

A Submission to
Senate Standing Committee on
Economics
Inquiry into the Disclosure Regimes
for Charities and
Not-for-profit Organisations

On behalf of
The Australian Catholic Bishops
Conference

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Introduction

Thank you for the opportunity to make a submission to the Inquiry into the Disclosure Regimes for Charities and Not-for-Profit Organisations. Charities and Not-for-Profit Organisations (C&NFPs) make a significant contribution to society. Accordingly their regulation, management, governance, standards, accountability and transparency are appropriate matters for consideration.

Background and Context

There have been numerous studies and inquiries of various issues regarding C&NFPs over the past decade. The Terms of Reference of this most recent Inquiry are a subset of a wider range of social policy issues regarding C&NFPs. Hopefully this Inquiry will make a valuable contribution to consideration of some of these important issues.

The Committee will be aware that Catholic Church agencies are major providers of services, especially in the areas of Education, Health and Community Services. The issues and needs in these different areas differ greatly from one another and, accordingly, the issues and needs of Catholic Church agencies providing services in these diverse areas differ greatly. This submission on behalf of the Australian Catholic Bishops Conference (ACBC) seeks to address a number of general issues of relevance to the Committee's Inquiry.

The Australian Catholic Bishops Conference is a permanent institution and the instrumentality used by the Australian Catholic Bishops when acting nationally and to address issues of national significance.

A number of Catholic Church agencies will be making their own submissions to address the particular issues affecting each sector.

At Attachment 1 is a submission from Catholic Education Authorities. As noted in that submission, there are over 691,000 students in 1,700 Australian Catholic schools, employing 75,000 staff.

The background paper provided by the Committee is welcomed. It is noted that the paper relies very heavily upon a recent *Choice* article and upon a paper prepared by former Senator Andrew Murray. Both the *Choice* article and Senator Murray's paper are part of a genre of writings about C&NFPs which call for a range of controls on C&NFPs and make assertions of inadequate control in the C&NFP sector.

If there are problems they should be fixed. But, it is respectfully suggested, the Committee should firstly seek to understand the size, complexities and issues of the C&NFP sector and secondly to understand the different needs and issues of different parts of the sector prior to seeking to identify improvements that could be implemented. When seeking to identify improvements, a key issue for consideration by the Committee is whether particular proposed improvements are appropriate for all or only part of the C&NFP sector. It is likely that many proposed improvements could be appropriate for only some parts of the C&NFP sector.

Other reviews, such as the review of Taxation and Transfers being conducted by Dr Ken Henry and his colleagues, are addressing issues that, at least, are complementary to the issues being considered by the Committee. It is presumed that the Committee will be cognisant of these other reviews in its deliberations.

The C&NFP sector is often referred to as the Third Sector. The premise is that, in modern society, the other two sectors are the Government Sector and the Private Sector, with the C&NFP the Third Sector. As noted below, in recent years, roles and relations between these sectors have evolved, especially regarding the delivery of services to those in need. Accordingly, it is appropriate to consider the role of the C&NFP sector within the context of our modern society. It is suggested that such consideration is much wider than disclosure regimes. The roles and structures of the many different C&NFPs in society are complex and most provide important services. Implementing changes to such roles and structures would thus also be complex with an important imperative to ensure that the disadvantaged in society are not adversely affected by any change.

New regulatory regimes that add to the administrative overheads of C&NFPs will likely result in a reduction in funds available to provide community services. More importantly, a complex regulatory regime can have the effect of deterring some volunteers from undertaking governance roles, eg as treasurers, lest they find themselves at risk of non-compliance.

Valuable sources of information about the C&NFP sector include the 2001 report of the *Inquiry into the Definition of Charities and Related Organisations* (CDI) and recently released statistics from the Australian Bureau of Statistics regarding Not-for-Profit Organisations 2006-07 (ABSNFP). Both of these documents are valuable sources of information. But they also illustrate how statistics can appear to differ considerably regarding C&NFPs depending upon the definitions used.

