



Clubs Australia

**SUBMISSION TO THE SENATE ECONOMICS COMMITTEE**

**DISCLOSURE REGIMES FOR CHARITIES AND NOT-FOR-PROFIT ORGANISATIONS**

**28 August 2008**

**Introduction**

ClubsAustralia<sup>1</sup> is pleased to provide comment on the important issues of governance, compliance and disclosure regimes for the not-for-profit sector. Clubs are not-for-profit, mutual organisations which exist to encourage sport and support a range of other purposes, whether as RSLs, community, worker's surf-life saving, or ethnic clubs. Clubs range from very small venues with few members, run entirely by volunteers, to professionally operated club groups that turn over millions of dollars each year and welcome thousands of members through their doors each week.

Unlike other not-for-profit sector organisations, clubs do not rely upon Government grants as a source of revenue. Due particularly to the sale and service of alcohol as well as the provision of gaming, clubs have significantly higher disclosure requirements than many for-profit companies let alone the not-for-profit sector. Clubs are therefore in a strong position to comment on the impact of high regulation and oversight on not-for-profits. ClubsAustralia believes that clubs in each jurisdiction are over-regulated in regard to financial and operational disclosure requirements.

**A Profile Of The Club Movement**

The club model is unique to Australia and is the envy of the world. Clubs provide a popular venue for food and beverage, sport and fitness facilities and entertainment. They make a major economic contribution to local communities. There are approximately 4,000 licensed clubs nationwide, with clubs in every State and Territory. Approximately 1,800 clubs provide gaming<sup>2</sup>. Clubs are widely dispersed, with over 60 per cent located in regional Australia. There are around ten million club memberships held, indicating that millions of Australians choose and pay to be members of clubs.

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<sup>1</sup> ClubsAustralia is a member of the National Roundtable of Not-for-Profit Organisations

<sup>2</sup> Australian Bureau of Statistics, Report Number 8687.0, "Clubs, Pubs, Taverns and Bars, Australia, 2004-05"

Certain groups in society, such as the elderly and the disadvantaged, take advantage of the reasonable prices and organised activities offered by clubs. Many people would not otherwise be able to afford the type and quantity of facilities provided if not for their local club. Clubs also provide a safe environment for entertainment and recreation, which is important for women, children and elderly people.

Clubs are prohibited from distributing surpluses to individuals. Because clubs respond to community needs rather than corporate return, they often are the source of key investment in local capital expenditures in the community interest such as golf courses, football fields and bowling greens. In addition, many clubs are long-time sponsors of local charities and community groups. In NSW alone, clubs in the last ten years have given over \$1 billion to charities and community groups. In the very much smaller jurisdiction of the ACT, where clubs have been a mainstay of recreation and community support since its foundation, clubs have contributed \$124 million over the past ten years<sup>3</sup>.

The above figures understate the extent of the contribution that the club sector and individual clubs make to their communities throughout Australia. Without clubs and such investment by clubs, many important community needs would not be met and Australia would be much the poorer. This is despite significant challenges to their operation: the Allen Consulting Group<sup>4</sup> found in 2007 that over 30 percent of NSW clubs are not 'profitable'; their EBIT to total revenue ratio is less than 0.1 percent.

The Australian Bureau of Statistics in 2004/05<sup>5</sup> reported Australian clubs have 65,000 employees and contribute \$4 billion to the Australian economy. On top of this, the NSW Independent Pricing and Regulatory Tribunal (IPART) in its blueprint for the future of registered clubs in NSW<sup>6</sup> found that clubs in NSW make an \$811 million annual positive net social contribution. This includes through providing cash donations, provision of affordable goods and services and the value of time provided by the 43,000 volunteers in NSW clubs (there are 65,000 volunteers in clubs nationally).

