



August 26 2008

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

POSTED
28/8/08 *gmk*

E-MAILED
28/8/08 *gmk*

Dear Sir / Madam

Re: Inquiry into the Disclosure regimes for Charities and not-for-profit organisations

On behalf of Cerebral Palsy League of Queensland, I thank you for the invitation to provide feedback to assist in the Inquiry into the Disclosure regimes for Charities and not-for-profit organisations.

Permission is given to publish the Submission on the Senate Inquiry website.

Should you have any inquiries please do not hesitate to contact us via the details outlined below.

Yours Sincerely

Angela Tillmanns CEO

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Cerebral Palsy League of Queensland

Submission

Inquiry into the Disclosure regimes for Charities and not-for-profit organisations

August 2008

**SUBMISSION TO SENATE ECONOMICS COMMITTEE INQUIRY INTO THE DISCLOSURE REGIMES
FOR CHARITIES AND NOT-FOR-PROFIT ORGANISATIONS
AUGUST 2008**

POSITION STATEMENT - Cerebral Palsy League of Queensland

The Cerebral Palsy League of Queensland (CPLQ), currently registered under the Corporations Law as a Company, limited by guarantee and not having a share capital, supports the Senate Inquiry into the Disclosure Regimes for Charities and Not-For-Profit sector (NFP and/or Third Sector). The CPLQ operates a sizable Fundraising and Marketing department that works diligently to assist in meeting funding shortfalls for service delivery in the disability sector. The CPLQ acknowledges the complexity and fragmentation of the current regulation of the NFP and Charities sector in Australia and that Australia has fallen behind in international best practice benchmarks in this area. At the same time, the CPLQ recognises that charities and NFPs form a major part of Australian society and range in size from small local groups to well-known major charities with budgets of millions.

The not-for-profit sector is increasingly being used by governments for the delivery of services. While there are inbuilt accountabilities to government bodies for funded programs, the fundraising accountabilities of the sector are fragmented and inconsistent. Over time, this could lead to reduced levels of public trust and confidence, which will have a negative impact on fundraising.

Consequently, the CPLQ endorses the establishment of a national Regulator with its independence spelt out in commonwealth legislation and based on the best practice models established in Canada, United Kingdom and New Zealand. Such endeavours must be driven by the following principles:

Disclosure and Regulation

- Levels of reporting requirements which reflect the size and complexity of the organisation;
- Provide clarification, explanation, and interpretation of international accounting standards and their application in the NFP sector and to sector specific transactions. This form of regulation could be developed and based on the Accounting and Reporting by Charities: Statement of Recommended Practice (SORP), which operates out of the United Kingdom.
- Reignite public trust and confidence in the NFP sector;
- Be less bureaucratic and less complex; and
- Be focused on effectiveness (outcomes) and efficiency (processes).

Resources

- Be adequately resourced to ensure an actual improvement to the current situation;
- Be resourced to ensure minimum data set development and data linkage with existing data sets monitoring the indicators such as: determinants of disadvantage; social determinants of health, community well being, quality of life and social inclusion.

Accountability

- Have an annual reporting process, similar to Australian Securities and Investment Commission (ASIC).

Reporting

- Be effective in terms of improving the quality and consistency of financial reporting by NFPs;
- Enhance the relevance, comparability, consistency and understandability of information gathered;
- Establish a minimum data set (including social indicators) that can be benchmarked with other countries and with other organisations of similar operating budget categories; and
- Ensure that all NFPs are registered with the regulatory body to encourage consistent compliance standards.

JURISDICTION

The **Cerebral Palsy League of Queensland (CPLQ)** is the largest non-government service provider for Queensland clients who have physical disability and provides a range of services throughout the state. Services are accessed by children and adults with cerebral palsy and other disabilities and their families / carers. The CPLQ's mission statement documents the core direction and purpose of the organisation as follows:

"The Cerebral Palsy League of Queensland will provide services and supports which enable and empower people with cerebral palsy and related disabilities to create and access opportunities to lead valued lives as respected and equal members of society within their family and community." (Extract from the Corporate Plan 2005-2010)

The organisation has grown, from its initial small inception in 1948 by a group of parents of children and concerned citizens to one, sixty years on, with an annual budget of \$54m in the provision of vital services to assist some 10,000 (active and inactive) clients. Currently we assist 1,500 children and 1,500 adults and their families/carers to achieve their life goals.