Size and Funding of C&NFP Sector

A threshold question is: how many C&NFP organisations are there? The Committee's Issue paper advises "there are as many as 700,000 not-for-profit organisations in Australia". The CDI report advises (Chapter 6) that there are 31,764 nonprofit entities. The CDI report also notes that another study estimated that there might be as many as 700,000 but advises "such an estimate should be treated with great caution. Most of these would not employ staff but would rely on volunteers". The recently released ABSNFP report advises that "at the end of June 2007, there were 40,976 not-for-profit organisations in Australia". Therefore, based upon the CDI and ABSNFP figures, one can accept that there are about 40,000 C&NFPs, of varying sizes, structures and purposes.

C&NFPs that do not employ staff are likely to be very small and, probably, very local. All significant C&NFPs employ staff. Thus employment of staff is one measure of the significance of particular parts of the C&NFP sector. The CDI report advises (Ch 6) that the composition of employment in the C&NFP is:

- Education 34.8%
- Health 27.9%
- Community Services 31.3%
- Religion 4.3%
- Arts & Culture 1.3%
- Environmental Groups 0.3%
- Other 0.2%

(CDI Chapter 6)

With an extensive network of schools, hospitals and other education and health services, Catholic Church agencies are the major providers of Education and Health Services by the C&NFP. Similarly, Catholic Church agencies are significant, if not the largest, providers of Religion and Community Services.

The source of funding for C&NFPs is an important issue in considering whether or not additional controls or regulation are required. For example, Government funding is always accompanied by substantial reporting requirements and services sold or provided for a fee are arguably self-regulated by the market. The following is a summary from the ABSNFP of the percentage of funding from Government and Fees for Service or Sales for Education, Hospitals, Health and Social Services:

Service	From Government	Fees For Service or Sales	Total	From Other Sources
Education & Research	51.3%	33.4%	84.7%	15.3%
Hospitals	67%	27%	94%	6%
Health	65%	22%	87%	13%
Social Services	55%	30%	85%	15%

(ABS – 8106.0 Not-for-Profit Organisations, Australia 2006-07)

On one of the above measures, Education, Health and Community/Social Services make up 94% of the C&NFP sector. On the other measure, between 84% and 94% of funding is provided either by Government or fees for service or sales. That is, only between 6% and 15% is provided from other sources, such as donations or earnings from investments. ABSNFP advises that, for all C&NFPs, donations, sponsorships and fundraising accounts for 9.4% (\$7billion) of total income.

It is thus reasonable to conclude that, if there are needs for additional controls or regulation in the C&NFP sector then, for 94% of the sector, such controls or regulation would only be required for very small parts of the operations of C&NFPs.

Most discussions about donations to C&NFPs refer to cash donations. The ABSNFP advises that \$7 billion is donated via donations, sponsorships and fundraising. But there is another, more substantial, source of donations to C&NFPs: volunteers. The 2001 CDI advises that a 1994-5 study estimated that 374 million hours per annum were donated via voluntary work, at an estimated value of \$7.5 billion (in 1995 figures).

Therefore, when one considers issues such as possible additional controls or regulation of C&NFPs, it is important to note that about 90% of resources for C&NFPs come from either Government or Sales and Fees for Services. The remainder is divided about equally between donations etc and voluntary work, with the value of voluntary work being larger than the total of cash donations.

A Rationale for Social and Economic Policies

The Catholic Church and its agencies have been involved in providing Education, Health and Community Services in Australia since the establishment of schools and hospitals in the early colony of New South Wales. Much has changed in the past century, especially in recent years, as to the roles of Government, the Private Sector and C&NFPs in the delivery of services to those in need.

