

26 August 2008

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

Dear Committee Secretary,

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

Please find below the Australian Centre for Democracy and Justice's (ACDJ) submission to the Senate Inquiry into the Disclosure regimes for charities and not-for-profit organisations. We hope you find our comments useful.

It is our belief that this is an important inquiry and we commend Senator Lyn Allison for moving that the inquiry take place and the CHOICE report that served as a catalyst for the motion.

Not-for-profit organisations are a pivotal part of any democracy. Not-for-profit organisations provide a collective voice for the varying interests of Australian individuals. They provide opportunities, to pursue any number of ideas and activities that they would not otherwise be able to pursue. They fill every niche market and enable Australians to participate in the community.

The stronger Australia's not-for-profit sector, the more engaged and active the citizenry is. Not only does this empower those involved in the not-for-profit sector but also makes Australia a more vibrant and equitable society.

Unfortunately the ACDJ was not able to provide the detailed response that we would like to have. Instead we have concentrated on the two key issues that we feel are the most significant with regards to this inquiry. Namely, we believe that there should be a single national regulatory regime and body governing non-profit disclosures and that we do not believe that advocacy activities should be excluded from activities funded with money generated from Deductible Gift Recipient status funds.

Kind regards,

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

Democracy has two key components, access and participation. Community groups are key enablers of both.

The non-for-profit sector provides a way for people to get involved in their community, find those who share similar interests, fill niche and often eclectic markets.

Similarly community groups provide access to facilities, ideas, education, self-help and so on.

Importantly however, they also provide a way for these interests to interact with the nodes of power, be they local, state or federal governments or the broader communities that they operate in. In other words, they provide access.

It is for this reason that the Australian Centre for Democracy and Justice (ACDJ) believe that all not-for-profit groups should be advocacy organisations. Few organisations have the democratic mandate that not-for-profit organisations have. They represent the views of their members, consumers and supporters and are, generally speaking, very directly responsive to the concerns of their constituents. Therefore if community groups are not advocating the views of those they represent in appropriate arenas they are failing the interests of those they are there for.

However the 'access component' of a democracy is also about access to information: transparency. Traditionally too many community groups have failed to be transparent enough although often through no fault of their own. Conversely, many non-profit groups are exceptionally transparent which is usually a response to the needs and demands of their members, supporters and consumers – a responsiveness that few corporations could boast.

A paradox exists here. Community groups are nearly always under resourced. This often makes a high level of transparency difficult as, particularly from a financial standpoint, it can be very expensive and resource intensive. So how do we enable a community sector that does not compromise any of its effectiveness yet meets high levels of transparency and reporting requirements?

Consumer rights

A good starting point for this discussion is the importance of consumer rights with regards to disclosure regimes for community groups.

The not-for-profit sector, through its fundraising activities, depends on the altruism of the general public. It is therefore important that the general public are able to make informed decisions about what is done with the money they are donating which has the flow on effect of encouraging people to make donations or participate in fundraising events.

Now days it is rare to find a large international aid-based organisation that does not give a breakdown of how your donation will be spent, what proportion of it will be used for administrative activities and what proportion will make it to those in need of aid. This has come about in response to a high level of suspicion that people have of these organisations and a concern that the money will be squandered or wasted.

However, currently there are no standards or guidelines for the way in which these figures are established. What constitutes administrative work? What constitutes money reaching it's intended recipients? Where do the wages of aid workers fit into this?

Similarly, people are less likely to donate to an organisation that does not have Deductible Gift Recipient (DGR) status as DGR status brings with it a high level of legitimacy. History tells us that having DGR status makes you no more or less susceptible to the squandering of resources but people look to this measure for legitimacy. It is also telling that very few people actually claim their donations as tax deductions.

A system needs to be established which reassures the general public of the legitimacy of not-for-profit organisation which has a standard set of reporting requirements that easily enables community groups to establish that they are bona fide so that people will donate to them, and makes it easier for community groups to understand what is required of them.

To enable this, the ACDJ is of the opinion that it would be beneficial to establish a single national regulatory regime and governing body.

Single regulatory body and legislation for fundraising

The Australian Centre for Democracy and Justice is firmly of the opinion that a central regulatory regime, with a corresponding governing body should be established,

There are several reasons for this including national consistency, providing consumers with a 'one-stop-shop' for their research into not-for-profits and providing community groups with a better understanding of what is required of them.

