

Senate inquiry into the disclosure regimes for charities and not-for-profit organisations

Submission from Cancer Council Australia

Recommendations – general

Cancer Council Australia recommends that the Senate call for measures to build, rather than restrict, the not-for-profit sector's capacity while ensuring accountability and transparency by:

- Establishing national consistency across the myriad Commonwealth, state and territory laws and regulations that currently govern the operation and registration of charity and not-for-profit organisations.
- Strengthening eligibility criteria for charitable (tax exemption and Deductible Gift Recipient) status.
- Reducing the administrative burden that currently generates unnecessary financial cost and can potentially restrict not-for-profit organisations.
- Safeguarding the rights of not-for-profit organisations to advocate and comment openly on public policy without threat to their charitable status – providing it does not involve partisan political activity.

Proposed options for meeting these goals include:

- A ratings system for charities, based on a charity's demonstrated impact, social responsibility and other criteria that would assist individual and corporate donors in choosing a charity to support.
- Regulation through expansion of an organisation like Charity Direct or oversight from an independent agency funded by government (along similar lines to the Ombudsman, or under the auspices of the Australian Securities and Investments Commission).
- The charity regulator could establish standard reporting requirements across the sector. While greater transparency in disclosure would better inform donors how their donations are used, tighter disclosure regimes must not lead to increased administrative costs at the expense of core business.
- One option for standardised reporting requirements for large charities would be to adapt the current arrangements applying to the Australian Stock Exchange to the not-for-profit sector. (More flexible, less stringent arrangements – e.g. monitored by local councils – could apply to small not-for-profits.)
- Greater rigour should be incorporated into the Australian Taxation Office's provision of DGR status. The eligibility criteria relating to the purpose for which monies are being raised should be tightened; sustainability of the charity should be a criteria.

- All charities that receive DGR status should have an appropriate governance structure defined in their constitution. Whether the charity is an incorporated body or a company limited by guarantee should depend on size, scope and activity.
- Consideration should be given to making clearer distinctions between “charities” and not-for-profit organisations more generally. For example, it could be argued that a “charity” should be eligible for DGR as well as tax exemption, while not-for-profit organisations that undertake no charity work are eligible for tax exemption only.
- Integration and standardisation of the various registers and databases listing not-for-profit organisations, into a single, national register of charities, would assist in monitoring and enable more informed choice for potential donors.
- All organisations with DGR status should be required to report their governance structure, including how management decisions relating to the use of donor funds are made. Rigour in governance could be a consideration when accrediting and rating an organisation.
- A ratings-based system could also help tighten disclosure around how funds are raised – for example, organisations engaging in techniques considered less ethical according to national guidelines could receive a lower rating.
- The rights of not-for-profit organisations to advocate and comment independently about government policy, without losing their charitable (tax exemption and DGR) status, should be enshrined in Commonwealth law.

Overview

The not-for-profit sector in Australia includes 700,000 not-for-profit organisations, 180,000 bodies corporate, 100,000 incorporated associations, 10,000 companies limited by guarantee and 3,500 cooperatives.

The sector provides 7% of Australia’s workforce, 12% of private employment, a turnover of \$50 billion per annum and is supported by the unpaid work of around 5.2 million volunteers.¹ It is estimated that 93 Commonwealth, state and territory agencies are involved in determining charitable status among these organisations and that around \$100 million per annum is lost to the sector each year in unnecessary administrative costs.²

Like many charities in Australia, the Cancer Council’s viability depends on the generosity of ordinary Australians, who donate through a range of mechanisms – for example subscriptions, bequests and one-off donations. We also receive corporate sponsorship and rely significantly on volunteers to help deliver a number of our programs.

Tax exemption as a charity is integral to the Cancer Council’s viability. While staff salaries are benchmarked at the lower end of the market, without incentives such as salary sacrifice it would

¹ Australian Bureau of Statistics

² Allen Consulting, National Roundtable of Non-profit Organisations, 2008

be difficult to attract and retain professionals with appropriate skills for our work in cancer control – such as education, research, policy development, administration etc.

The Cancer Council's viability also relies on its capacity to make independent recommendations to government and robust public comment about cancer control policy and practice. It is in our view essential that charity organisations are able to advocate publicly on behalf of their stakeholders without threat to their charitable status – provided they do so without engaging in partisan politics.

We therefore see this inquiry as an opportunity to make Australia's not-for-profit sector more viable and better able to benefit the community.

We welcome in particular public comments from the Parliamentary Secretary for Social Inclusion, Senator Ursula Andrews, expressing the Rudd Government's recognition that "not-for-profit organisations are often best placed to address the needs, and advocate on behalf of, the most vulnerable in our society".³

Addressing the terms of reference

a) the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;

It is estimated that up to 93 state and Commonwealth agencies are involved in determining a non-government organisation's charitable status. Unnecessary administrative costs caused by the complex and fragmented nature of existing regulations have been calculated to cost the charitable sector around \$100 million per annum.

Such findings indicate that the current arrangements relating to disclosure regimes are inappropriately unwieldy and are decreasingly relevant to Australia's burgeoning not-for-profit sector. The current lack of national consistency is particularly problematic for a large federated organisation like the Cancer Council, which raises funds through joint exercises across jurisdictions.

To some extent, the Cancer Council's evolution as a large, federated health charity reflects the complexity of Australia's two-tiered government system and a lack of national cohesion and consistency in current disclosure regimes for charities.

Our member organisations have variously been established under several Commonwealth, state and territory laws and statutes, and with differing governance arrangements. Likewise, our organisations report their financial statements according to varying approaches.

The Cancer Council would welcome harmonisation and streamlining of current regimes, reducing administrative burden and facilitating greater consistency, transparency and accountability across the sector.