The rationale for the Church and its agencies to be involved in providing services in these areas is the same rationale that should guide legislators considering developments in social and economic policy. The rationale was described by the ACBC in its 1998 paper *Moral Reference Points for Tax Reform* (<http://www.acbc.catholic.org.au/about/pubpolicy.html>). The rationale is very relevant to the issues being considered by the current reviews. In summary there are three principles that should guide all policy developments in these matters:

1. The Common Good – “It is the proper function of public authorities to arbitrate, in the name of the common good, between various particular interests; but it should make accessible to each what is needed to lead a truly human life: food, clothing, health, work, education and culture, suitable information, the right to establish a family, and so on.” (Moral Reference Points for Tax Reform, p2)

2. Distributive Justice – Authorities have a responsibility to ensure that tax and other social systems, together with other economic mechanisms available to the Governments, are managed in a way that promotes the common good. This is not a matter of welfare or charity, but of justice.
3. Preferential Option for the Poor - The greater the needs of people, the greater the responsibility of authorities and those with a capacity to meet those needs. “The efficiency, effectiveness and justice of our taxation system are crucial to ensuring that Australia remains both a competitive and compassionate society... Many suggest, for the benefit and prosperity of the whole community, a simplification of the myriad of regulations governing the Australian tax system. The Bishops support the comprehensive evaluation and just reform of the taxation system..... Tax reform should promote the increased provision of such services to all the community, especially those in disadvantage.”
(Moral Reference Points for Tax Reform, p3)

As noted, these three principles should be the yardsticks against which society in general and government in particular measure all social and economic policy, especially policy regarding taxation, transfers and the C&NFP sector.

Some Recent Changes That Have Affected the C&NFP Sector

For most of the 20th Century, there was a balance between the Government, Private and C&NFP sectors. The C&NFPs provided services across a range of areas. In caring for disadvantaged people, the Government provided most fundamental services with the C&NFPs providing assistance for those who fell through the cracks of Government services. In providing services for the disadvantaged, C&NFPs relied on their own sources of income as well as upon government funding. C&NFPs were often able to cross-subsidise high cost, under-funded, assistance for disadvantaged people from surpluses generated from other services. Without shareholders, any surplus funds were, and are, used to further assist disadvantaged people. The Common Good, Distributive Justice and a Preferential Option for the Poor were accepted benchmarks for such arrangements.

However, in the past 15 years the balance between the Government, Private and C&NFP sectors has changed. Any examination of arrangements for the C&NFP needs to firstly examine and understand the reasons for and the significance of this change.

There were 2 primary, interrelated, reasons for this change in the balance between Government, Private and C&NFP sectors. The first reason is that, with a freeing up of the economy and related changes in technology, Australian society became much less sensitive to those who, for a variety of reasons, have not benefited from the improved economic conditions. Terms such as “dole bludgers” and punitive programs such as the harshly titled “Work for the Dole” are indicators of a hardening of attitudes in society in

general and Government in particular towards those less fortunate members of our society.

The second reason for this change in balance has been an enthusiasm by Governments to reduce costs. Outsourcing and an imperative to reduce costs saw many services, previously provided by the public service, outsourced to the private and C&NFP sectors. An attraction to Government in outsourcing to the C&NFP sector is that, with its generally lower salaries and cost bases, the C&NFP sector has traditionally been able to provide services to disadvantaged clients at a much lower cost than Government. An additional situation also developed as for profit private providers have been able to “cherry pick” more lucrative services, leaving it to C&NFPs to carry additional burdens without the opportunities to cross subsidise that were previously available.

Any consideration of these changes should prompt questions such as:

- Is the shift of services, previously provided by government services, to the C&NFP sector in order to save money for the Government, an appropriate use of the C&NFP sector?
- Are the opportunity costs of such a change justified?

Of course, it could be argued that, if involvement in a particular service was not cost-effective for a C&NFP, they should not tender for such services. However, the situation is not as simple as at first appears. Many C&NFPs have traditionally provided a range of services to disadvantaged people, as noted often cross subsidising one service from another, and providing a holistic service for such people. With the outsourcing of many services from Government, many services previously provided in a holistic way became the subject of numerous separate contracts for different services. This fragmentation of services provided opportunities for “cherry picking” noted above. C&NFPs had to decide whether to continue to assist their clients or to opt out of providing such services. Some C&NFPs did opt out of participating in these outsourced services, while others chose to continue their commitment to the disadvantaged. Any consideration of the C&NFP sector must be cognisant of these recent changes and of the current situations of many C&NFPs.

