



27th August 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee Secretary

On behalf of both Australian Territories of The Salvation Army, I endorse the attached submission to the Inquiry into the Disclosure Regimes for Charities and Not-for-Profit Organisations.

The Salvation Army does not support the establishment of a full charities commission with wide ranging powers that adds significant regulation and administrative burden. However, The Salvation Army is open to some government directed guidelines and monitoring to assist with the standardisation and simplification of reporting within a broad sector that is in the public interest.

If it was decided that a regulatory authority was to be formed, The Salvation Army would seek involvement in the preparation of the charter.

James Condon
Lt Colonel
Chief Secretary – Australia Eastern Territory

The Salvation Army Response
to the Inquiry into the
Disclosure regimes for Charities and
Not-for-Profit Organisations

August 2008

1. Does there need to be regulatory reform of the not-for-profit sector?

The Salvation Army is supportive, in principle, of the notion that regulatory reform would be beneficial for the sector provided that this does not unduly add administrative burdens or costs without delivering significant benefits.

The Salvation Army is also keen that any outcomes from this inquiry would clarify the definition of some key terms, particularly:

- Charity; and
- Public Benevolent Institution.

However, TSA is very concerned that any proposed regulatory body is not allowed to become overly intrusive with the flow on effect of significant additional administrative burdens. The cost of compliance should be limited and the continued use of volunteers should be encouraged. Much of our NFP sector is based on this very culture.

If not, why not?

Are there alternative (non regulatory) measures that might be taken by government and the not-for-profit sector to address some of the concerns raised by groups such as *Choice* about the governance, standards, accountability and transparency of not-for-profit

The key benefit that might arise from the reform relates to standardisation of reporting in order to make it easier for the readers of reports to make comparisons between entities. It is believed that this can only realistically be accomplished with a form of regulation. Non compulsory guidelines are often not adopted and this approach is not considered to be likely to produce the desired results.

organisations who use public and/or government funds?

Who should be responsible for progressing and/or funding these measures?

If the reporting is designed to serve government or the public, then this should be funded by the government funding bodies. As the designated authority charged with the responsibility of monitoring this reporting is likely to be a statutory authority, this adds weight to that argument. While it is true that the reporting requirements of public and listed companies are funded from the entities themselves rather than government, the difficulty for the not-for-profit sector is that it does not have the ability to raise capital or retain profits to cover the costs of the additional administration. It is considered highly inappropriate to begin to tax or levy the not-for-profit sector to achieve this. While this may be logical, the concept of taxing the not-for-profit sector would reduce funds available for the agreed purpose. This would mean less services in the community service sector and the recipients will lose out.

How might the uptake of any such measures be monitored?

It is believed that reports prepared in accordance with the regulations implemented would have to be monitored by government. Industry or sector bodies would not be considered to have sufficient respect to enforce rules. Normal report monitoring requires a compliance aspect. It is believed that the Departments of Government that provide funding would be the best monitoring authorities. However, there are State and Federal funding arms of government. In line with the general approach to standard national approach to corporations monitoring, it is believed that Federal Government would be the responsible authority.

If so: what should be the objectives of reform?

Objectives could include standardising disclosures would be key and practical outcome.

Clarification of definitions would be helpful particularly covering:

- Revenue;
- surplus / loss;
- Carried forward surpluses or losses;
- Donor Restricted Reserves;
- Other Reserves; and
- Liquidity measures.

The objectives should not be only financial. Reforms could also:

- confirm appropriate governance practices are in place to give confidence to the stakeholders.
- ensure reports enable readers to be clear on the organisation's objectives and the organisation's success in achieving their goals.

Are their minimum requirements that must be met in order for a national regulatory system to be worthwhile?

A basic standard bottom line financial result measure would be considered a minimum requirement.

Should regulatory reform apply to the whole not-for-profit sector, or only to segments of the sector? For example, to charities; to bodies receiving public funds, whether through grants or tax concessions; to bodies with a financial turnover about a specified threshold etc?

The practicalities of a regulatory requirement across a sector that reportedly has over 700,000 entities in NSW alone suggest that some breakdown is required. Small NFP's with volunteer admin staff are not going to have the ability to complete complex reporting. In addition, for small entities, it is not considered to be practical or necessary. The Salvation Army considers that the appropriate way to deal with this is to set a specific threshold on revenue. To apply reform based on types of income or by specific purpose is not considered to be appropriate. This would only lead to unhelpful segregation and encourage organisations to adapt their approaches to fit the rules. Revenue is a common factor and an appropriate measure to set thresholds.

Where should the impetus for reform come from? Who should drive reform?

Only government can effectively do this

What sort of consultation should be conducted on the nature of any regulatory reform?

Consultation is considered critical to get practical and helpful outcomes. Every organisation should be encouraged to participate in discussion on this issue.

How could input be facilitated from across the broad range of organisations who comprise the not-for-profit sector?

An advertising campaign would be considered appropriate with reference to an appropriate website address. A survey would be helpful.

