

NONPROFIT ROUNDTABLE
Promoting Community Wellbeing

**NATIONAL
ROUNDTABLE OF
NONPROFIT
ORGANISATIONS**

**C- Philanthropy Australia
Level 10, 530 Collins Street
MELBOURNE VIC 3000
Ph 03 9612 9021
Email:
adam@social.net.au**

6/12/2005

Regulation Taskforce
PO Box 282
BELCONNEN ACT 2616

email:info@regulationtaskforce.gov.au

Reducing the Regulatory Burden on Business

**SUBMISSION TO THE REGULATION TASKFORCE BY
THE NATIONAL ROUNDTABLE OF NONPROFIT ORGANISATIONS**

The National Roundtable of Nonprofit Organisations (the "Roundtable") welcomes the opportunity to comment on the review of business regulation by the Regulation Taskforce.

About the Roundtable and the Australian nonprofit sector

The National Roundtable of Nonprofit Organisations has the purpose of enhancing the recognition and promoting support for the work of Australia's nonprofit sector, and contributing to the development of research, exchange of ideas, sound policies, and the capacity of the nonprofit sector overall to benefit the public.

In Australia there are over 700 000 nonprofit organisations. Most are very small and operate entirely on voluntary labour. However over 320 000 are incorporated. Of these around 140 000 are incorporated by one of several generalist methods: as companies (mostly limited by guarantee), incorporated associations and co-operatives. Around 35 000 employ staff. They can be found in many industries. In 2000, the ABS estimated that this group of nonprofits turned over more than \$33 billion and contributed 3.3% to GDP, a contribution as large as the agricultural industry (ABS 2002).

As well as their economic contribution, nonprofit organisations also make considerable contributions to Australian society through their mobilisation of social capital and to the maintenance of our democratic political system.

Inappropriate and burdensome regulation of nonprofit entities.

Nonprofit organisations have different needs and objectives than those of for-profit businesses, and the public interest in regulation them differs as well. Nonprofit entities have frequently been damaged by the unconsidered application to them of laws and regulations designed for for-profit entities (eg Woodward 1999).

We have argued that there needs to be a thorough review of the confusing and burdensome array of laws and regulations generated by national state and territory governments. The unsatisfactory state of nonprofit regulation reflects in part a “regulatory neglect” of the sector: policy-makers have not prioritised development of appropriate nonprofit regulation because of a combination of a poor understanding of the needs, goals and benefits of nonprofit entities; the lack until recently of effective sector-wide representation of such entities; the diffuse and diverse nature of the sector; and perhaps a perceived lack of political relevance or political gain to be had in pursuing such reform.

These matters are directly relevant to the Regulation Taskforce’s inquiry, for the following reasons:

- 1) For-profit businesses dedicate considerable financial and non-financial resources to the nonprofit sector. The effectiveness of nonprofit entities in utilising those resources depends in part on nonprofit regulatory arrangements. If nonprofits are subjected to burdensome regulation, the donations and other support by businesses is less effective and efficient than it otherwise could be.
- 2) Some nonprofits provide benefits directly to businesses. For example, an indigenous group may provide start-up support for small indigenous-owned enterprises, or an environmental advocacy organisation may advise businesses on best environmental management practices. The ability of nonprofits to carry out this role and thus to improve business performance is hampered by inappropriate regulation.
- 3) In examining the regulation of “business”, we would encourage the Taskforce to adopt the broadest possible reading of the term in this context. It would be artificial to confine the inquiry to for-profit enterprises, given the diversity and frequent cross-over among both for-profit and nonprofit entities. For example, an industry advocacy group could be a nonprofit (non-charitable) membership organisation, the members of which are all for-profit businesses. Similarly, some business advisory services may be provided by both for-profit and nonprofit organisations. Corporate forms and regulations frequently apply irrespective of the “business” or “nonprofit” characterisation of an entity.

Costs and consequences of inappropriate regulation of nonprofit entities, and a short review of relevant research.

We believe that substantial and unnecessary costs are imposed on the nonprofit sector by inconsistent, contradictory, burdensome and poorly targeted government regulation. The effect of this is not only to increase the costs of compliance of nonprofit entities, serious though that is. In addition, high administrative costs undermine the very credibility of nonprofit entities, whose

supporters rightly demand that their donations and other contributions are put to good use.

Despite the best efforts of nonprofit entities to utilise their scarce funds efficiently, unnecessary regulatory costs can create a vicious cycle of increasing administrative costs relative to program delivery, which impairs the perceived effectiveness and accountability of the sector, which can in turn drive increased regulation and decreased fundraising efficiency.

