

INQUIRY INTO THE DISCLOSURE REGIMES FOR CHARITIES AND NOT-FOR-PROFIT ORGANISATIONS



WOMEN'S HEALTH VICTORIA

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INTRODUCTION

Women's Health Victoria is a state-wide women's health promotion, information and advocacy service. We are a non government organisation primarily funded by sections of the Victorian Department of Human Services. We work with health professionals and policy makers to influence and inform health policy and service delivery for women.

The work of Women's Health Victoria is underpinned by a social model of health. We are committed to reducing inequities which arise from the social, economic and environmental determinants of health. These determinants are experienced differently by women and men. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

The vision of Women's Health Victoria is for a society in which there is an accepted approach to health that is empowering and respectful of women and girls; one that recognises the importance of gender in determining health outcomes and utilises a sound gender analysis in policy making and in health and community service design.

We work towards achieving this vision by incorporating the principles of integrated health promotion. This is implemented by:

- Having a strong focus on working in partnership with other organisations and opinion leaders. We use credible tools to determine and strategically plan for the creation of new partnerships and the development of existing ones.
- Using a mix of health promotion interventions that are focused at the population level to achieve our vision – a significant amount of our activity is spread across evidence-based health information provision, policy support, advocacy, social marketing and sector based capacity building.
- Clearly defining our community of interest as individuals and organisations that work in areas which influence health outcomes. Our community of interest includes but is not limited to health promotion practitioners, service and information providers, policy and opinion leaders, and researchers and educators.

SUBMISSION

Thank you for the opportunity to contribute to the Inquiry into the Disclosure Regimes for Charities and Not-for-Profit Organisations.

We welcome the Federal Government's commitment to engaging with the community sector and developing and implementing its Social Inclusion agenda. Strengthening the community or third sector is crucial to the economic and social development of not only local communities but the Australian community.

This has been recognised more recently with the Victorian State Government's commitment in an Action Plan to implementing recommendations from its commissioned reviews: the Stronger Community Organisations Project and the Review of Not-for-Profit Regulation.

The Federal Government's 2001 Inquiry into the Definition of Charities and Related Organisations and recommendations provided the sector with hope that real change would eventuate in regulation and compliance frameworks. It is disappointing to note that to date some of the major recommendations from that Inquiry are yet to be implemented.

The Australian Bureau of Statistics has limited data on not for profit (NFP) organisations. Information that is available includes summary of operations, income and expenditure, and assets and liabilities data¹. For this, the ABS broadly divides NFPs into nine categories, including 'health', 'social services', 'hospitals', 'religions', 'education and research' and so on. This data does not account for all the NFPs in Australia and no exact number of Australian NFPs is available². However, it does show that Australia has over 40,000 not for profit organisations that collectively employ nearly 885,000 people¹. In addition, information recorded for 2006-07 reveals that some 2,434,815 volunteers worked for non for profit organisations during that financial year¹. At the same time, industry value added by NFPs was \$35.1b and capital expenditure was \$8.5b¹. ABS data highlight the significance of the NFP sector, but with regulation remaining the purview of disparate federal and state bodies, many aspects of the sector remain invisible, are underdeveloped, underutilised and overregulated.

Currently, it is difficult to navigate through and comprehend the many varied aspects of NFP governance and regulation. In some instances it is difficult to identify which laws apply to what organisations and whether they are standardised or different depending on various categories such as business size, number of employees, volunteers and so on. The state and federal distinctions, ambiguous nature of third sector regulation creates a climate of complexity and at times confusion about many NFP factors including tax exemptions, report standards, access to resources, and general sector information. Uncertainty and lack of clarity in these and many other areas can place NFPs at risk of non-compliance or can lead to inadvertent illegalities occurring. It is for these reasons that the sector is often perceived as lacking accountability and transparency.

Accountability

Accountability is made all the more difficult because there is not consistency of regulation across the sector. Currently, the plethora of legal structures NFP organisations may be incorporated under or not, results in different levels of reporting, regulation and compliance that hinder accountability. This can have wide ranging effects that potentially impact on, among other things, funding, organisational performance, and public and donor confidence². A beginning would be to achieve accounting standards, specific to NFPs, (as is the case outside of Australia) and not based on for-profit organisations as is currently. Another step would be to have one sectoral language, so that terminology is consistent throughout the sector regardless of size, revenue or location. This would enable standardised processes and reporting systems to be devised, used, collated and audited on a national basis.

