



CHILDREN'S CANCER  
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29 August 2008

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

Dear Sir/Madam,

**Re: Inquiry into the Disclosure Regimes for Charities and Not-for-Profit Organisations**

Thank you for the opportunity to have Children's Cancer Institute Australia ("CCIA") participate in the enquiry into the disclosure regimes for charities and not-for-profit organisations, sponsored by the Senate standing committee on economics.

By way of introduction, CCIA is the only independent medical research institute in Australia dedicated to research into the causes, prevention, better treatments and cure of childhood cancer. As a public company limited by guarantee, CCIA takes its statutory obligations seriously particularly in the areas of disclosure, transparency and overall governance as it relates to the administration of the Institute and its use of public funds.

This background paper breaks down the terms of reference provided by the Senate standing committee into two broad categories. The first considers the current disclosure regime and its adequacy; the second considers whether there is a case for fundamental regulatory reform within the NFP sector. We consider the following submission addresses each category from a high level policy perspective and it attempts to provide a prima facie case for both reform and greater transparency and harmony in disclosure without materially increasing the administrative burden of the affected entities. We do not however claim this to be an exhaustive treatment of all the issues which may have further implications for existing legislative, accounting and tax regimes.

**Discussion**

Consideration should be given to which of the more than 700,000 not-for-profit organisations should be included in any new disclosure regime. The *Income Tax Assessment Act 1997* (Cth) ("Act") provides clarity over the definition of what constitutes a "charity" for purposes of its requirements in regard to assessable income. There are four recognised heads of charity: (1) the advancement of education; (2) the relief of poverty; (3) the advancement of religion; and (4) other purposes beneficial to the community. Further the *Extension of Charitable Purpose Act 2004* extends the definition of what is a charity for purposes of whether income is assessable. However any organisation that is not-for-profit and falls under any of the other

categories defined in the Act<sup>1</sup> may either self assess, or apply for endorsement as a tax exempt organisation.

### Small Organisations

There are many not-for-profit organisations which exist solely to benefit their members. Examples are local sports clubs and associations and after school care facilities which operate on a non profit basis. Some of the qualities of these organisations include their main source of revenue being member fees; fundraising activities are incidental to the organisation's total revenue with all monies to be used for the benefit of its members (i.e. to provide facilities and care to children after school hours); and the organisation itself operates on a "local" level with often negligible or immaterial levels of public funding. Many of these organisations are incorporated associations. These organisations are usually income tax exempt and may be eligible for GST or FBT concessions if they fall within the definition of a "charity".

There may well be a case to allow these small not-for-profits the ability to be exempt from any formal disclosure regime due to their size and also their potential inability to absorb the cost of such disclosure or other compliance requirements. Some tests (this list is not exhaustive) that may be applied in order to determine which organisations should fall outside any formal disclosure or other compliance regime might include:

- Main revenue source is via member fees;
- Fundraising income is incidental to overall revenue;
- Public or grant funding is incidental to overall revenue;
- The main purpose of the organisation is to benefit its members;
- The scope of the organisation is limited to being within a State.

The number of not-for-profits that would fall into the above category needs to be understood when considering any form of national regulatory reform. These organisations may well be left to work within the existing state based regulatory regimes or a variation of the existing legislative framework in these state jurisdictions.

### Large Organisations

The other end of the spectrum includes those not-for-profits that are public companies limited by guarantee or fall under the Trust laws. These entities are subject to the *Corporations Act 2001* (Cth) and must, under law, adhere to all applicable accounting standards and produce statutory accounts which are audited and lodged with the Australian Securities and Investment Commission ("ASIC").

Further, these entities must have in place proper governance and risk frameworks for which Directors have a fiduciary responsibility. Attributes of these entities would likely include a national presence, the ability to attract significant public or grant funding and fundraising as primary sources of revenue. Transparency and disclosure would be paramount to the ability of these organisations to successfully further their cause and continue to attract public funding. Where fundraising is a material component of an entity's revenue they will likely be endorsed as a "Deductible Gift Recipient" ("DGR") and attract FBT concessions in addition to income tax exemption and GST concessions. Where they are endorsed as a Public Benevolent Institute ("PBI") they are exempt from FBT. Other entities that would be included in this category are Trusts and Foundations.

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<sup>1</sup> Community Service organisations; employee/employer associations; government bodies; hospitals; and sports, culture and recreation organisations as examples.

## Government Bodies and Public Hospitals

Any government body or public hospital, university or any other organisation registered under the *National Health Act 1953 (Cth)* should already be subject to robust disclosure requirements and should therefore be excluded from the scope of this submission.

## Fundraising

Organisations that rely on fundraising as a main source of revenue are eligible to be endorsed as a DGR. Currently they must adhere to fundraising legislation that is unique to each state in which the organisation conducts fund raising activities. This is a very onerous regime that is inefficient, ineffective and costly to the entity. It diverts public dollars that would otherwise go to the cause of the organisation and by its nature increases the risk of non compliance by the organisation.

A more efficacious model may be for there to be one national regime for fundraising, which includes reporting that is in keeping with current technology in order to minimise the cost of compliance. Basic requirements should include adherence to accounting standards and reporting to a single regulatory body. Further, consideration should be given to specific measurement and disclosure requirements for the fundraising component in order to provide a more consistent and transparent reporting framework across the not-for-profit sector. This last point should be determined in close consultation with relevant accounting bodies as well as key stakeholders within the not-for-profit sector in order to ensure the right outcomes are achieved for the users of this information as well as the organisations themselves.