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<sup>3</sup> The Allen Consulting Group, "Socio-Economic Impact Study of Clubs in the ACT (2008)"

<sup>4</sup> The Allen Consulting Group, "Socio-Economic Impact Study of Clubs in NSW (2007)"

<sup>5</sup> Op Cit Australian Bureau of Statistics

<sup>6</sup> IPART, "Review of the Registered Clubs Industry in NSW", Final Report, June 2008

The \$811 million excludes intangible benefits such as fostering social inclusion, improvement in quality of life for the aged or reducing obesity through sport. Extrapolated nationally, clubs' social contributions would exceed \$1.2 billion. As seen above, clubs also make a significant economic contribution through employment and tax, with NSW clubs alone paying over \$1.2 billion in tax per year.

### **Not-For-Profit Status**

ClubsAustralia believes strong financial performance should be encouraged to ensure the strategic long-term viability of community clubs. Unfortunately, a view exists in the community that 'not-for-profit' status is inconsistent with the making of healthy surpluses. ClubsAustralia argues in response, healthy surpluses are essential for clubs. Surpluses have allowed clubs to build and maintain facilities for their members like gyms, bowling greens, golf courses and a variety of other sporting infrastructure. Surpluses enabled affordable food and beverage and accessible services such as child care centres and aged care homes. These services make our communities better places to live. As the *Report of the Inquiry into the Definition of Charities and Related Organisations* concluded, in respect to charities that:

there is some confusion about whether the carrying on of commercial activities by a charity will affect a charity's not-for-profit status. While this is clearly not the case in the current law, the Committee sees a need to provide some charity to the sector and the wider community. In particular, it needs to be stressed that not-for-profit does not mean that a profit or surplus cannot be generated.<sup>7</sup>

### **Deductible Gift Recipient (DGR) Status**

A number of licensed clubs have DGR status, including Surf Life Saving and Returned Services (RSL) Clubs. Sometimes the club itself has DGR status, and at other times the clubs set up benevolent charitable trusts as vehicles to provide services such as aged care homes, welfare services, sporting facilities and scholarships. In the case of clubs, full financial statements relating to all assets of the club are available to members either by law or custom.

The capacity of clubs to achieve DGR status varies between jurisdictions, depending on regulation. For example registered clubs in NSW can not have DGR status, while

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<sup>7</sup> Inquiry into the Definition of Charities and Related Organisations, June 2001 p. 93

some clubs in Victoria and Queensland are eligible for DGR status subject to certain conditions. ClubsAustralia believes DGR status assists the charitable activities run and supported by clubs to receive the level of financial support required to meet the ongoing needs of their communities. However it is not clear whether all clubs need DGR status. ClubsAustralia suggests there is no clear need at this time to harmonise regulation to provide improved access to DGR status.

### **Roles of the Board and Management Team**

As in the corporate world, club leadership is a significant contributor to the strategic and operational success of the organisation. Club Boards take responsibility for establishing strategic priorities and policies, performance targets, compliance oversight, and recruitment of the most senior management positions. Club management implements these policies on a day-to-day basis and seeks to deliver on club performance targets. This responsibility carries with it an obligation to ensure that the operations and management of the club are conducted with efficiency, fairness and integrity.

An important distinction however is that, whereas directors, management and staff of a corporation aim to make profits for shareholders, their club counterparts have traditionally seen their role as custodians of members' property for the benefit of the broader community. The creed of 'not for private gain' has focused club boards on the provision of sporting and recreational facilities, services to members and donations to the community rather than on producing fiscal surpluses.

Unlike boards of publicly traded companies that have a relatively simple mission to maximise shareholder return, club boards have to balance a complex and often conflicting array of social, political and economic interests. Given that club board members are volunteers, such demands can become onerous and a deterrent to participation by talented individuals.

### **Complexity of Governance Requirements**

Club board members are volunteers. As such, they have limited time available for club related duties. The imposition of complex governance requirements, liabilities and up skilling is a significant burden which tends to discourage potential directors from donating their time and efforts. The decline of the volunteer spirit due to increasing demands on individuals' time is having a significant bearing on the governance of clubs.

Participants in a Ucomm survey<sup>8</sup> of club directors and managers were asked, 'If the NSW Government decides to make changes to the way it supports registered clubs, what would be the most beneficial change it could make?' In response, there was near universal (99 per cent) support for 'simplifying regulations to reduce the compliance burden'. Interestingly, respondents identified this as a higher priority than any other issue.