A centralised regulatory body could govern such accountability and consistency without overburdening NFPs by requiring multiple or irrelevant reports². The current system/s encourage much duplication. With a single regulator, governance of NFPs would include clear duties that

would be met by each. Compliance would be monitored in a consistent way and relevant feedback to NFPs would be readily available. NFPs could not only report economic activity in their annual report, but could be required to show how outcomes and generated impact reflected the objectives and purpose of the NFP³. Relevant data from annual reports could be publicly available so that public scrutiny would be an added accountability measure to external auditing procedures. A single national regulatory body would enable public accountability, and would do so in a fairer more equitable way, suitable to the variables of NFP organisations, but consistent in method and management.

Reduced costs of compliance for organisations will eventuate from a single regulatory system and achieve a cumulative and flow-on effect in a number of ways beneficial to the community.

Transparency

A standardised reporting mechanism with a central regulatory body would allow for greater data collation by the Australian Bureau of Statistics (ABS) and other research bodies. This not only has the potential to increase transparency, but also creates greater NFP visibility. Data gathering provides an evidence base that could simplify funding decisions, benefit grant applications, increase donor agency, and could potentially increase currently underutilised philanthropic opportunities, including the international sector.

We would advocate that the ABS should be suitably resourced to be the data collecting entity if another alternative is not achievable within a central regulatory framework. Information could be made readily available and searchable online similar to the UK Guidestar system.

There would also be increased scope to monitor various community and social trends and indicators, including those relating to health. This would have the potential to inform policy decisions.

Transparency must be built into the structural design of regulation. As it stands, with the multiple federal and state entities that govern the NFP sector, transparency is hindered and invisibility aided by the many and varied systemic factors that currently comprise NFP regulation. A national regulatory body could be a significant step to alleviating this and to promoting NFP transparency.

The opportunity for effective benchmarking to occur in a consistent regulatory regime should also not be overlooked or underestimated. It is very difficult to compare 'apples with apples' at present. This has been evidenced by this organisation's participation in various consultancy projects undertaken by funding bodies (mostly State and Federal government departments) over the years to establish cost based funding models only to find that there is lack of consistent and comparable data for a range of reasons. This has resulted in unsatisfactory outcomes for both funding bodies and funded organisations. This situation continues today and any improvements to data collection processes would be welcomed.

Regulation model

Both the United Kingdom and the United States of America have NFP regulation models around legal structure that Australia can learn from. New Zealand has also recently established a Charity Commission responsible for registering and monitoring charitable organisations in New Zealand. However, none of these countries takes the added step to amalgamate charity and other NFP regulation.

Ideally, a new regulatory body would:

- enable NFP organisations to work across all states and territories with surety of regulation and compliance
- address issues of incorporation, fundraising and charitable status
- have a standard chart of accounts for funding and service agreements
- include an online, freely accessible NFP database
- have clarity and consistency around incorporation
- have a sliding scale of reporting obligations based on organisational size

We concur with the Public Interest Law Clearing House (Vic) Inc. (PILCH) submission's concluding remarks to the Inquiry that a reform Taskforce be established to progress the work towards achieving a sustainable and supported regulatory framework for the benefit of all engaged in the community sector in Australia.

Conclusion

As a not-for-profit (NFP) organisation, registered Charity and Deductible Gift Recipient, Women's Health Victoria advocates the need for a national NFP regulatory body. It is the position of Women's Health Victoria that a single NFP regulatory entity would help to address concerns about the sector's transparency and accountability, and would create greater sectoral visibility, recognition and legitimacy. The current NFP regulatory structures appear unsustainable; a national regulator would enable sustainability and would increase public confidence in the sector. In addition it would clarify many legal, reporting and accountability ambiguities. It would ideally be separate from the Australian Taxation Office (ATO) and the Australian Securities and Investment Commission (ASIC), although it might draw on the data facilities and management that ASIC has developed. The national body could combine charity and other NFP entities regulation, and in so doing lead the way in integrated NFP-specific regulation.

Women's Health Victoria believes that the opportunity this Inquiry presents should not be lost. There is a desire to achieve real reform in a sector that affects and achieves benefits for all Australians and of which not enough is understood and made visible for a variety of reasons as outlined in our submission.

¹ ABS (2008) Not-for-profit Organisations, Australia, 2006-07. Australian Bureau of Statistics. Cat. No. 8106.0. Located at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Main+Features32006-07> Accessed 26 August 2008.

² Woodward, S. (2003) 'Not-for-profit' motivation in a 'for-profit' company law regime: national baseline data. *Australian Company Law and Securities Journal* 21: 102-32. Available online at: <http://cclsr.law.unimelb.edu.au/not-for-profit/motivation.pdf> Accessed 26 August 2008.

³ Pro Bono Australia (2008) Call for more practical Not for Profit reporting framework. Pro Bono Australia. Located at www.probonoaustralia.com.au/news/print.chtml?filename_num=226921 Accessed 26 August 2008.