=&cy=1>

Figure 1: The Compliance Pyramid



Such a cooperative compliance model relies in the most part on sector self regulation and places emphasis on the quality of governance of organisations. One such model of governance already in place is the ACFID Code of Conduct ('The Code'); a voluntary, self regulatory industry code for the overseas aid and development sector. The Code represents the active commitment of overseas aid agencies and NGDOs to conduct their activities with integrity and accountability^(x).

The Code defines standards of governance, management, financial control, communications with the public and reporting with which NGDOs should comply. It identifies mechanisms to ensure accountability in NGDO use of public monies. The Code aims to maintain and enhance standards throughout the NGDO community, ensuring public confidence in the integrity of individuals and organisations comprising the NGDO community and the quality and effectiveness of NGDO programs.

Among the requirements of The Code, signatories are required to:

- Produce an audited annual report and to make it available to the organisations own members, supporters and to members of the public upon request;
- Ensure that funds and other resources designated for the purposes of aid and development will be used only for those purposes and will not be used to promote a particular religious adherence or to support a political party, or to promote a candidate or organisation affiliated to a political party;
- Ensure that the Organisation's governing instrument (constitution, articles of association, rules, bylaws or similar documents) be consistent with legislative requirements and set forth the Organisation's basic goals and purposes, define membership, governance structure of the Organisation including the frequency of meetings (at least two a year) and the size of a quorum.

^x ACFID Code of Conduct. Available at: <http://www.acfid.asn.au/code-of-conduct>

- Ensure fundraising solicitations will be truthful, will accurately describe the Organisation's identity, purpose, programs, and needs and will only make claims which the Organisation can fulfill.
- Has a compliance monitoring process and a complaints handling process.

Another example of self-regulation employed by the aid and development sector includes the Fundraising Institute Australia's (FIA) code of self-regulation for professional fundraisers. The *FIA's Principles and Standards of Fundraising Practice*^{xi} are the fundraiser's guide to ethical, accountable and transparent fundraising. The Principles and Standards are critical to how the fundraising profession is viewed by donors, government and the community, and indeed by fundraisers themselves.

Conclusions

The ATO Cooperative Compliance Model is an effective model for designing regulatory change and ensuring cooperative compliance within the NFP sector.

A cooperative compliance model already exists in the NFP sector which has proven to be self-regulatory, cost effective and an effective governance vehicle.

The cooperative compliance model would be useful in a tiered regulatory structure (suggested in Part 1 of this submission) which would allow small and emerging organisations to enter the regulatory environment with a relatively low burden of compliance and reporting expectations.

At this level the regulatory body, in line with the cooperative compliance model, would concentrate its efforts on the education and support of the Board and management of the organization and in offering information and assistance.

Recommendations

In terms of models of regulation and legal forms that would improve governance and management of charities and NFP organisations and cater for emerging social enterprises, ACFID recommends that:

- 2A. A cooperative compliance model be established between the NFP sector and the proposed independent regulatory body using the ATO Compliance Model as its framework;
- 2B. The cooperative compliance model be used in conjunction with a tiered regulatory structure, with the small and emerging entities being able to enter the regulatory environment with a relatively low burden of compliance and reporting expectations;
- 2C. The proposed regulatory body should focus on supporting and educating small and emerging NFP entities to implement adequate governance structures and on providing education and support to its Directors and board members;

^{xi} The Fundraising Institute of Australia, *Principles and Standards of Fundraising Practice*. Available at: http://www.fia.org.au/AM/Template.cfm?Section=Principles_and_Standards_of_Fundraising_Practice

Benefits to Government and NFP sector

The proposed model would assist the government by minimizing the level of monitoring and regulation required to govern the sector. Equally, it would provide the escalation mechanisms to ensure paths to assisted regulation or active enforcement are accessible to all NFP organisations regardless of their size or activities.

3. 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.

Public Benevolent Institutions

In its 2001 submission to the Charities Definition Inquiry, a principal concern expressed by ACFID (then ACFOA), was the inconsistent application and interpretation of the terms *charity* and *public benevolent institution* for different legal and administrative purposes. In the intervening seven years, the need for consistency of treatment of bona fide NGDOs has increased.

For example under current ATO interpretations of taxation law, after having been accepted as an “approved organization” by AusAID, an NGDO applicant for Public Benevolent Institution (PBI) status may be refused on the grounds that it is not strictly delivering benevolence to people in need.

The ATO recognises that the work of certain NGDOs “arouses compassion in the community” as required in the PBI definition. However, its decision-making in relation to PBI status has focused on a narrow interpretation and understanding of benevolence and providing “relief” to people in need. The ATO’s recent approach has been to define “development” activities and programs as ineligible because they are perceived not to be principally providing such “relief”.

This approach runs directly counter to the strong internationally-accepted evidence base around ‘what works’ in terms of achieving sustainable social and economic development in poor communities. It negates a range of development activities which AusAID and the sector regard as both pivotal and fundamental to Australia’s poverty reduction efforts in developing countries.