The CPLQ employs approximately 1500 staff to assist in the delivery of innovative services to meet the needs of our client population across the state with special consideration being given to the difficulties of service access to those people who have disability and who are living in rural and remote regions and also those people from culturally and linguistically diverse backgrounds.

The CPLQ has seven regional centres for child and adult services and it also provides an outreach program within each region and throughout the state. The regional centres are located at:

- Gold Coast
- Brisbane South
- Wide Bay
- Townsville
- Toowoomba
- Brisbane North
- Sunshine Coast
- Rockhampton

The CPLQ operates a sizable Fundraising and Marketing department that works diligently to assist in meeting funding shortfalls for service delivery in the disability sector. CPLQ services are also provided in rural and remote places such as Mt Isa, Torres Strait and Cairns. The CPLQ is currently certified as a Quality Assured organisation under Queensland Disability Sector Quality System, Commonwealth Disability Services Standards, and AS/NZS ISO 9001:2000.

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Mrs Angela Tillmanns
Signature

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THE SENATE INQUIRY

The Senate referred the matter to the Senate Standing Committee on Economics for report by the last sitting day of November 2008. The inquiry will examine:

1. The relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;
2. 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; and
3. 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.

Submissions close on Friday 29 August, 2008.

For this submission the Senate Inquiry questions are highlighted in italics and the responses are in normal font.

METHODOLOGY USED TO DEVELOP THIS SUBMISSION

The evidence for this submission has been gathered by:

- Consultation, focus groups and discussions with managers, supervisors, staff and clients of the Cerebral Palsy League of Queensland;
- Analysis of relevant internal document such as the Constitution and policies and procedures around fundraising and financial management;
- Analysis of documents from various Government and Community Reference Groups involved with providing support to the Not-For-Profit Sector and Charities;
- Literature Review; and
- Research identifying international benchmarks.

1.0 RECOMMENDATIONS

1.1 *Disclosure and Regulation*

1. Australia has fallen behind globally in converging regulatory standards for not-for-profit organisations compared with countries such as New Zealand, Great Britain and Canada and the importance of a central regulator should be considered to assist in the public perception of not-for-profit organisations through the introduction of a framework that includes governance, standards, improved accountability and transparency;
2. A central independent regulator, whatever its form, will need significant resources, as an under resourced body will not provide the effectiveness or efficiencies of process that is required;
3. Regulatory response needs to be proportionate in terms of size and risk;
4. Provide clarification, explanation, interpretation and support of international accounting standards and of their application in the NFP sector and to sector specific transactions. This form of regulation could be developed and based on the Accounting and Reporting by Charities: Statement of Recommended Practice (SORP) which operates out of the United Kingdom;
5. The Regulator needs to be the central focus for reporting on, monitoring and encouraging compliant behaviour of organisations through education

and awareness campaigns and appropriate sanctions.

2.0 JUSTIFICATION FOR RECOMMENDATIONS

2.1 *Current Disclosure regimes*

The various jurisdictions responses to strengthening the NFP sector demonstrate fragmentation and ad-hoc approaches to fundraising and accountability and that there is an urgent need to create national responses to fundraising disclosure and regulation with the sector. Table One illustrates the current legislation and the fragmentation of the jurisdictions legislative requirements.

Table One: Regulation of Public Fundraising in Australia

Jurisdiction	Act and Regulations
Queensland	Collections Act 1966; Collections Regulation 1998
New South Wales	Charitable Fundraising Act 1991 Charitable Fundraising Regulation 1998 Best Practice Guidelines
Australian Capital Territory	Collections Act 1959 No Regulations issued
Victoria	Fundraising Appeals Act 1998 Fundraising Appeals Regulations 1999 and 2001
Tasmania	Collections for Charities Act 2001 Collections for Charities Regulations 2001 The Charitable Collectors Handbook
South Australia	Collections for Charitable Purposes Act 1939; Collections for Charitable Purposes (Collection Bins) Regulations 1995; Collections for Charitable Purposes Code of Practice
Western Australia	Charitable Collections Act 1946; Charitable Collection Regulations 1947 Street Collections (Regulation) Act 1940 Voluntary Code of Practice for Public Fundraising
Northern Territory	No equivalent legislation

3.0 ADEQUACY OF CURRENT DISCLOSURE REGIMES FOR NOT-FOR-PROFIT ORGANISATION

3.1 The disclosure regimes are considered to be inconsistent in their current form. The intended purpose of mandatory disclosure of fundraising cost ratios are to:

- Evaluate the cost-efficiency of fundraising (NSW Dept of Gaming and Racing)
- Serve as important performance indicators (NSW Dept of Gaming and Racing)
- To ensure proper and efficient management and administration of fundraising appeals.