### **Honorary Secretary Managers (Unpaid Manager)**

Many smaller clubs do not have the financial capacity to employ a manager and rely on the Honorary Secretary to fulfil the role and duties of a paid Secretary Manager or CEO. In this position he/she is responsible to the board for the day-to-day management of the club. He/she is also tasked with ensuring the responsible service of alcohol and responsible gaming on the club's premises with the same exposure to penalties under law as a full-time employed Secretary Manager. The voluntary nature of such an honorary secretary presents a risk to corporate governance and a significant challenge to professional reporting requirements.

Around Australia, the relevant State/Territory Government departments monitor compliance with governance requirements. Compliance programs often include:

- Governance and management audits;
- Legislation and conditions audits;
- Standards and systems audits;
- Complaint investigation; and
- Workshops and seminars.

The impact of the compliance requirements on clubs is substantial, with many reporting a need to engage additional resources to meet compliance obligations. This is particularly the case for small clubs which are less likely to have these skills on staff. Compliance requirements should reflect the varying capacity of clubs to respond to such a process. For example, the same forms are often used for small clubs open three days per week with mainly volunteer staff, as are used for the largest of clubs employing highly skilled and trained professionals.

ClubsAustralia believes a clear distinction needs to be made between significant compliance issues, that require policing activity, and management practices that lead to high levels of compliance.

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<sup>8</sup> Ucomm Managers and Directors Focus Group Report, July 2007

It is acknowledged that management best practice is important. However ClubsAustralia believes it is best and more appropriately achieved through education and training initiatives than under an umbrella of compliance. ClubsAustralia submits that this type of compliance activity creates unnecessary hardship and is an example of compliance 'red tape'. The high level of compliance required of the club industry is now out of alignment with clubs' status as non-profit community organisations with boards of directors giving their time on a voluntary basis.

### **Volume of Legislation**

The club industry, involved as it is in the provision of alcohol, food, live entertainment and gaming, is a highly regulated business sector subject to high levels of compliance, public scrutiny and administration costs. The following is an outline of the many different Acts that NSW clubs are currently required to comply with – each State and Territory will have some variation to these. This is not an exhaustive list, nor does it include Regulations, other delegated instruments or Local Government requirements:

1. Registered Clubs Act 1976
2. Gaming Machines Act 2001
3. Gaming Machines Tax Act 2001
4. Charitable Fundraising Act 1991
5. Fair Trading Act 1987
6. Corporations Act 2001
7. Industrial Relations Act 1996
8. Club Managers' (State) Award 1999
9. Club Employees (State) Award 1999
10. Annual Holidays Act 1994
11. Long Service Leave Act 1955
12. Lotteries and Art Unions Act 1901
13. Privacy Act 2001
14. Public Lotteries Act 1996
15. Racing Administration Act 1998
16. Trade Practices Act 1974
17. Occupational Health and Safety Act 2000
18. Apprenticeship and Traineeship Act 2001
19. The Unlawful Gambling (Two-up) Act 1998
20. Smoke Free Environment Act 2000
21. Income Tax Assessment Act 1997

22. A New Tax System Act 2000
23. Food Act 2003
24. Workplace Relations Act 1996
25. Liquor Act 2007
26. Anti-Money Laundering and Counter-Terrorism Financing Act 2006

The multiplicity of legislative instruments with which clubs must comply at both State and Federal level is time consuming, resource draining and expensive for clubs. To help their members cope, club associations invest significantly in not only providing face to face and online training for club directors and senior staff but also in the production of resources to assist our members to comply with the law. The ClubsNSW Director's Guide provides directors and managers with over 190 pages of information in plain English explaining the major operational and governance areas affecting clubs while helping clubs achieve best practice goals. ClubsQld has produced a succinct booklet and an accompanying DVD to assist their clubs with best practice corporate governance<sup>9</sup>.

