

Senate Standing Committee on Economics

Inquiry into disclosure regimes for Charities and Not-for Profit Organisations

Submission from the Department of Culture and the Arts (WA)

Overview of the Department of Culture and the Arts

The Department of Culture and the Arts (“DCA”) is a Western Australian State Government department which operates to:

- Encourage and support a vibrant and sustainable culture and arts sector.
- Foster an environment in which culture and arts is recognised and valued as essential to community well-being.
- Deliver and maintain infrastructure to sustain culture and arts.
- Develop a strong and coordinated culture and arts portfolio that strengthens and supports the delivery of Government objectives.

The DCA brings together the Culture and the Arts portfolio with the other organisations being the:

- Art Gallery of Western Australia (a statutory authority)
- State Library of Western Australia (a statutory authority)
- Western Australian Museum (a statutory authority)
- Perth Theatre Trust (a statutory authority)
- ScreenWest (an Incorporated Association)

The Department also provides support to the Swan Bells Belltower, which is managed by a Foundation.

The Department recognises the intrinsic and extrinsic value of culture and the arts to the wider community. Culture and arts are fundamental to human existence – they are vital to our history, identity, creativity, expression of aesthetic meaning and our propensity for play and enjoyment. Culture and arts have the potential to improve all realms of human endeavour. Activities that engage, analyse, develop and challenge cultural norms are crucial to sustained development and social well-being.

The Department has an annual appropriation of approximately \$168 million, which goes towards both capital expenditure and service provision to the Western Australian community.

DCA funded organisations

The Department recurrently funds 46 key arts and cultural organisations and in 2008 DCA distributed a total of \$13,652,000 to these organisations. All organisations which are funded by the Department on a recurrent basis are not-for-profit organisations, however there are a variety of different organisational structures as set out in the table below:

Organisational structure	Number	Percentage
Company (ltd by guarantee)	11	24%
Incorporated Association	31	67%
Aboriginal Corporation	2	4.5%
Other	2	4.5%
Total	46	100%

6 organisations which are recurrently funded by the Department have annual turnovers of more than \$3,000,000 per annum and another 6 organisations have turnovers of more than \$1,000,000 per annum.

The Department also provides project funding to organisations and individuals. In the 2007 – 2008 financial year, the Department provided \$4,376,158 in project grants through all the funding programs administered by the Department. Whilst it is not a requirement that organisations applying for project funding be not-for-profit, it is the experience of the Department that a majority are small not-for-profit organisations.

Regulation in Western Australia

The majority of not-for-profit arts organisations in Western Australia are structured as either incorporated associations or companies limited by guarantee.

Companies limited by guarantee

Companies limited by guarantee are governed by Commonwealth legislation and regulated by the Australian Securities and Investments Commission.

Incorporated Associations

Incorporated associations are governed by State legislation and in Western Australia this has been the subject of much discussion. In November 2006, the Government of Western Australia released a draft revision of its associations legislation for public comment. A large number of submissions were received with the view that the subsequently amended *Associations Incorporation Bill 2006* was to be introduced into Parliament in 2008. However, this has not yet occurred and due to the recent change of government in Western Australia the fate of this bill is uncertain.¹

Currently the *Associations Incorporation Act 1987* requires that an association keep accounting records and provide an annual statement of its financial position to members. However an association is not required to submit any accounts to any regulator nor are they required to have their accounts audited.

Proposed legislation

The *Associations Incorporation Bill 2006* incorporated a number of changes to be made to the management and accountability requirements of Western Australian incorporated associations, with the relevant changes for the purposes of this inquiry being:

¹ See the DOCEP website at http://www.docep.wa.gov.au/ConsumerProtection/Content/Business/Associations/Act_Review/index.htm for more information.

- obliging an association to appoint a member of its management committee to be its public officer and be responsible for providing information to the Commissioner for Consumer Protection;
- requiring associations to lodge an annual return with the Commissioner setting out their financial position; and
- the inclusion of audit requirements that will differ depending on the extent of the financial activities and property of an association – a three tiered system of accountability is proposed.²

The Department of Consumer and Employment Protection states the following in the publication “*Consultation Guide - Your Views Sought on the Associations Incorporation Bill 2006*” published in November 2006:

“The Government is of the view that all associations should be financially accountable to their members. The Government also recognises the need for different auditing requirements, depending on the size, scale and complexity of the association’s activities.

It is proposed that amendments be made to the Act to require committees of management to present a solvency statement along with financial statements at annual general meetings. The solvency statement would assure members that the association is able to pay its debts as and when they fall due and that the financial records show a true and fair view of all income and expenditure and are a true reflection of the state of the organisation.

