

29 August 2008

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Department of the Senate
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Dear Sir or Madam

Inquiry into the Disclosure Regimes for Charities and Not-For-Profit Organisations

Executive Summary

Our submission to the Inquiry into Disclosure Regimes for Charities and Not-For-Profit Organisations provides our views in relation to the following areas:

- i. Introduction – background to the sector and our experience
- ii. Disclosure Regimes
- iii. Regulatory Reform
- iv. Single Specialist Legal Structure
- v. Conclusion

1 Introduction

We welcome the opportunity to make a submission to the Senate Inquiry referred to above.

We recognise that there is huge diversity of Charities and Not-For-Profit Organisations involved in many areas of operations including:

- associations and membership organisations (including industry associations);
- community agencies;
- welfare organisations;
- health and aged care facilities;
- education institutions;
- foundations;
- independent schools;
- performing arts organisations;
- sporting organisations;
- religious organisations;
- registered clubs; and
- medical research and promotion organisations.

This sector makes a huge contribution to society often carrying out work which commercial operations and government are unwilling or unable to provide. These organisations at the same time provide and employ significant resources. In addition, many of these organisations operate predominately or wholly through a volunteer workforce. The participation of a volunteer workforce can not be undervalued in its contribution to both the sector and the community generally.

Within the sector, there are a range of organisations which have a diversity of mission from a charitable or altruistic focus through to organisations with a strong commercial oriented focus. In addition, the resources and access to skills within this sector also vary greatly.

Moore Stephens currently services a diverse range of entities in each of the areas outlined above. Moore Stephens have been advising the Not-For-Profit sector in relation to financial reporting, taxation, corporate governance and general advice for over 50 years. Our involvement with these entities encompasses a diverse range of operations and structures. Based on our experience and technical expertise in the financial reporting environment we believe we are in an ideal position make a contribution to this inquiry.

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2. Disclosure Regimes

In our view the current disclosure regimes for Not-For-Profit Organisations are inconsistent and at times inappropriate for the nature of organisations involved. This inconsistency has arisen predominately through the range of regulations, legislation and multi departmental involvement on both a state and federal basis.

As many Not-For-Profit agencies operate and raise funds throughout Australia as well as receiving funds from more than one government department, there are distinct advantages to moving towards a single national disclosure regime however in our view, due consideration would need to be given to:

- i. understanding of the diversity of the sector;
- ii. establishment of a differential reporting regime to provide cost effective and appropriate levels of disclosure based on objective measurements;
- iii. identification of the level of disclosure which is appropriate to the type and style of organisation; and
- iv. clear distinction of the level of disclosure based on the degree of public interest.

Commentary

Current disclosure requirements vary greatly between the various forms of charities and not-for-profit entities. Whilst some have strict requirements covered by specific legislation (e.g. companies limited by guarantee and entities falling under the Charitable Fundraising Act), many others have no public reporting mechanisms or are exempt from certain disclosure requirements.

We believe an element of financial accountability, providing a level of both good governance and transparency in respect of all Charities and relevant Not-For-Profits is essential if public confidence is to be maintained.

The level of disclosure should, however, differ depending on the nature of the entity, as well as the type and nature of its operations. Factors which could be considered in determining such disclosure requirements would include:

- a. size of organisation in terms of income, assets and employees;
- b. use of mutual (private) versus public funds;
- c. external funding from government and other public institutions;
- d. Deductible Gift Recipient (DGR) status;
- e. the basis on which income tax exempt status has been applied;
- f. the ability for donors, members etc to access information internally; and
- g. nature of operations and their degree of public interest.

We recognise that many entities lack resources and/or skills to be able to comply with strict reporting requirements and therefore if any changes are to be made consideration would also need to be given to providing financial assistance in the preparation of such reports.

A balance between disclosure, public interest and the costs of compliance is a difficult one and any changes to the existing disclosure requirements need to consider a range of financial, non financial and societal issues.

Consequently the level of reporting may range from, comprehensive reporting regimes where large amounts of government funding is provided and the scale of operations are large, to a basic level of reporting with little or no financial detail in organisations with no public funding and a relatively closed group of 'members'.

