

Sector Briefing Note

January 2009

Senate committee report on charities and not-for-profit organisations

BACKGROUND

In June 2008, the Senate Standing Committee on Economics was asked to review and report on disclosure regimes for charities and not-for-profit organizations.

The Committee subsequently undertook a wide-ranging examination of the not-for-profit sector in Australia, with a focus on:

- the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organizations;
- models of regulation and legal forms that would improve governance and management of charities and not-for-profit organizations and cater for emerging social enterprises; and
- other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.

ACOSS provided a detailed submission to the inquiry on behalf on the not-for-profit community services sector. The report was completed in December 2008, and includes 15 recommendations for reforms regarding the not-for-profit sector.

KEY RECOMMENDATIONS AND WACOSS' RESPONSE

The Senate Committee's recommendations, if implemented by Government, have the potential to significantly impact the operations of not-for-profit organisations across Australia. In order to implement the recommendations, cooperation would be required between the Commonwealth and the States. WACOSS therefore wishes to advocate on behalf of the sector and guide the response of the WA Government.

WACOSS seeks feedback from its members and stakeholders regarding the report's recommendations and their implications for the WA not-for-profit community services sector. The following is a summary of the report's key recommendations, and WACOSS' initial response to them.

Recommendation 1: *The committee recommends all Australian Governments agree on common terminology for referring to organisations within the Sector. Governments should also develop a common meaning for terms referring to the size of these organisations, including 'micro', 'small', 'medium' and 'large'. This standard terminology should be adopted by all Governments.*

WACOSS strongly endorses the principle of applying differing regulatory requirements to organisations according to their size. The notion of 'tiered' regulation, with the most onerous

requirements applying to the largest organisations with the greatest capacity to comply, is a sound concept.

WACOSS tentatively supports the notion of tiered classification of not-for-profit organisations based on income thresholds. Measuring organisational size using employee size would appear to be more appropriate than using other measures such as number of employees.

Recommendation 2: *The committee recommends that the Government establish a unit within the Department of Prime Minister and Cabinet specifically to manage issues arising for not-for-profit organisations. The unit should report to a Minister for the Third Sector.*

WACOSS endorses this recommendation, and has advocated a similar arrangement in Western Australia. WACOSS' pre-budget submission for the 2007-08 State Budget recommended that the Government create a new Ministerial portfolio dedicated to the not-for-profit community services sector, supported by an Office for the Community Services Sector. This recommendation was a resolution that was supported by over 300 delegates at the March 2006 WACOSS Conference.

The case for establishing a dedicated unit and Minister at the State level would be strengthened if such an arrangement was put in place at the Commonwealth level. Inter-governmental discussion pertaining to the sector at COAG and sub-COAG levels will function more efficiently where Ministerial portfolios are broadly comparable across Governments.

WACOSS strongly supports such an arrangement at both the State and federal level, whether the portfolio represents the third sector more broadly or the not-for-profit community services sector more specifically.

Recommendation 3: *The committee recommends that there be a single independent national regulator for not-for-profit organisations.*

WACOSS recognises the potential for significant gains to the sector and Government that could arise from the creation of a single independent national regulator. A single national regulator could streamline and improve tax arrangements and lower administrative burdens associated with disparate regulations and regulators. If a national regulator is to be established, there should be clear rationale for its existence, and a clear enunciation of its responsibilities in statute. The boundaries between the regulator's responsibilities and those of funding agencies and other agencies (such as the ATO) should be clearly delineated and comprehensible.

WACOSS is concerned about the potential for a national regulator to add to, rather than reduce, the administrative burden on not-for-profit organisations. Organisations are still likely to be required to provide separate reports relating to their funding. Care should be taken to ensure that the creation of a single national regulator does not impose unnecessary additional reporting requirements.

Where additional reporting requirements are unavoidable, funding contracts should reflect the additional costs of compliance for organisations. State Government departments should ensure that reporting requirements in funding contracts for not-for-profit organisations take into account the matters on which the organisations are required to report to the national regulator. Unnecessary duplication should be avoided.

Recommendation 4: *The committee recommends that the Australian National Regulator for Not-for-Profit Organisation should have similar functions to regulators overseas, and particularly in the UK, including a Register for not-for-profit organisations with a compulsory sign-up requirement. The committee recommends consultation with the sector to formulate the duties of the national regulator.*

WACOSS does not object to the notion of a national regulator in principle. However, as with other recommendations, WACOSS is concerned about the potential for increased administrative requirements and heightened complexity for not-for-profit organisations.

In order to minimise the administrative burden, such a register should draw from existing data collected about not-for-profit organisations. For example, a large proportion of organisations are likely to have been issued Australian Business Numbers (ABNs). There is no need for an additional registration number to be issued.

WACOSS supports the recommendation of consultation with the sector to formulate the duties of the regulator. This consultation should not be limited to the formulation of the duties of the regulator, but rather should be ongoing in nature, and included as a statutory requirement. Ongoing consultation, monitoring and joint review committees should provide feedback regarding the operation of the national regulator, and this feedback should be taken into account.