Under the suggested changes to legislation, small associations dealing with limited amounts of money should meet only minimum auditing requirements, while those with the largest operations and dealing with the greatest amounts of money should meet more stringent requirements. This is similar to systems operating in South Australia, Victoria, the Australian Capital Territory and the Northern Territory.”³

Under this proposal, only Tier Three associations (associations with an annual turnover of more than \$1,000,000 OR with net assets of over \$1,000,000) would have to lodge an annual auditor’s statement along with their financial statements to the Department of Consumer and Employment Protection. This would ensure that associations at greatest risk from financial irregularities meet higher financial accountability requirements. The auditor’s statement would be submitted with the public officer’s annual return.

Tier One associations (turnover of less than \$100,000 and with net assets of less than \$100,000) would be required to have their accounts audited annually by any suitable person (other than an officer of the association, or anyone who has assisted in the preparation of the accounts or the spouse or de facto partner of the persons mentioned above).

Tier Two associations (turnover of between \$100,001 and \$999,999 and with net assets in the same range) would be required to have their accounts audited annually by a person who is a member of CPA Australia or the Institute of Chartered Accountants, or the National Institute of Accountants with suitable experience, or a

² The Green Bill and associated explanatory memoranda can be downloaded from http://www.docep.wa.gov.au/ConsumerProtection/Content/Business/Associations/Act_Review/The_Green_Bill.html

³ “Consultation Guide – Your Views Sought” - published by the Department of Consumer and Employment Protection, November 2006

person that the Commissioner approves. However Tier One and Tier Two associations would not be required to submit copies of the audited reports to the regulator unless requested.

As an additional safeguard, it was recommended that the Commissioner will have the authority to direct a stringent audit of any association if there is reasonable concern about its true financial position.

Lack of Transparency and Accountability

As acknowledged in the Background Paper to this Inquiry, there are calls from various sectors for not-for-profit organisations to be subject to standardised accounting and reporting requirements. This would enable stakeholders to make accurate assessments of charitable organisations.

The Department of Culture and the Arts acknowledges this concern and believes that it is in the interest of not-for-profit organisations for these issues to be addressed to ensure that effective and on-going relationships with funding bodies, organisations and individuals are maintained. Although it is acknowledged that arts organisations derive a smaller amount of their income from fundraising, sponsorship and philanthropy than many other sections of the not-for-profit sector, it is reasonable and desirable for arts organisations to undertake the same disclosure and reporting as all other areas of the not-for-profit sector.

Single National Disclosure Regime

A standardised national disclosure regime would ensure that entities which operate nationally would be able to significantly reduce compliance costs. This would also resolve the different reporting regimes in each state of Australia and enable comparisons across states and sectors to be more readily achieved.

Not-for-profits have to be competitive in an increasingly national and globalised market for philanthropic funds. The fact that there is not a national system for regulation in place in Australia operates only to disadvantage Western Australian not-for-profit arts organisations, as increasingly WA organisations are in competition with organisations from other states and even internationally for the same fundraising and philanthropy dollars. Although there is evidence that the rate of philanthropic donations from Western Australian individuals and companies is increasing, there is no doubt that a large proportion of private funding for the arts in Western Australia comes from funds or individuals resident in other states of Australia.

The Department of Culture and the Arts notes that all of its recurrently funded organisations have a systematic reporting system in place with the Department, and often these organisations will also report to a number of other state and federal government bodies. The Department of Culture and the Arts participates in the harmonised reporting framework for arts organisations, which means that standardised reporting for funded organisations has been agreed between all state arts funding agencies and the Australia Council, enabling arts organisations to submit one set of reports to both federal and state funding bodies.

The Department is supportive of a standardised national regime for disclosure and reporting, however the role, structure and funding of any such national regime or proposed national body would need to be carefully negotiated with State Governments.

Tiered system of reporting

The Department's main proviso on the recommendation for a single national disclosure regime is to ensure that costs of compliance are not disproportionate to the size of the organisations. A system which classified organisations on the basis of size and required different levels of regulation and reporting, similar in operation to the proposed *Associations Incorporation Bill 2006* in Western Australia, would be the preferred model of the Department of Culture and the Arts. Many arts organisations are very small entities, often with volunteer staff or small amounts of paid staff and the Department is aware of the impact on resources and levels of activity that increased compliance costs may have on these small organisations.

Role of national body

In the event that a national stand-alone body is created, the Department of Culture and the Arts is of the view that a significant role of a national body would be to educate, advise and support the not-for-profit sector, as well as to provide policy advice on the definition of charity, on regulatory requirements and other related issues. This body could also act as an information resource on charitable activities and provide accurate comparative data to third parties on the not-for-profit sector in Australia.

Information sharing and standardised systems

The Department of Culture and the Arts also acknowledges the potential for the Department to align its current reporting required from arts organisations with the standardised reporting required by a national system. This would enable organisations to significantly reduce their compliance costs, especially those organisations which report to a variety of different state and federal government bodies.