³ Speech to PricewaterhouseCoopers 'Transparency Awards', April 2008

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;

As outlined against term of reference a), current regulatory and legal arrangements are burdensome and unwieldy, and do not adequately reflect the increasing scope and capacity of the non-for-profit sector.

Laws and regulations relating to the sector should be designed to enhance its capacity, rather than impose restrictions – provided appropriate national standards are established along with a mechanism to ensure compliance. Greater clarity is also necessary to help people make an informed choice in supporting charities that use funds appropriately and are rigorously and demonstrably committed to their mission.

Eligibility criteria

The extraordinary growth in the number of not-for-profit organisations over recent years raises concerns about the rigour associated with eligibility for charitable status. Mechanisms such as an scheme would help to underpin quality assurance in the sector.

Recommendations:

- A ratings system for charities, based on a charity's demonstrated impact, social responsibility and other criteria that would assist individual and corporate donors in choosing a charity to support.
- Regulation through expansion of an organisation like Charity Direct or oversight from an independent agency funded by government (along similar lines to the Ombudsman, or under the auspices of the Australian Securities and Investments Commission).
- The charity regulator could establish standard reporting requirements across the sector. While greater transparency in disclosure would better inform donors how their donations are used, tighter disclosure regimes must not lead to increased administrative costs at the expense of core business.
- One option for standardised reporting requirements for large charities would be to adapt the current arrangements applying to the Australian Stock Exchange to the not-for-profit sector. (More flexible, less stringent arrangements – e.g. monitored by local councils – could apply to small not-for-profits.)
- Greater rigour should be incorporated into the Australian Taxation Office's provision of DGR status. The eligibility criteria relating to the purpose for which monies are being raised should be tightened; sustainability of the charity should be a criteria.

- All charities that receive DGR status should have an appropriate governance structure defined in their constitution. Whether the charity is an incorporated body or a company limited by guarantee should depend on size, scope and activity.
- Consideration should be given to making clearer distinctions between “charities” and not-for-profit organisations more generally. For example, it could be argued that a “charity” should be eligible for DGR as well as tax exemption, while not-for-profit organisations that undertake no charity work are eligible for tax exemption only.

Targeted funding and duplication

The magnitude of charities in Australia that in many cases seek to represent the same stakeholder base suggest substantial duplication is occurring in service delivery. Cancer research is a good example, with a large number of not-for-profit organisations competing for donor funds for similar projects.

In some cases, such duplication would be expected to cause inefficient use of overall donor funds. It may also lead to the neglect of lower-profile issues. (One example is breast cancer, which is the focus of hundreds of charities; yet lung cancer, which kills more than twice as many Australians as breast cancer, is not specifically supported by any high-profile group.)

While individual and organisational donors to charity should as a matter of course be free to support the charity of their choice, greater clarity of the sector may enable more informed choices and better targeting of donor funds.

Recommendation:

- Integration and standardisation of the various registers and databases listing not-for-profit organisations, into a single, national register of charities, would assist in monitoring and enable more informed choice for potential donors.

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.

Rigour in governance and decision making varies significantly across the not-for-profit and charity sector. In considering the measures put forward above, government should also look at standard reporting requirements for governance and a system that recognises greater rigour and accountability.

Recommendations:

- All organisations with DGR status should be required to report their governance structure, including how management decisions relating to the use of donor funds are made. Rigour in governance could be a consideration when accrediting and rating an organisation.

- A ratings-based system could also help tighten disclosure around how funds are raised – for example, organisations engaging in techniques considered less ethical according to national guidelines could receive a lower rating.

Protecting the right to advocate

A parliamentary review in 2004 of eligibility for charitable status in relation to “advocacy” and political activity left this critical issue largely unresolved.

As stated throughout this submission, the Cancer Council relies for its viability as a high-level, evidence-based cancer control organisation on the tax concessions available to a charitable status. Its capacity to comment independently on public policy in relation to cancer control, and to provide independent cancer control advice to all parliamentarians in a nonpartisan manner, is also pivotal to the Cancer Council’s viability and its mission.

The Cancer Council therefore calls on the Senate to recommend that government, in responding to this Senate inquiry, provides an assurance to nonpartisan, non-government organisations that they are entitled to advocate and comment on policy without risk to their charitable status – provided they are not engaging in partisan political activity.

Recommendation:

- The rights of not-for-profit organisations to advocate and comment independently about government policy, without losing their charitable (tax exemption and DGR) status, should be enshrined in Commonwealth law.

About the Cancer Council

The Cancer Council’s mission is to lead a cohesive approach to reduce the impact of cancer. Our vision is that the threat of cancer to all Australians is minimised, through successful prevention, best treatment and support.

Each Australian state and territory has a Cancer Council. All eight state and territory Cancer Councils were established separately, under a variety of governance arrangements. All Cancer Councils are non-government, not-for-profit organisations. While we openly compete for cancer-related government contracts, our operational funds are derived entirely from non-government sources.

Cancer Council Australia (formerly Australian Cancer Society) was created in 1961, to represent the national interests of the then six state-based Cancer Councils. Separate Cancer Councils were later established in the Australian Capital Territory and the Northern Territory, also becoming part of the federated national body.

While each Cancer Council is an independent entity, over recent years the state and territory Cancer Councils have developed a common corporate identity and have streamlined a number of services and fund-raising initiatives. As a matter of course, the Cancer Councils also promote

the same evidence-based positions on cancer control policy and subscribe to the same fundamental principles of independence and political non-partisanship.

Collectively, the Cancer Council is Australia's largest health charity. Cancer Council Australia, as the focal point for the Cancer Councils' national policy priorities, therefore has a high stake in any government measures designed to improve the efficiency, transparency and accountability of not-for-profit organisations in Australia. We therefore welcome this Senate inquiry and the opportunity to contribute.