Are their particular models of regulation and/or legislative forms that would be useful, in the

The normal corporations' requirements are a base for reform. However, given the diversity of size, skills and stakeholder interest, the diversity immediately

Australian context, in improving
governance and management of
charities and not-for-profit
organisations and in catering for
emerging social enterprises?

requires a new approach.

What are the perceived advantages
and/or disadvantages of these
models?

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

The Salvation Army believes that only a single, national regulator:

- can do this job. Once the responsibility is broken down by State or by type, this concept will immediately become compromised; and
- would have any chance of being a cost effective way to manage this plan.

If not, why not?

What would be the disadvantages in having a single national regulator?

The disadvantages are only considered to be a national regulator not being aware or sensitive to the local issues.

If so:

Should a national regulator be responsible for the entire not-for-profit sector or only the charitable

The Salvation Army believes that a national regulator only needs to be established to cover the charitable sector.

sector?

The non-charitable NFP organisations which exist only for the purposes and benefit of their members are not considered to have the same degree of public concern.

The non-charitable NFP organisations could be encouraged to adopt the guidelines rather than be obligated to comply.

Should the regulator be independent of government?

For this to be effective and have the appropriate authority, it is considered that the regulator should be a government authority with sector representation.

Where would the regulator be best located? For example, as a stand alone agency or located within an existing institution, such as the Australian Securities and Investment Commission.

A division of ASIC would be an appropriate place because of the commonality of many of the reporting concepts.

What would be the role of a national regulator? For example, should it have an:

- educative/advisory role?

Yes

- enforcement role?

Yes but not immediately. The Salvation Army considers that a period of say 5 years should be allowed prior to any enforcement power was given. It needs to be appreciated that the sector has been outside the income tax net and is not set up with the systems as advanced as listed companies to comply with all reporting and compliance regimes. Further, given the reduced remuneration often available, skill levels are generally not as high as those demanded in the commercial sector. There is a need to make an allowance for this through a period of voluntary compliance and tolerance.

- mediation/dispute resolution role?

The resolution role is considered to add value in the sector's relations with government agencies.

Should a national regulator be responsible for making decisions about charitable status?

Currently, the ATO has this role. It is considered appropriate that a body independent of the regulator retains the responsibility for determining if an organisation fits the criteria.

How should any national regulator be funded? For example, by the federal government, by federal, state and territory governments, on a cost recovery basis?

Given it is recommended that this regulatory role should be a national role, funding should be from Federal Government. It is strongly argued that this should not be on a cost recovery basis. While it is considered reasonable that a nominal lodgement fee for annual returns might be implemented, this alone could not fund such a regulator. As this concept is being discussed for the benefit of public interest, the cost should be a public cost. To charge the charitable or NFP sector generally for this will ultimately harm the sector and reduce the benefits currently provided to the beneficiaries.

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

If not, why not?

There is currently a type of legal structure available to the NFP sector in the form of the Company Limited by Guarantee. While this gives better protection to the management and leadership of NFP's through the protections available to directors (viz a viz the "corporate veil"), not all NFP's feel that the requirements of this structure in terms of reporting are warranted.

Also, where organisations have dual or multiple purposes, this type of structure is not always considered appropriate. Due recognition needs to be given where organisations such as The Salvation Army and others are established by Acts of Parliament. It is proven that these legal structures have stood the test of time (The Salvation Army New South Wales Property Trust Act incorporated in 1929) and should not be amended or replaced.

What would be the disadvantages in having a single, specialist, legal structure for the not-for-profit sector?

Not all organisations have single purposes. The church sector particularly has dual / multiple purposes. The simple distinct structure of a "one size fits all" does not allow for the cross funding of programs. This is particularly relevant where there are religious activities and social welfare programs with distinct funding. The specific issues are where there:

- is tax deductibility of donations involved; and
- is different status for Fringe Benefits Tax (i.e. exempt and rebateable).

If so, would this be best achieved through:

- A national legislation scheme, whereby current national and state and territory laws relating to the not-for-profit sector are harmonised into uniform law?; or
- The referral of powers from the states and territories to the Commonwealth, allowing for incorporation of current laws relating to the regulation of the not-for-profit sector, for example, incorporations Acts and fundraising Acts, into Commonwealth legislation?

The harmonisation is considered a non-negotiable requirement of any national scheme.

These would have to be handled nationally and not devolved or referred to State or local authorities. This would simply create inefficiency and cost the economy too much for the benefits likely to be derived.

What should be the minimum features of any legal structure?

Issues that need to be considered are setting up structures that are sufficiently flexible to encourage well skilled individuals to contribute to the sector without the burdens of the legal liabilities. This may mean a new type of entity. Clearly, there should not be an opportunity for fraudulent management or insolvent trading to be carried on without control lest the wider community loses respect for the sector. However, the economy and indeed the community need the skills of the qualified personnel to add strong support to

sanctioned and worthy community ventures that are in the NFP space.
Unless something is done to assist the sector, the country will be deprived of
great benefits. This is particularly true in an age where commitment is
considered an option