Another implicit purpose in disclosure regimes currently, is to protect donors by detecting possible fraud or misleading practices which only goes a part of the way towards resolving the matter of public trust.

Current disclosure strategies are fragmented across jurisdictions, numerical in nature and provide sometimes limited understanding of the reality of the situation by gathering data that cannot be compared or benchmarked because of the wide variation in services across the sector and the type of data collected.

Currently, disclosures requirements are static and do not necessarily take into account the challenges faced in benchmarking disclosure data. Snapshot data also does not include the evolving/constantly changing and longitudinal nature of disclosure requirements for the sector. Some examples include:

- A new NFP may be trying to develop a reputation and support base and may require more or less of their fundraising proportion allocated to costs;
- Smaller NFPs require less administration than do larger counterparts;
- Funding/cost ratios may be dictated by a range of external factors such as the competitive environment, change in government policy, changes in regulatory environment, and demographic changes;
- There may be significant start-up costs with fundraising programs;
- Fundraising may be aimed at attracting more than just money – it may also aim to attract volunteers or goods in kind.

3.2 *Potential advantages and disadvantages for not-for-profit organisations of moving towards a single national disclosure regime*

Advantages

- Strengthen Australia's commitment to the UN Convention on the Rights of the Person with Disability;
- A more strategic approach to the NFP Sector;
- Less bureaucracy across legislative portfolios;
- A common system of reporting across jurisdictions;
- Reduction in compliance costs where NFPs report to a single entity rather than reporting to each state and territory;
- Public Benefit issues; and
- Legal structures to enhance public trust in the NFP sector.

Disadvantages

- Cost of compliance especially for smaller NFPs could lead to a rationalisation of the sector and reduced choice for clients
- Cost of compliance is not funded under any government funding for service delivery so onerous reporting regimes come at the cost of service to clients
- Cost of introducing a new regime

3.3 *How might any disadvantages be minimised?*

- Adequate funding of the Regulator to provide effective education, advice and support to the sector in setting up the new standards;
- Streamlined reporting structure for NFPs;
- Time for NFPs to fully comply with the new standards

3.4 *Applicability and nature of a national disclosure regime, should it apply across all not-for-profit organisations or should different regimes apply to different parts of the sector? For example, should charities be treated differently than other not-for-profit entities?*

There should be a single regulator and disclosure regime for the entire NFP sector based on size and risk thresholds. Given all the complexities of the sector and the aims of a disclosure regime it is more appropriate that the system be designed to meet the needs of the users – those managing and investing (donations) into the organisation rather than individual agencies. In effect, it is an accountability mechanism for stakeholders.

- 4.1** There have been concerns raised and documented in such publications as Choice about the governance, standards, accountability and transparency of not-for-profit organisations who use public and/or government funds and for alternative (non regulatory) measures that might be introduced by government and the not-for-profit sector to address these concerns.

In consideration of these concerns the CPLQ considers that the following should be included in these deliberations:

1. All non-profit organisations should be considered in regulatory reform - not just community welfare or charitable organisations.
2. Australia has fallen behind globally converging regulatory standards for non-profit organisations compared with countries such as New Zealand, Great Britain and Canada and the importance of a central regulator should be considered to assist in the public perception of not-for-profit organisations through the introduction as a framework that includes governance, standards, improved accountability and transparency;
3. A central independent regulator, whatever its form, will need significant resources, as an under resourced body will not provide the effectiveness or efficiencies of process that it requires;
4. Regulatory response needs to be proportionate in terms of size and risk;
5. Provide clarification, explanation, interpretation and support of international accounting standards and of their application in the NFP sector and to sector specific transactions. This form of regulation could be developed and based on the Accounting and Reporting by Charities: Statement of Recommended Practice (SORP) which operates out of the United Kingdom;
6. The Regulator needs to be the central focus for reporting, monitoring and supporting appropriate behaviour of organisations in complying with the requirements of any regulatory reform.

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

- An independent Regulatory body;
- The government would initially be involved in setting up the Body's parameters;
- It could be based on the model used by the Australian Securities Investment Commission (ASIC) which is an independent body although still a government entity;
- It could be funded by the Commonwealth, and operate as a statutory body;
- It could also utilise international best practice models that are established in the United Kingdom, Canada and New Zealand.