While a detailed review of the regulatory issues in the nonprofit sector is beyond the scope of this submission, we draw the Taskforce's attention to several important recent developments in the area:

- The Roundtable has adopted an initial statement setting out our position on regulatory reform, which can be found at http://www.nfprounstable.org.au/Initial_Statement_Reg_Reform.doc.
- As part of a wider ranging review, the U.K. Better Regulation Task Force recently published a review of regulations affecting the nonprofit sector in the United Kingdom. Entitled *Better Regulation for Civil Society: Making life easier for those who help others*, the report was published earlier this month and can be found at www.brtf.gov.uk/docs/pdf/betregforcivil.pdf. The report addresses a range of regulations that fall on nonprofit organisations, including general regulations and other regulations that are specific to the sector.
- As an example of one class of regulations that have long imposed extraordinary costs on many nonprofits we draw to the Taskforce's attention the wide-ranging and uncoordinated reporting requirements under applicable state and federal laws and attached to grants and contracts between nonprofits and various government departments. The difficulties are nicely summarised in Flack and Ryan "Financial Reporting by Australian Nonprofit Organisations: Dilemmas Posed by Government Funders" published in the *Australian Journal of Public Administration* in September 2005. A copy of this paper is attached. It deals with the myriad of reporting requirements created by Queensland government departments. However, the problems described in the article are just one instance of a more general problem across Australia, especially for nonprofits operating in multiple jurisdictions.

The reporting requirements fashioned by each government program seem to assume that the nonprofit organisations that receive these funds are funded only by that program and exist only to provide services specified in the program. Nothing could be further from the truth and the costs and inefficiencies imposed on even small nonprofits receiving funds under only 2 or 3 programs are considerable; for larger nonprofits they are massive.

- The Victorian Department for Victorian Communities is conducting a review and reform of non-profit regulation, to examine options for better law and regulation for the non profit sector. The Department has commissioned an external research and consultation on current issues and possible solutions developing an issues paper which is being presented to the Victorian Government this month. The National Roundtable of Nonprofit Organisations provided consultative services and advice to this

project. We are informed the Department for Victorian Communities is forwarding you a copy of this report.

- A number of reviews of various aspects of nonprofit regulation have been conducted over the years. Examples include:
 - "A Better Framework: reforming not-for-profit regulation", a February 2004 report by the Centre for Corporate and Securities Regulation at the University of Melbourne (available at <http://cclsr.law.unimelb.edu.au/go/centre-activities/research/reforming-not-for-profit-regulation-project/index.cfm>)
 - Mark Lyons (2003), "The legal and regulatory environment of the Third sector", *The Asian Journal of Public Administration*, 25(1), pp.87-106.
 - The 1995 Inquiry by the Industry Commission, *Charitable Organisations in Australia*, and the subsequent 2001 Inquiry into the Definition of Charities and Related Organisations (available at www.cdi.gov.au).Unfortunately, most of the recommendations of these reports and inquiries have not been adopted.

Recommendations

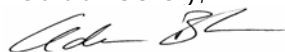
In light of the complexity and breadth of reforms required, we do not make recommendations for specific legislative reforms at this point. However, the Taskforce can help drive the urgent process of regulatory reform in the nonprofit sector by recommending that the Commonwealth commit to the following:

- 1) Convene an inquiry specifically to identify instances of burdensome or inappropriate regulation of nonprofits in Australia and to recommend reforms;
- 2) Working with the States and Territories to improve the consistency and efficiency of nonprofit regulation across all Australian jurisdictions by specifically placing nonprofit regulatory reform as a standing item on the agenda of COAG;
- 3) Create a separate entity along the general lines of the U.K. Charities Commission, with the broad mandate of administering charities law and facilitating the ability of charities in Australia to achieve their goals to further the public interest, including by recommending facilitative legislative and regulatory changes.

We would be happy to discuss these issues further with the Taskforce, at your convenience. In this light, the Roundtable seeks the opportunity to arrange a delegation to meet with the Taskforce to present the specific nonprofit issues and considerations.

Please feel free to contact Adam Blake, Executive Support, on 02-9939 1157 or via adam@social.net.au in this regard. A hard copy of this submission has also been forwarded.

Yours sincerely,



Adam Blake

On behalf of

Ms Elizabeth Cham, Chairperson
National Roundtable of Nonprofit Organisations