



Senate Standing Committee on Economics Inquiry into the disclosure regimes for charities and not-for-profit organisations

Submission by Wesley Mission NSW



Contents

This paper provides comment to a number of issues raised in the Senate Standing Committee on Economics' background paper. The submission is set out as follows:

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A summary of Wesley Mission's recommendations for not-for-profit regulatory reform

1. Strengthen the effectiveness of the Not-for-Profit (NFP) sector through reform that supports the sectors independence from business and government within acceptable guidelines. This allows flexibility for NFPs to take innovative approaches to address community need.
2. Shift the spotlight of NFP 'accountability' from the current primarily economic focus on fundraising and administration ratios to a process by which a NFP holds itself openly responsible for what it believes, what it does and what it does not do, in a way that shows it involving all concerned parties and actively responding to what it learns. Fundraising and administration ratios by themselves are not a broad or accurate enough measure of a NFPs performance and act as a disincentive to NFP innovation.
3. Alleviate the administrative burden on NFP organisations, particularly those with diverse programs, by providing a standardised approach to accountability. This should involve reporting to a single national entity, with uniform reporting methods.
4. Within a standardised approach however, allow NFPs the flexibility to respond to changing conditions and rearrange priorities to achieve the most effective outcomes. This could be achieved through setting mandatory key result areas against which a NFP must report, whilst also allowing the NFP to set performance targets appropriate to their organisational model and report under an "if not, why not?" principle.
5. To relieve NFPs of inherent ethical tensions, ensure a considered balance between "output" and "outcome" disclosure requirements linked to funding contracts. Highly quantitative requirements can put pressure on NFP staff to rush through client cases in order to meet "output" requirements, jeopardising quality, sustained outcomes for the client and community.
6. To facilitate the professionalisation of the NFP sector, provide funding opportunities, and/or allow NFPs to pursue innovative funding opportunities in order to invest in appropriate management support systems.
7. Charitable Tax Status should apply to NFPs who run 'commercial' operations if those income supporting measures directly support a NFPs core purpose, regardless of the legal structure of the organisation. This approach not only relieves the funding burden on government but also reduces the financial sustainability risks of NFP organisations.
8. Any NFP legal structure review should allow for Church based NFPs governance requirements.
9. The preceding points indicate just some of the complexities of managing an organisation to meet community need with limited resources in a sustainable and accountable manner. It is requisite that there is some form of public education around the challenges of this operating environment so that NFP transparency is not met by punitive reaction by naïve funding partners and the wider community.

† The "If not, why not?" principle is used in the ASX Governance Best Practice Recommendations.

Wesley Mission

Wesley Mission, a parish mission of the Uniting Church in Australia, provides support and relief to people in need with a vision to build communities where everyone has the opportunity to live a whole and productive life. Our strength lies in our ability to bring together our diversity of services and partner with key organisations to address a persons needs holistically, enabling and encouraging their continued social inclusion.

Wesley Mission operates many innovative programs under several key areas including Family, Community and Supported Accommodation services; Health and Counselling services; Aged Care and Disability services; and Employment and Vocational Education services. We also run pastoral, evangelical and theological education activities. Wesley Mission operates some allied

commercial services that are designed to contribute revenue to sustain the organisations activities. We employ around 2700 staff, operate over 200 services in communities across NSW and in 2007/08 our total annual expenditure came to approximately \$150 million.

Like most organisations in our sector, we have room for improvement in ensuring our governance systems meet global best practice standards. We are currently undertaking measures for our continual improvement in these areas. However, this is where we meet a number of ethical and resource tensions due to current NFP disclosure requirements. Wesley Mission supports the need for NFP regulatory reform, however the form that this takes should account for the discussion points raised in this submission.



Concerns about the not-for-profit sector

- a) A lack of transparency about the way in which public or donated funds are spent
- b) Lack of accountability, despite the fact that the not-for-profit sector is a major provider of services to the public

Wesley Mission's current approach to transparency and accountability

Wesley Mission takes the issue of stakeholder accountability seriously. The organisation has undertaken a number of measures to improve our transparency in the absence of a uniform NFP accounting standard.