### **Technical Non-Compliance**

In recognition of the nature of the compliance challenge experienced by volunteer club directors, ClubsAustralia believes there should be statutory relief from technical non compliance where there has been no material gain and best endeavours have been made to achieve compliance. Failing this, penalties should be given as a last resort, with a reasonable opportunity to rectify the breach.

### **Federal Issues**

Clubs are regulated differently in each State and Territory. In NSW, the great majority of clubs are companies limited by guarantee, as a requirement of legislation. In other jurisdictions they might also be co-operatives or incorporated associations. There is a high level of duplication between State and Federal requirements specifically in relation to Corporations law. Whether clubs are companies, co-operatives or associations, they must meet strict reporting and lodgement requirements. For example when a club, which is a company limited by guarantee, makes constitutional changes it is required to lodge these changes with both the Australian Securities and Investment Commission (ASIC) which is Federal and the relevant State or Territory authority.

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<sup>9</sup> This material can be provided upon request.

Another issue which has compliance and cost implications for clubs relates to the time-consuming review and preparation of GST Business Activity Statements. This is a particularly relevant issue for small regional clubs that may be managed by limited staff or volunteers. These returns are legal documents and require a certain level of specialist knowledge. Volunteers have difficulty complying with them. Therefore consideration of the implications that the GST reporting requirements place on small business is recommended.

### **Improving the Regulatory Process**

The Taskforce on Reducing Regulatory Burdens on Business found that regulatory burdens fall disproportionately on the economy's many small (including 'micro') businesses, which lack the resources to deal with them.

The Taskforce's report recommended that the Australian Government should endorse the following six principles of good regulatory process:

- Governments should not act to address 'problems' until a case for action has been clearly established. This should include establishing the nature of the problem and identifying why actions additional to existing measures are needed, recognising that not all 'problems' will justify (additional) government action;
- A range of feasible policy options — including self-regulatory and co-regulatory approaches — need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework;
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted;
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements;
- Mechanisms are needed to ensure that regulation remains relevant and effective over time; and
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.<sup>10</sup>

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<sup>10</sup> Rethinking Regulation, Report of the Taskforce on Reducing Regulatory Burdens on Businesses, 2006, p. 147.



ClubsAustralia believes this process should be adopted in relation to the review of disclosure and governance regimes for not-for-profit organisations.

### **Financial Reporting**

In its November 2005 submission to the Federal Government's Taskforce on Reducing the Regulatory Burdens on Business, the Institute of Chartered Accountants recommended the adoption of a simpler financial reporting and regulatory framework for smaller businesses, a category that would include the vast majority of registered clubs and not-for-profit organisations:

A position could be put that, except for listed public companies, there is little benefit in companies providing detailed financial information that is required to be provided by listed companies, and therefore there should not be a mandatory requirement for other than the listed companies to produce and file with ASIC annual financial statements that in most cases have to be audited. This would result in significant savings to SMEs and larger businesses.<sup>11</sup>

ClubsAustralia supports this position and advocates a detailed analysis of options to streamline not-for-profits' existing financial reporting requirements, including for clubs, rather than development of additional reporting.

### **Conclusion**

Clubs already face significant compliance and disclosure regimes that are costly and time consuming. Each State and Territory has different laws and delegated instruments that regulate the Club Movement. While additional regulation of the broader charities and not-for-profit sector may be desirable because it is currently very poorly regulated, it is far from true of clubs. From the perspective of the Club Movement, new regulation of not-for-profits such as clubs should not be contemplated, unless it involves streamlining or removing existing regulation.

ClubsAustralia would be prepared to address the Committee in person, should that be required, and is happy to provide further information upon request. The Committee Secretariat can contact Josh Landis, Manager – Government Relations on (02) 9268 3004 or [jlandis@clubsnsw.com.au](mailto:jlandis@clubsnsw.com.au)

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<sup>11</sup> Institute of Chartered Accountants, [www.regulationtaskforce.gov.au/submissions/sub041.pdf](http://www.regulationtaskforce.gov.au/submissions/sub041.pdf), accessed July 2007.