We consider entities that rely on fundraising activities to support their causes to be ethically obligated to provide transparency, governance and efficiency to their stakeholders. Further they should have in place robust governance and risk frameworks similar to any public company, with Directors (if applicable) and officers held accountable. This is the model we have vigorously pursued at CCIA.

The level of disclosure however may be dependent upon the scope and breadth of the organisation in addition to other considerations. Some tests that may be applied in order to determine which organisations in this category might fall outside such a regime include:

- Fundraising activities take place in one state; and
- Total fundraising revenue is less than \$100,000; and
- Public and/or grant funding is incidental.

## Public / Grant Funding

Organisations that rely on public or grant funding (government) as a main source of revenue must be held to a high standard in terms of reporting, transparency and governance. Currently those organisations that attract government funding are required to adhere to strict reporting requirements; however funding agreements are inconsistent in form and substance, depending upon which government department or funding body awards the grant. Further reporting requirements vary between grants; this makes the administration of such grants more expensive to the recipient organisation and increases the risk of non-compliance.

The disclosure regime for not-for-profit organisations that receive government funding must be consistent and relevant. However it should not be onerous or overlap with other compliance obligations of the entity. Ideally the reporting and other compliance requirements currently imposed on not-for-profits should be included in the overall disclosure regime of such entities, carving out specific grant related requirements so as to minimise administration and cost, yet maximise transparency and disclosure of what is important.

The level of disclosure however may be dependent upon the scope and breadth of the organisation in addition to other considerations. Some tests that may be applied in order to determine which organisations in this category might fall outside such a regime include:

- Organisation activities take place in one state; and
- Total public/grant funding is less than \$100,000; and
- Fundraising revenue is incidental.

## Summary

1. The need for disclosure should be commensurate with the activities of the organisation, its legal structure and tax status. The larger and broader in scope the organisation, the greater the need for a governance structure similar to the corporate sector. Fundraising ability and whether an organisation is a user of other public or government grant funding should also be key requisites as to the strength of an entity's disclosure and overall compliance system.
2. Financial reporting and disclosure in the not-for-profit sector must include specific accounting measurement and presentation requirements embodied in a standard, specifically with regard to fundraising revenue, expenditure and the measurement and presentation of same. The relevant accounting bodies, in close consultation with the sector, must work together to produce such a standard.
3. Organisations that raise significant revenue primarily through fundraising or government funding bodies have an ethical obligation to provide transparency, governance and efficiency to their stakeholders. Further they should have in place robust internal control and risk frameworks similar to any public company, with Directors (if applicable) and officers held accountable. Whether an existing national regulator is used to provide the oversight required is beyond the scope of this submission. Certainly there are existing regulatory bodies with the infrastructure in place (e.g.: ASIC, APRA) to cope with what is required for the not-for-profit sector.
4. There should be one national regime for fundraising, which includes reporting that is in keeping with current technology in order to minimise the cost of compliance. Basic requirements should include adherence to accounting standards and reporting to a single body.
5. Small not-for-profits should be excluded from any reform agenda. Therefore it is strongly recommended that the above tests be used as a starting point in order to determine which organisations fall outside any regime. Using simple measures such as turnover or staffing levels are inadequate. These types of organisations generally have little or no staff. Further they may do little or no fundraising or attract no public funding. Last the purpose of these small organisations is usually to benefit members; there are no external stakeholders per se.

## Capacity of the Sector to Respond to Reform

The greatest challenge the not-for-profit sector will face will be its ability to respond to significant reforms in the areas of financial and other reporting (both qualitative and quantitative), governance, risk and related systems, and compliance in general. A key reason for this is the sector's inability to attract experienced individuals who have the skills to drive the changes needed. Further, the internal systems and controls currently in place may be grossly inadequate to accommodate new and more granular reporting, which may significantly increase the cost of compliance.

Any reform agenda must consider the ability of the sector to respond and therefore a realistic time frame must be set for any transition (up to two years). Further, consideration must be given as to how the sector can begin to attract the human talent needed in order to successfully

implement these changes. On this basis, there is a case to increase the concessions available to the not-for-profit sector in order to provide a competitive advantage in the quest for human talent. There must also be consideration given to providing specific funding targeted at improving or replacing obsolete internal systems (IT as an example) in favour of the systems and controls needed in order to meet new requirements. The overall cost to the sector of meeting any new regime will not be insignificant. Consideration must also be given to the increase in the ongoing cost of compliance to the sector and the impact on how much of each dollar raised goes to the purpose of the organisation.

Last, almost all not-for-profits do not remunerate their Directors; the position is voluntary. This is a long standing practice within the sector. Given the increased accountability and liability placed on Directors there is a case to review whether this practice is tenable going forward. The ability of this sector to attract and retain high quality Directors is just as important as its ability to attract and retain senior managers. This will add an additional cost to any reform agenda and must be considered as a cost of such reform.

Respectfully,

**Mary Anne Stephens**  
Chief Operating Officer  
Company Secretary  
Children's Cancer Institute Australia