4.3 *How might the uptake of any such measures be monitored? If so:*

Through the provision of annual reports similar to those required by ASIC

4.4 *What should be the objectives of reform?*

The Regulator should be an independent regulator for NFP activity to promote the public's trust and confidence, with the values of being:

- Effective
- Efficient
- Expert

- Fair
- Independent
- Innovative
- Responsive

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

The minimum requirement is that the Independent Regulator should be funded adequately in order to carry out its role effectively.

4.6 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 regulatory reform should include all of the NFP Sector.
- The level of regulation could be based on operating budget disclosure and risk profile.

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

Commonwealth Government

4.8 What sort of consultation should be conducted on the nature of any regulatory reform? How could input be facilitated from across the broad range of organisations that comprise the not-for-profit sector?

There will need to be a consultation process across the sector and across the jurisdictions. Many of the medium to large charities have peak national bodies.

4.9 Are there particular models of regulation and/or legislative forms that would be useful, in the Australian context, in improving governance and management of charities and not-for-profit organisations and in catering for emerging social enterprises?

The UK, NZ and Canada models.

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

Insufficient funding.

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

Why not? What would be the disadvantages in having a single national regulator?

The entire NFP sector should have the same regulation although the regulation will depend on categories established by the required disclosure of operating budgets and risk profile.

**4.12 What would be the role of a national regulator? For example, should it have an:
– educative/advisory role? enforcement role? mediation/dispute resolution role?**

The role of the Regulator must:

1. Monitor and report on compliance within the sector;
2. Education and awareness of the regulation; and
3. Enforcement role.

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

Yes. This also needs to be accompanied by an appeal process.

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

The Regulator should be funded by the Commonwealth and set up under similar terms as ASIC.

5.0 REFERENCES

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Consumer Affairs Victoria 2004b, *Compliance and enforcement policy*, Consumer Affairs Victoria, Melbourne.

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Consumer Affairs Victoria 2005b, *Review of Associations Incorporation Act 1981: interim report*, Consumer Affairs Victoria, Melbourne.

The two reviews commissioned by the Victorian Government: the Stronger Community Organisations_project, led by Professor Allan Fels, AO, and the Review of Not-for-Profit Regulation, led by the State Services Authority. Both reports contain recommendations to improve the regulatory framework of the nonprofit sector and are the most recent government work available in this area. These were well resourced and considered reports which both map

many of the issues and point to the directions of feasible reforms.

This was preceded by The Allen Consulting Group. (2005). *Improving Not-For-Profit Law and Regulations*. Melbourne: Department for Victorian Communities, State Government of Victoria.

Industry Commission. (1995). *Charitable Organisations in Australia*, Report No 45, Melbourne: Australian Government Publishing Service. This report is available on the Productivity Commission Web Site.

- Sheppard, I., Fitzgerald, R., and Gonski, D., *Inquiry into the definition of charities and related organisations*, June 2001, and the related Board of Taxation Report on the draft Charities Bill.

Lyons, M. (2001). *Third Sector: The Contribution of Nonprofit and Cooperative Enterprises in Australia*, St Leonards, NSW: Allen & Unwin. This is an excellent introduction to the third sector in Australia and most of the broad current themes and issues

See also:

- The National Nonprofit Roundtable's National Reform Agenda gives a broad view of the regulatory issues facing the third sector.

4. Woodward, S. (2004). *A Better Framework: reforming not-for-profit regulation*. Melbourne: Centre for Corporate Law, University of Melbourne

This report examines the appropriateness of existing corporate legal frameworks as they apply to not-for-profit (NFP) companies. It challenged the application of laws designed for companies with profit making objectives to NFP organisations. The project considered the issues of reporting and accountability to NFP stakeholders and how these stakeholders (and their needs) differ from those of stakeholders in 'for-profit' companies.

See also:

A discussion paper on financial reporting by unlisted public companies prepared by the Federal Treasury.

5. Steinberg, R. (2006). 'Economic Theories of Nonprofit Organisations' in Walter W. Powell and Richard Steinberg (eds.), *The Non-Profit Sector: A Research Handbook*, Second Edition. New Haven: Yale University Press. This is an excellent introduction for the lay reader about how economists understand nonprofit organisations. It is also a really good reference book for those interested in nonprofit research issues

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