In regards to our fiscal accountability Wesley Mission has chosen to produce “general purpose” financial reports under A-IFRS accounting standards for a number of years, even though these have not been mandatory. General purpose reports incorporate a broader scope of accounting standards than “special purpose” reports that only account to a limited and specified audience. Undertaking A-IFRS general purpose reports requires a significantly greater proportion of administration time however they are more effective than “special purpose” reports in terms of evaluating the efficiency of comparable organisations.

In addition to A-IFRS reporting, our public funding is subject to acquittal reports. Wesley Mission produces approximately 120 acquittal reports annually.

Most of our services also meet a range of accreditation procedures and standards in order to continue operating. These accountability requirements far exceed those required of government operated community services, such as Health. Currently, governments provide no funding for the accreditation process, instead providing a charge to gain accreditation. Wesley Mission and other NFPs must absorb the cost of these processes.

Wesley Mission is also undertaking measures to improve our accountability in regards to our impact on a broader array of stakeholders including our clients, staff, volunteers, Christian community, suppliers, the environment and the local communities in which we operate. Our Annual Report accounts to our broader community outlining our performance in key activities for the year. Over the past two years our Annual Reports have included some basic reporting against guidelines in the Global Reporting Initiative (GRI)[†].

To assist in the continual improvement of our management systems, Wesley Mission is in the preliminary stages of a performance information review using varying voluntary reporting regimes including the Global Reporting Initiative; Corporate Responsibility Index; Social Auditing Network; The Institute of Chartered Accountants in Australia NFP Guidelines; Accountability 1000 Series of Standards; and the International NGO Accountability Charter. Developing robust management systems supports our aims to: secure sustainable income streams; attract and retain skilled staff; reduce our environmental footprint; ensure rigorous performance measurement and accountability to stakeholders; and update our legacy infrastructure to ensure ‘best practice’ standards are possible.

Current disclosure regimes for Not-for-Profits (NFPs) act as a disincentive to transparency and broad accountability in the NFP sector for a number of reasons including the following:

[†] See p9 ‘Reporting’ for an outline of the Global Reporting Initiative.

i) An appropriate definition of 'Accountability' in the NFP sector

The lack of accountability in the form of NFP sector public reporting may be influenced by a different appreciation of 'accountability' in the NFP sector.

Accountability is a central issue in our increasingly interdependent world and is largely due to the advocacy of NFPs challenging the ethical conduct of corporations and governments. Ethical business is increasingly being understood in terms of 'Corporate Social Responsibility', the expectation that organisations should be explicitly transparent about their impact on a broad array of stakeholders. Their legitimacy increasingly depends on doing this or, at least, being seen to try to. It is inevitable that eyes have turned towards the NFP sector's own accountability.

The term 'accountability' has been heavily influenced by a commercial definition, reducing it to a financial model – a ledger style balancing of figures. This characterization is the one that has been imposed on NFPs by government and corporate funders, essentially asking a sector whose role is that of providing 'connectivity, care and passion' to act as accountants. This is a reductionist model which does not factor other key accountabilities or outcomes. Such a focus fails to adequately acknowledge that funding bodies are not the only stakeholders to which an NFP should be accountable. Wesley Mission's key stakeholders include:

- the needy and disadvantaged
- our staff and volunteers
- the Uniting Church
- other service providers
- donors and supporters
- the local communities in which we operate
- the wider community
- future generations.

This is a model of performance which looks beyond financial parameters and furthers the understanding of NFPs contribution to qualitative social and environmental returns that are essential to building healthy, stable communities and sustaining a robust domestic economy.