Despite the long practice of the ATO providing PBI status to a number of NGDOs, the application of Section 57 of the FBT Act 1986 with respect to a wider group of these agencies has continued to generate confusion and has led to unintended discriminatory results. For this reason, ACFID strongly recommends that a statutory provision be made to specifically include eligible NGDOs within Section 57.

Such a statutory change would address the anomaly whereby a range of NGDOs are excluded from PBI status despite often having virtually identical organisational features to those which are granted that status. It would also ensure that there is an alignment across government in terms the nature of development work and the objectives of Australia’s aid program.

In 2001, ACFID expressed serious concern at the difficulty experienced by its member agencies in interpreting the ATO’s application of Tax Determination 93/11^(xii). Since 2003,

^{xii} This TD 93/11 has been superseded by TR2003/5 and the current the eligibility criteria for a PBI applicant organization are:

TD 93/11 has been superseded by Tax Ruling 2003/5. Notwithstanding this change, the pattern of variable application of the eligibility criteria has continued. TR 2003/5 has not provided a definitive statement of governing principles which could rectify the weakness. As a result, the intent of this part of the FBT Act has not been fulfilled and dissatisfaction across the sector about the lack of clear guidelines has increased.

The application of the criteria in TR 2003/5 again generated concern across the sector between 2005-2008. A restrictive interpretation of the “direct” relief criterion was identified as unusual in two respects:

- that the main features of at least one agency deemed to lose PBI status were not dissimilar from many other PBI holders with respect to the “relief” criterion and;
- for the first time, the restrictive definition was seen within government to be at odds with the statement of purpose for its own overseas aid program, as identified by AusAID’s Executive.^(xiii)

ACFID proposes to put forward proposed eligibility criteria to *Australia’s Future Tax System Review* which is currently accepting submissions.

Recommendations

In terms of eligibility for Section 57A of the FBT Act, ACFID believes that these distortions could be readily overcome by the following steps:

- 3A. An additional category for Non Government Development Organisations be created within the Section 57A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) alongside other categories under S57A;
- 3B. Precise criteria for eligibility for the proposed new category be specified within the Section 57A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);

Benefits to Government and NFP sector

- An increase in the ATO’s capacity to focus on substantial compliance matters within Section 57 of the FBTAA due to a decline in NGDO representations at political and officials level arising from variability of outcomes in relation to PBI applications and reviews;
- Policy alignment across the whole of government;
- Confidence within the NGDO sector in the application of relevant FBT exemption provisions.

-
- is set up for needs that require benevolent relief
 - relieves those needs by directly providing services to people suffering them
 - is carried on for the public benefit
 - is non-profit
 - is an institution, and
 - its dominant purpose is providing benevolent relief.

^{xiii} Based on several discussions with AusAID’s Assistant Director General for Community and Business Partnerships during February and March 2008.

Definition of a Charity

Australian charities perform vital functions both domestically and overseas. ACFID member organisations are charities working in the international aid and development field contributing to, among many other activities, the relief of poverty, provision of education, environmental protection, the defence of human rights, improvement of health and the provision of emergency relief.

As such, ACFID members are engaged in assisting and supporting some of the world's poorest and most disadvantaged people and communities.

The sector also makes a central contribution to promoting the effective operation of democratic political systems particularly in assisting the empowerment of citizens to express their views and to influence public policy and service delivery matters.

Advocacy is a crucial element in the relief of poverty and the promotion of development because it raises public awareness of the issues, and enables civil society organisations to participate in the formation of government policy towards the goal of long term, sustainable human development. It is therefore not only acceptable but an expectation that international aid and development organisations will, amongst other activities, seek to engage in advocacy to further the relief poverty and to assist the its overseas partner organisations. This does not detract from their status as 'charities' but rather reinforces it.

One of the ways in which a government can encourage and sustain a strong aid and development sector is to ensure that there are laws and regulatory arrangements that are supportive of its work and role^(xiv).

ACFID therefore urges the Committee to consider the particular needs of charities in the aid and development sector when making recommendations about a future regulatory system. It is essential that reforms to the regulatory environment for NFPs are underpinned by a contemporary definition of a charity.

Such a definition needs to recognise that charities contribute to policy development and that there are a range of strategies that charities use to achieve their dominant purpose. This range of activities should permit advocacy activities and allow for the development of new strategies into the future to deal with emerging poverty reduction and development challenges.

ACFID also recommends that the means employed by the proposed regulatory body for NFPs to determine charitable status be objective, consistent, simple to administer and flexible in response to changing social demands on charities.

Recommendations

3C. A contemporary definition of a charity be defined;

^{xiv} Lyons M (2003) 'The Legal and Regulatory Environment of the Third Sector', Asian Journal of Public Administration, Vol 25, No. 1 June2003.

- 3D. The unique needs of charities in the aid and development sector be specifically recognised within the proposed national regulatory body for NFP entities;
- 3E. The means employed by the proposed regulatory body for NFPs to determine charitable status are objective, consistent, simple to administer and flexible in response to changing social demands on charities.