Recommendation 6: *The committee recommends that, once a Register is established and populated, this information should be provided to the ABS, who should prepare and publish a comprehensive study to provide government with a clearer picture of the size and composition of the Third Sector.*

WACOSS strongly endorses this recommendation. There is an alarming paucity of information about the third sector (and the not-for-profit community services sector more generally) in Australia and Western Australia. There is a need for more information about the sector itself, and about the recipients of its services.

WACOSS has long advocated for a more coordinated, detailed approach to the collection and collation of information pertaining to the sector. The *Human Services Industry in Western Australia: Scoping the Sector* paper prepared by the DPC SPU for the Human Services Industry Roundtable identifies many areas in which up-to-date data is not available. Recommendation 6 would fill many of these gaps.

One of WACOSS' priority recommendations in its pre-budget submission for the 2009/10 budget related to the creation of an accessible, integrated data set of social performance indicators in WA. This would provide additional information about the recipients of community services, and would complement the study called for in Recommendation 6.

Recommendation 7: *The committee recommends that a single, mandatory, specialist legal structure be adopted for not-for-profit organisations through a referral of state and territory powers. Given the degree of change such a legal structure would mean for some not-for-profit organisations, the legal structure must be developed in full consultation with these organisations.*

The creation of a single legal structure for not-for-profit organisations would represent a significant break from current practice. Most not-for-profit organisations are incorporated under State-based Associations Incorporations legislation, and changing their legal status to comply with a national system would be highly burdensome. WACOSS could only support this recommendation (subject to consultation with the sector) if it could be shown that there would be tangible, significant benefits associated with the proposed structure, and that organisations would be adequately trained, funded and assisted to comply with the new regulatory regime.

Recommendation 8: *The committee recommends that the Henry Review include an examination of taxation measures affecting not-for-profit organisations with a view to simplifying these arrangements and reducing confusion and cost of compliance for these organisations.*

WACOSS strongly endorses this recommendation, with the caveat that any examination of tax measures affecting the sector should not result in increased costs of any kind (be they administrative costs or taxes themselves) for organisations.

There are a number of taxation measures affecting not-for-profit organisations that are in need of examination. These include:

- the definition of charity and charitable purposes. Organisations that do not have charitable status are less able to compete for staff, as they cannot offer salary sacrifice arrangements. They are also less able to attract donors and gifts as they do not have tax deductible gift recipient status.
- the burden of reporting for organisations with charitable status. Organisations that have, or seek to have, charitable status face onerous reporting requirements.

WACOSS joins ACOSS in endorsing the definitions of a 'charity' and 'charitable purposes' recommended by the *Inquiry into the Definition of Charities and Related Organisations*¹ (the Charity Definitions Inquiry). The Commonwealth's now-abandoned draft Charities Bill, formulated based on the recommendations of the Charities Definition Inquiry, stated that a 'charitable purpose' for an organisation is any of the following:

- the advancement of health;
- the advancement of education;
- the advancement of social or community welfare;
- the advancement of religion;
- the advancement of culture;
- the advancement of the natural environment; or
- any other purpose that is beneficial to the community².

This definition of charitable purposes is more modern than the current common law definition, and better reflects the contemporary operations of charitable organisations. Reforming the definition of a charity and charitable purposes would represent a significant reform in taxation measures affecting the not-for-profit sector in Australia.

Recommendation 9: *The committee recommends that a National Fundraising Act be developed following a referral of powers from states and territories to the Commonwealth.*

As with the creation of a single, national legal structure, this recommendation poses considerable risks for the sector. WACOSS is concerned that such an Act may be overly prescriptive, and that 'standardising' fundraising models may stifle some organisations' ability to support themselves. WACOSS advocates detailed, ongoing consultation regarding the operation of such an Act, and its implications for the sector. The proposed Act should have a mechanism for review and amendment of its operation arising from consultation.

Although accountability and effective regulation is important, it is imperative that organisations maintain the ability to be flexible and creative when designing their fundraising programs.

Recommendation 12: *The committee recommends that the Commonwealth Government work with the sector to implement a standard chart of accounts for use by all departments and not-for-profit organisations as a priority.*

WACOSS strongly endorses this recommendation. WACOSS has long advocated for the implementation of a standard charter of accounts at the State level, and this has been pursued through the Human Services Industry Roundtable.

Recommendation 15: *The committee recommends that a taskforce be established for the purposes of implementing the recommendations of this report. The taskforce should report to COAG.*

WACOSS strongly supports the principle of widespread, detailed consultation with the sector regarding any significant change. WACOSS therefore endorses this recommendation, provided the not-for-profit community services sector is adequately represented and the views of the taskforce are taken into account when designing any new legislation or other regulation.

¹ For a summary of the 2001 enquiries recommendations pertaining to charities and charitable activities, see ACOSS, Jobs Australia & VCOSS 2006, *Charity Now: Redefining Charity Law for the New Millennium: A discussion paper.*

² Advancement includes protection, maintenance, support, research or improvement

The full report is available at:

http://www.aph.gov.au/Senate/committee/economics_cte/charities_08/report/index.htm .

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