We might better define NFP accountability as the process by which a NFP holds itself openly responsible for what it believes, what it does and what it does not do, in a way which shows it involving all concerned parties and actively responding to what it learns.

ii) Differing operating models across the sector require different fundraising and administration approaches for effective outcomes

Not-for-profit organisations are broadly defined by what they aren't, rather than what they are. Typically they are values-based organisations that rely on corporate and government funding, charitable donations and help from volunteers - though this model is shifting with the increased blurring of a distinct separation between government, business, and community sector roles. Their *raison d'être* is cause-related rather than profit incentive with their two main functions being operational (providing services) and advocacy (giving voice to the cause). Worldwide and in Australia the NFP sector is growing rapidly and becoming increasingly professionalized with many NFPs now commanding considerable resources.

The focus on NFP use of funding on fundraising/administration weighed against the amount that "reaches clients" has definitional problems and inbuilt assumptions as to what creates effective outcomes for the community.

Concerns about the not-for-profit sector

Though it is a reasonable expectation that donors' gifts will benefit the intended recipients, the most constructive allocation of funds for achieving long-lasting, successful community outcomes will differ depending on an organisation's size, operating model and sustainability requirements. Whether funds go into meeting clients' basic needs; attracting and supporting engaged and skilled staff to care for clients; implementing management systems for clients to be supported in a safe, secure and well-informed environment; or securing a sustainable income stream so that we can provide ongoing services to the client – the ultimate beneficiary is the donors' intended recipient. Currently, the pecuniary focus acts as a disincentive for investment in updating management support systems for many NFPs (but particularly large organisations with a diversity of services) because it suggests that this type of spending will not benefit clients or the community. This is not a sustainable approach.

Providing daily services to people in need, while investing limited financial and human resources into best-practice support systems, is a complex, ethically challenging decision-making environment for NFP management to operate within. *Transparency around the outcomes of these decisions is problematic for NFP sustainability without funding for investment in support systems and community understanding of the ethical difficulties of our operating environment.*

Another concern is the definition of 'Not-For-Profit'. Public and media criticism of NFPs that derive income from some aspects of their work has increased, even if those income supporting measures are part of the NFPs core purpose. The concern about community organisations being profitable relates mainly to those who run competitive businesses not generally considered of a care nature. These businesses compete in the same market as For-Profits with shareholders and receive benefits of no taxation because their profits go straight back into charitable services.

However, Wesley Mission runs hospitals and aged care facilities that are sometimes profitable and directly address our core purpose. Often these services do not make a profit as government will not contribute to capital costs to achieve their rigorous certification standards. NFPs are also accountable for any complaint made against them. For example, in aged care if a complaint is made three departments immediately visit the site: the Department of Health and Ageing, the Health Department of NSW, and the Standards Agency for Accreditation. Most businesses would not cope with this much scrutiny and demand on their time with no resource support. There appears to be little public or corporate understanding of the extensive standards monitoring and restrictive operating conditions that our sector is under – it is not a free and open market situation.

Given a renewed focus on 'professionalising' the NFP sector it is nonsensical to expect NFPs to meet best-practice standards without finding alternative funding streams to ensure appropriate support systems. There is a vast difference between an organisation that carries profitable aspects which help to fund and support its core purpose (in Wesley Mission's case our deficit-funded projects with the poor and needy) and organisation's who make a profit to bolster the for-profit enterprise. The nature of 'core purpose' is a concept independent to the legal structure of the broader organisation.

iii) Funding disclosure requirements linked to “output” create ethical tensions for NFPs

With the rapid growth of the NFP sector it has become increasingly important for NFP organisations to operate with professional standards. However, it is important to note that maintaining professional standards as a NFP does not equate to operating like a commercial business. Business and NFP drivers are very different, one being profit, the other cause-related. Therefore our approach to performance measurement should reflect this different focus. Often NFPs are required to give more attention to typically business-style “output” measures that can work counter to achieving our core objectives.