A Compact between the Government and the NFP Sector

The Rudd Government is actively considering the introduction of a national compact with the NGO sector and is currently consulting with some NGOs regarding the development of such an agreement by 2009. ACFID welcomes the Government's announcement on 29th August of an Expert Panel to assist in the development of the compact.

A new report by The Australia Institute ^(xv) has explored whether a formal agreement, such as a compact, is the right way for the government and the NGO sector to go about building an on-going positive and constructive relationship.

The report also examines the conditions necessary for a compact to be effective. These conditions include that a compact must:

- Be known: government officials and both large and small NGOs whose work falls within the ambit of the compact must be aware of its existence and understand its implications;
- Be monitored: a check of some sort is required to ensure that the commitments made within the compact are being met. One way the compact could be assessed is through a regular and comprehensive survey of NGOs;
- Include penalties: a penalty needs to apply if NGOs or government bodies do not comply with the arrangements made in the compact;
- Have champions: there must be people in both the Australian Government and the NGO sector who firmly support the development and operation of a compact.

ACFID supports the idea of a national compact in principle but reiterates that these conditions, at a minimum, are necessary for a compact to be effective. It is essential that the wider NGO community is consulted in the development stages of a compact to ensure the future success of the compact itself as well as the ongoing relationship between government and the NGO sector.

^{xv} Edgar, D (2008) *Agreeing to Disagree: Maintaining dissent in the NGO sector*, The Australia Institute, Discussion Paper 100. Available at: www.tai.org.au.

Appendices

Appendix 1: List of ACFID Members

Current members

All ACFID members are signatories to the [ACFID Code of Conduct](#) as at 26 June 2008

Full members

Action Aid Australia (For Those Who Have Less)
Adventist Development and Relief Agency
Afghan Australian Development Organisation
Anglican Board of Mission - Australia Limited
AngliCORD
Archbishop of Sydney's Overseas Relief & Aid Fund
Assisi Aid Projects
Austcare
Australasian Society for HIV Medicine
Australia for UNHCR*
Australian Business Volunteers
Australian Conservation Foundation
Australian Doctors International Inc
Australian Federation of AIDS Organisations
Australian Foundation for the Peoples of Asia and the Pacific
Australian Lutheran World Service
Australian Relief and Mercy Services
Australian Reproductive Health Alliance
Australian Respiratory Council
Australian Volunteers International
Baptist World Aid Australia
Burnet Institute
CARE Australia
Caritas Australia
ChildFund Australia
CBM Australia
Credit Union Foundation Australia
CWS (the international humanitarian and development agency of the National Council of Churches in Australia)
Emergency Architects Australia Ltd*
Foresight (Overseas Aid and Prevention of Blindness)
Fred Hollows Foundation
Friends of the Earth (Australia)
Habitat for Humanity Australia
Hunger Project Australia, The
International Centre for Eyecare Education

International Christian Aid Relief Enterprises Limited
International Help Fund Australia Ltd
International Nepal Fellowship (Aust) Ltd
International Women's Development Agency
Interplast Australia, Royal Australasian College of Surgeons
Leprosy Mission Australia, The
Live & Learn Environmental Education
Marist Mission Centre
Marist Solidarity Australia*
Mercy Works Inc.
Mission World Aid Inc.
Muslim Aid Australia
Nusatenggara Association Inc.
Opportunity International Australia
Oxfam Australia
Oz GREEN - Global Rivers Environmental Education Network Australia Inc.
PLAN International Australia
Project Vietnam
Quaker Service Australia
RedR Australia
RESULTS Australia
Salesian Society Incorporated
Save the Children Australia
Sexual Health & Family Planning Australia
Spastic Centre, The
TEAR Australia
Transparency International Australia
Uniting Church Overseas Aid
WaterAid Australia
World Education Australia Limited
World Vision Australia
WWF-Australia

Consulting Affiliates

Australian Red Cross (also a signatory to the ACFID Code of Conduct)
Refugee Council of Australia
* denotes ACFID provisional full member

Appendix 2: Characteristics of not-for-profit entities in the private sector^(xvi)

- their primary objectives to provide goods, services and/or funding to various recipients and not to make a profit;
- they are generally characterized by the absence of defined ownership interests that can be sold, transferred or redeemed or that convey an entitlement to a share of a residual distribution of resources, including on liquidation of the entity;
- the providers of resources are often different from the recipients of goods, services and/or funding provided by the entity;
- their receipts of resources generally are contributions rather than sales. Contributions may be solicited in the form of donations or assessed, such as through membership dues; and
- their capital assets are typically acquired and held to deliver services without the intention of earning a financial return on them.

xvi The Australian Accounting Standards Board ‘Application to Not-for-profit Entities in the Private and Public Sectors’ July 2008. Available at: <http://www.aasb.com.au/admin/file/content102/c3/NSS-4%20Comment%20Document%20on%20Phase%20A%20ED%20and%20Phase%20D%20DP%20-%20FINAL.pdf>