Inquiry into the Disclosure regimes for Charities and Not-for-profit Organisations: A Submission to the Senate Standing Committee on Economics

Senators,

My Submission is written from a general perspective, rather than addressing specific regimes currently operational in Australia. I write from the perspective of both a practitioner, having managed a charitable trust with international purposes for over 18 years, and an academic, being a PhD student at the University of Canterbury, Christchurch, New Zealand,[1] as well as in a spirit of trans-Tasman co-operation and friendship.

(a) The relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations

In New Zealand, reporting by charities is regulated by the financial reporting standards as promulgated by the Institute of Chartered Accountants. The rationale behind such standards is "sector neutrality." The disadvantage of that concept is that reports based on those standards fail to recognise the distinct characteristics of the charity sector. The eventual implementation of International Financial Reporting Standards will do nothing to enhance charity reporting in this country. Australia needs to avoid that mistake.

The Charity Commission for England and Wales has developed a Statement of Recommended Practice (SORP), which recognises the unique characteristics of charities. Charities in England and Wales prepare a "Trustee Report," which focuses on both quantitative and qualitative information. Such a model is ideal for charity/NFP reporting and I suggest to the Senate Committee that consideration should be given to developing a similar model for Australia based on the SORP.

(b) 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

[1] My PhD is provisionally entitled "The History of the English Charity Exemption from Income Tax: From Pitt to Pemsel."

The New Zealand Charities Act 2005 c. 39 is a regulatory and monitoring Act, retrospective in intent, whereas the Charities [England and Wales] Act 2006 c. 50 is forward-looking and pro-active. While the England and Wales Act also regulates and monitors, it is also designed to encourage philanthropy and community spirit, a concept lacking in the New Zealand Charities Act. The fact that the England and Wales Act contains, for the first time in a common law country, a legislative definition of charitable purpose comprising thirteen purposes, indicates the unique character of that Act.

The England and Wales Act is also unique in that a new form of charity entity has been created, the Charitable Incorporated Organisation ("CIO"). Such a form is lacking in New Zealand. Your Committee may wish to recommend that consideration be given to the CIO form as a model for Australia.

(c) 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.

As a Fellow of Chartered Secretaries New Zealand, my counterparts in Australia, as governance professionals, are well placed to assist the charity and wider NFP sector in addressing issues relating to matters raised under this heading. The legal and accounting professions also have a role to play, and the three professions should work collaboratively to provide assistance to the NFP sector in Australia.

The Centre for Philanthropy and Nonprofit Studies ("CPNS"), at the Queensland University of Technology, is also well-placed to contribute to not only this issue, but to all the matters being considered by this Senate Committee, in fostering the activities of the NFP sector in Australia. Australia is fortunate to have the CPNS, as there is nothing comparable in New Zealand. To this end, appropriate courses to develop the skills of staff and trustees/board members of charities and NFP's can only add value to their activities in civil society in Australia. Such courses, while being partly self-funding, also require the commitment of government and both State and Federal level to ensure adequate resources are available to develop such courses. This does not mean the introduction of a tax on charities and NFP's to fund those activities, as was attempted in England in the 19th century when attempts to do so were made, unsuccessfully, in order to fund the work of the Charity Commissioners!

The Senate may also consider establishing a form of Charity/NFP Commission along the lines of that for England and Wales. If this is to be debated, then it is important that such a Commission be seen as a friend, not the foe, of the sector. The complication is that if the Commission also has a regulatory role, then a perception of a conflict of interest might arise.

It is early days for New Zealand's Charities Commission, which was established by the Charities Act 2005, yet the Commission will have gained a considerable amount of experience in dealing with the registration process since that began last year. Thus both the England and Wales and New Zealand Commissions are well placed to assist in establishing an similar model in Australia. The Commission in England and Wales was established in 1853, and in 2005, New Zealand finally followed suit. Now it may be Australia's turn!

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