In some programs quantitative accountability data linked to government funding can result in pressure to ‘rush through’ client cases in order to meet targets. This ethical tension causes distress for NFP employees as there is little scope to offer a socially isolated person extra quality time for human connection as rigid outputs dictate service provision. It can be distressing for both client and employees, because many people need more than just a service. *The NFP sectors broad role in society is to provide ‘care, connectivity and passion’, with many community organisations playing a key social justice role; that role can be compromised under current disclosure models.*

It is also difficult for NFPs to measure the success of a program because objectives such as improvement in clients ‘wellbeing’ are intangible and difficult to measure by sum. To measure such factors and obtain meaningful data requires longitudinal studies. Such studies usually do not suit the timing requirements expected from funding disclosure regimes. The demand for short-term, rapid results can encourage either pushing for quick fixes or digging up the seedling to examine the roots before it can bear fruit. It is a myopic and ad hoc approach. *NFPs require long term funding and a balance of quantitative and qualitative measures to truly see the fruits of our projects.*

iv) Non-standardised disclosure requirements add to NFP administrative burden

Wesley Mission’s community strength lies in its ability to bring our services together to support individuals and families with a range of programs that address the symptoms of need and the underlying causes. This approach aims to create sustainable and long-term outcomes for individuals and the community. However, with so many programs in place the extra administrative burden of more than 400 non-standardised contracts limits Wesley Mission’s potential by diverting scarce resources to compliance issues. It also disadvantages Wesley Mission in comparison to organisations with a single focus program where fundraising and administration ratios are the main focus of accountability.

The plethora of accountability requirements from funding bodies allows fewer resources for innovation and investment in client-focused services and supporting management systems. Onerous disclosure requirements can involve sourcing a number of measurements that are of little organisational use and unrelated to quality outcomes for the client.

Calls for regulatory reforms

Wesley Mission supports the need for regulatory reform though this reform should allow NFPs the flexibility to self-determine the most effective management strategies to meet its core purpose, within acceptable guidelines.

Models of regulation that may be useful in improving governance and management of charities and not-for-profit organisations

Stakeholder Mapping

Through our research into voluntary accountability regimes, Wesley Mission has found that accountabilities must focus on a more progressive model which embraces a broader range of stakeholder groups. As stakeholder analysis becomes one of the key tools of organisational accountability the need to map and analyse various stakeholders in a given situation is paramount. This process identifies key needs and drivers of groups, identifies conflicting interests between stakeholders and helps prioritise stakeholders. This stakeholder analysis has become the key strategy with which many organisations and regulatory bodies design accountability mechanisms.

Wesley Mission has done some preliminary work in this area. Yet whilst this process assists to develop understanding of our operating environment, the decision-making benefits are limited due to the systemic constraints of current 'funder-centric' accountability requirements which provide little scope for NFP innovation. Conversely, in the context of a wider regulatory review the decision-making benefits of a stakeholder analyses approach could prove more useful by:

- I. assisting government understanding of the complexities of the NFP operating environment;
- II. identifying a broader set of Key Result Areas for NFPs to report their performance against; and
- III. providing clarity, for both NFPs and government, around where NFP accountability priorities should lay

Reporting

A standard requirement in any regulatory reform should be annual reporting to a Regulatory body, public supporters and stakeholders.

A possible approach to reporting could follow that taken in the corporate sector where a number of voluntary reporting initiatives based on a broader concept of accountability have become useful tools for company investors and stakeholders. The most widely adopted reporting system is the Global Reporting Initiative (GRI). The GRI is an UN-endorsed multi-stakeholder network of thousands of experts, in countries worldwide, who participate in GRI's working groups and governance bodies and use the GRI Guidelines to report. This framework sets out the principles and indicators that organisations can use to measure and report their economic, environmental, and social performance. Reports based on the GRI framework can be used to benchmark organisational performance with respect to laws, norms, codes, performance standards and voluntary initiatives. GRI provides standardised measures but allows organisations to set their own targets for continual improvement.

The GRI Non-Profit Sector Supplement project has been initiated to further reporting practice in the NFP sector. The GRI Non-Profit Sector Supplement will provide reporting guidance for non-profit organisations to report on performance at their organisational level. The Sector Supplement is intended to be generally applicable recognising that there are considerable variations among types of organisations in this sector, in terms of mission/focus areas, operations, and orientation (e.g., religious or non-religious, global or local focus).