A basic level of disclosure mandatory for all entities could comprise of the following:

- a. Mission;
- b. Source of funding;
- c. Board and Committee members;
- d. Contact details ;
- e. Tax status; and
- f. Commercial activities undertaken and their contribution to the mission of the entity.

In instances where exemption from certain disclosures were to be granted, appropriate notes to financial reports could indicate this together with the basis for the granting of such exemption.

3. Regulatory Reform

As outlined in background paper, there is some concern in the public domain as to the level of disclosure, accountability and transparency within the sector. The main focus of this is on those organisations which receive funds from the public and/or government.

The sector is currently regulated by a wide range of state, federal, industry and internal regulatory regimes. Given the diversity of this sector it would be difficult to transition to a uniform regulatory system without an appropriate level of involvement, discussion and consultation with the key stakeholders to determine the degree and level of regulation required,

In our view, the following steps could be taken to address the concerns which gave rise to the establishment of the inquiry whilst still providing a cost effective solution.

- i) The establishment of a working party or group made up of key stakeholders including current regulators, key industry representatives and advisers to:
 - a. develop a strategy to provide a consistent regulation of Incorporated Associations, and Charitable fundraising activities throughout Australia;
 - b. develop a differential reporting regime that meets the Not-For-Profit sector needs;
 - c. propose legislative amendments required to enable the Not-For-profit sector to comply with one regime;
 - d. develop proposals to state and federal departments in relation to a consistency in grant funding requirements;
 - e. identify the training, advocacy and support needs of the industry to provide assistance to the Not-For-Profit sector; and
 - f. identification of the current systems which are effective and can be retained such as the process for income tax exempt status and DGR status being administered by Australian Taxation Office. This would include the retention of state based regimes where effective.
- ii) Establishment of a federal organisation to develop, regulate and support the sector taking the positive elements of similar organisations overseas and adapting them to the Australian environment.

This organisation could further develop the findings of a working party and would act as a liaison between government, industry and the public to enhance both accountability and transparency of the sector whilst providing the sector with ongoing support.

Commentary

The Not-For-Profit sector currently has varying levels of regulation. Your background paper recognises that there are more than twenty different ways to incorporate a Not-For-Profit Organisation. Many have been set up under specific Acts of Parliament.

Whilst consideration might be given to the establishing of a single regulatory entity, this may require significant changes to a wide variety of other regulations and legislation, or worse, an additional layer of regulation over and above those which currently exist.

If a single body were to be established with a view to, over time, "standardising" the regulation and reporting of charities and not-for-profits, we believe such a body should take on more of an advisory role providing assistance and a level of accreditation of such organisations. These could involve:

- a. setting parameters and guidelines for best practice;
- b. approving exemptions from reporting requirements as referred to above;
- c. assisting in the establishment of training programs; and
- d. promoting the principals of good corporate governance.

4. Single Specialist Legal Structure

Our view is that a single specialist legal structure would not be appropriate in this context given the following:

- a. the diversity of the sector
- b. the cost of conversion to a single structure
- c. creation of another structure to add to the existing range of structures currently in operation
- d. if a common/consistent disclosure and regulation regime was established it would significantly reduce the need for a single legal structure.

However as part of the framework, a body of a similar nature as outlined in Section 4 to the submission could provide assistance, guidance and support to new organisations in determining which structure is appropriate to their needs.

5. Conclusion

Currently there are varying requirements with regards to the reporting of the use of public and government funds. These vary from the presentation of general purpose financial statements for the service entity being provided funds through to basic financial information and assurances that funds have been appropriately used. These requirements can vary from government department to government department or from State to State or Federally. More standardised requirements in respect of the various types of funding would assist in providing the opportunity for standard accounting and reporting systems being developed which would assist charities and Not-For-Profit Organisations in their administrative requirements in relation to this funding.

The single body referred to above could also have a watching brief in reviewing developments in the economy as a whole, in technology, in the needs of all who are involved in the sector (both providers and recipients) and ensuring that any framework continues to be appropriate and efficient in its operation.

Reform in the current processes and procedures would seem to be warranted. Any reform, however, will come at a cost and this cost needs to be balanced with the net benefit to both the sector and more importantly those that receive the benefits.

We trust that our submission provides the Committee with our views in relation We welcome any opportunity to assist the committee further if required.

Yours sincerely,



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