The current mix of state-based regulatory regimes is cumbersome, confusing and inefficient. The capacity of non-profit organisations is diminished by the additional resources required to ensure they comply with the various regimes. For example, in Victoria a fundraising license is required if you intend to fundraise over \$10,000 but in other states you don't need one at all. There is confusion surrounding this. For example, if you are in a state that does not require a fundraising license but are getting donations from Victorians do you need a license? Similarly, if you are in Victoria and the majority of your donations are coming from interstate do you need a fundraising license. While the answers to these questions may be available it is time consuming a difficult to determine.

We are also concerned that compliance often requires legal advice. This is beyond the financial capacity of most non-profit organisations and costly for those who can afford it. This is money better spent on those non-profits represent.

A single regulatory regime and body that is well thought out could overcome these difficulties. It means that there is only one body to deal with and one set of rules to comply with. In addition, by setting up a new body it is an opportunity to ensure that the regulations are made available in plain English to avoid

the use of lawyers as much as possible.

What should the regime look like?

Going into the detail of this is beyond the current capacity of the ACDJ, however we would like to suggest that the regulatory regime should be tiered according to the annual turnover of the organisation.

In other words, the higher the turnover of the organisation the higher the reporting standards should be and the easier it should be to obtain tax benefits. So it should be quite simple and easy for small organisations with annual turnovers of less than \$10,000 to obtain tax benefits for their work and the burden that is put on them with regards to reporting reduced. Similarly, if an organisation has an annual turnover of \$1 million or more they should have to meet higher levels of reporting to comply with their current tax status.

This is both an issue of capacity and relative to the impact that exploitation of these measures may bring about. If an organisation has raised \$10,000 and spent it inappropriately, the impact is much smaller than if \$1 million was inappropriately acquired or spent. The regulatory regime should reflect this by making it easier for groups with smaller annual turnovers to obtain DGR status or something similar and the reporting requirements of this should be adequate but not so onerous that professionals need to be used to comply with the regulatory standards. However, if an organisation is raising millions of dollars we would expect them to meet very rigorous accounting requirements.

We would also like to see a central repository of non-profit group's annual reports. A searchable website which contains scanned copies of the annual returns of non-profit groups so that they are accountable and consumers and donors of those groups are able to make informed decisions as discussed above.

Definitions, DGR and Advocacy

Current definition of what it means to be a 'charity' is antiquated, meaningless and irrelevant. The ACDJ can see no reason why funds raised with Deductible Gift Recipient Status should not be able to be used for advocacy activities.

ACDJ believes that the current restrictions on who is eligible for DGR status is too limited in scope and crippling of too many small non-profit organisations due to the overwhelming complexity of the issue. The reality is that legal advice is required to obtain DGR status, irrespective of how clear your claim to it may be. This puts DGR status out of the reach of too many non-profit organisations.

We believe it is important that DGR status is not abused by non-profit organisations. So while we believe that a far greater number of non-profit organisations should have access to DGR status the greatest challenge brought about by broadening the definition will be ensuring that DGR organisations have the legitimate and altruistic intentions that should be associated with DGR status.

However, we believe that if an organisation is meeting the stringent demands that DGR status places on them, that they should then be able to use the funds generated with that status for advocacy activities.

By limiting the advocacy activities of organisations with DRG status you are limiting the ability of those organisations to pursue the aims that it that formed the basis of their DGR status in the first place. If non-profit organisations are not advocating for the interests of their consumers, members and supporters then they are failing this constituency. People donate to organisations with DGR status because they represent their views and interests.

For example, if a disability self help group speaking up when the rights of a person, or people, with a disability are ignored or violated, they are not doing a very good job of representing those involved with

the group. If disability groups aren't ensuring that every building has disability access then the rights and interests of the members and consumers of that group are not being met.

Unless the broader structural issues that people with a disability are address there will never be any improvements for the rights of people with a disability. Any disability group that has DGR status has presumably been granted it on the basis that they will assist people with a disability. How is this possible without advocacy?

It is the ACDJs belief that most community group's mission statement should be to create a world where that community group is not needed. Where the rights and interests of the members, supporters and consumers of that group are met without the help of that community groups.

The reality is that few community groups can claim that their aims have been met, so the multitude of struggles continue on a day to day basis. Unless these organisations are able to raise funds for the activities that empower, represent and protect the members and consumers rights and interests they will continue to be ineffective and the broader Australian community will suffer.

Conclusion

Australia is a better place because of the hard work of community groups around the country. Without their efforts women would not be voting, Aborigines would still have a dubious legal status, people with a disability would still be locked up in institutions and we would have few native forests for us and out children to enjoy.

The greater the capacity of these amazing organisations the better the world we live in.

Two initiative that could improve the capacity of non-profit organisations are to allow them to advocate with DGR funds and a central regulatory regime and body that ensures that non-profits have a clear understanding of what is required of them.