The GRI and its Non-Profit sector supplement will be valuable references for any review into Not-for-Profit disclosure regimes^{††}. However, any uptake of the GRI or similar framework should be in place of, and not an addition to, already arduous NFP disclosure requirements. The costs of setting up the supporting systems to report against this framework would need to be resourced through government funding allocations.

Accountability to Funding Bodies

While it is important to lighten the administrative burden on NFPs by a standardised approach to accountability, NFPs should also have the flexibility to respond to changing conditions and rearrange priorities to achieve the most effective outcomes. Wesley Mission recommends the reform of a list of mandatory requirements similar to those stipulated by the Australian Taxation Office for Deductible Gift Recipients and Public Benevolent Institutions. These reforms focus on ethical governance without too many restrictive limitations. Essential requirements should include:

- a) The establishment and maintenance of Gift Funds into which all funds donated or acquired for the specified purposes of the NFP are deposited
- b) 'Responsible persons' 'to administer these funds. A 'responsible person' being someone who is recognised as contributing to the community with a specific award for community service or who belongs to an organisation with a specified ethical code (such as doctors or lawyers)
- c) Prohibition of the use of these funds by any members of the managing body
- d) The requirement that in the event the organisation is wound up the remaining funds are distributed to another NFP organisation having similar purposes
- e) Additional regular five-yearly reviews to check the management of the Gift fund, expressly that donations are used to support the not-for-profit purposes of the organisation.

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

Wesley Mission has concerns about the institution of a single National Regulator if it doesn't recognise the distinct role of Church NFPs. If there is to be a single National Regulator then it must be comprised of church, and non-church, not-for-profit and government representatives. However the National Regulator must have independence and autonomy and be free of any government or political control. The proposed National Regulator should be an accrediting body. Accreditation would be a prerequisite for the receipt of any Government funding.

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

It is impracticable to suggest that a single, specialist 'one size fits all' legal structure for the Not for Profit Sector would be appropriate or workable. Such a legal structure would be non-viable for some churches – the charitable sector's major providers – due to the unique nature, history and legal requirements of church-based agencies.

To date, governments have had difficulty understanding the structure and the operational nature of some church agencies, particularly the Australian Uniting Church and Catholic Church. And for this reason too it is essential that any regulatory body include representatives of Church-based NFPs.

Church organisations require a legal structure that enables the Church itself to achieve its ministry and mission objectives which include the provision of relief to the needy and disadvantaged. The means of providing relief services are also subject to the particular doctrines of the Church.

^{††}Global Reporting has not yet announced a release date for the Non-Profit Sector Supplement. For further information visit www.globalreporting.org.au

Calls for regulatory reforms

Wesley Mission's structure and relationship to the Uniting Church is determined by a federal constitution which provides for the constitution of property trusts in each state to hold property (as a convenience) as well as the establishment of Synods and Presbyteries in each State - the Synods to be responsible for supervision and resourcing, and the Presbyteries for mission and ministry. The Uniting Church in Australia vests all church property in Synod property trusts constituted in each state. These property trusts are the legal entities referred to as the "Service Providers" in funding agreements.

In most churches (but particularly the Uniting Church) the primary expression of the ministry of the church is the local congregation or parish mission. In the Uniting Church each parish mission has custodial and autonomous responsibility for the management of the properties and the operation of all programs conducted

for the Church on those properties. Governments have on occasion found it difficult to understand the complex governance structures and the 'custodial responsibilities' of Wesley Mission, a parish mission of the Uniting Church. There has been the expectation by Government that Wesley Mission is a 'trustee' or 'agent' for the Church itself - in much the same way as a Department like DEEWR administers the business of Government. Wesley Mission has only recently received approval for use of the expression 'The Uniting Church in Australia Property Trust (NSW) through Wesley Mission'.

A single, specialist legal structure would place restrictions on church governance structures that are essential for maintaining congruency between Wesley Mission's spiritual principal of Word and Deed (word and praxis) and the delivery of effective and efficient services and programs.





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