Consideration of Previous Reviews of the C&NFP Sector

Prior to considering the need for additional controls or regulation of C&NFPs, it is suggested that previous reviews undertaken regarding these issues should be examined. In particular, the 2001 *Inquiry into the Definition of Charities and Related Organisations* (CDI) made numerous recommendations that have, to date, not been fully considered by Government.

It is suggested that resources should be provided to review and, where appropriate, implement the 27 recommendations of the CDI Report. It should be noted that not all will agree with all of the recommendations, but they provide a useful foundation upon which to base consideration of the needs of the C&NFP sector

As noted above and in the CDI Report, the C&NFP sector is complex, with a wide variety of organisations providing a wide range of different services with consequentially a wide range of organisational and control structures. It is arguable that the diversity of organisational and control structures is one of the strengths of the sector because of the subsequent ability of appropriate organisations to deliver appropriate services to very different clients. In a sector that is so complex, one size will not fit all.

It is suggested that, when considering possible changes in control or regulation of C&NFPs, it is appropriate to consider them in 3 different groups, large, medium size and small C&NFPs. Defining whether a C&NFP is large, medium or small could be a matter of debate, depending upon definitions used.

Large C&NFPs provide most of the services in the C&NFP sector. They are particularly evident in the Education, Health, Community Service and Religion parts of the sector. The CDI Report advises that these parts of the sector employ 98.3% of people employed in the C&NFP sector. The ABSNFP advises that about 90% of income for the Education, Health and Community Services parts of the sector comes either from Government or from fees for services or sales. Significant controls and reporting accompanies government funding and the market controls fees for services and sales. The large organisations that provide most of the services in these parts of the sector have substantial internal control arrangements and are required to report to government about funding received. Any consideration of additional controls upon such organisations would first need to identify areas in which existing controls are inadequate.

Medium size C&NFPs usually provide services in only one or a small number of locations and usually provide only one or a limited range of services. There is much diversity among such organisations regarding services provided, organisational structures and controls. There are at times suggestions that such organisations need greater controls and regulation. But such suggestions are often made by people who have a vested interest in the implementation of such controls and regulation. If there are problems, they should be fixed. But simply because there is a diversity of organisational arrangements, does not indicate that there is a problem. Prior to identifying necessary changes, it is first necessary to identify a problem.

Small C&NFPs are numerous but make up only a very small component of the activity of the C&NFP sector. They exist in every town and suburb of Australia, usually rely entirely upon volunteers, and usually make valuable contributions within their local communities. Any consideration of additional controls or regulation of small C&NFPs must be very considerate of the cost/benefits of any additional burden upon volunteers who contribute to these organisations.

Simplifying Government Controls and Contracts

One part of the Inquiry's Terms of Reference is to examine "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". As noted, a significant proportion of funding for C&NFPs comes from Government, often via a multiplicity of contracts from a multiplicity of Government agencies. These multiplicities of contracts often have different reporting and performance requirements, often for very similar services. One measure that could be taken by government to assist the sector would be to introduce common performance requirements and contracts, especially for similar services, regardless of the government agency providing the funding. Such an improvement would be beneficial if greater standardisation of contracts and performance requirements could be achieved across the Commonwealth Government. It would be particularly beneficial if greater standardisation and simplification could be achieved across all levels of Government.

Some Particular Issues

In 2007 the Treasury published a discussion paper on financial reporting by unlisted public companies. Many C&NFPs operate through these structures. At Attachment 2 is a copy of a submission provided by the Australian Catholic Bishops Conference General Secretary to Treasury regarding Treasury's discussion paper. The comments in that submission may assist this current Inquiry.

Another issue which the Committee may wish to investigate is a simplified mechanism for the incorporation of C&NFPs. Many are able to operate very easily as unincorporated associations and this option ought to always be available.

In some cases incorporation is a requirement for access to government funding programmes. Large and complex organisations ought to be able to incorporate, in a simplified fashion, the particular project that is relevant without needing to establish what is largely a fictitious 'membership' and separate governance structure.

Simplicity and flexibility ought to characterise any new regulatory regime for the establishment and governance of C&NFPs.

Conclusion

Thank you again for the opportunity to discuss these important issues. Various Catholic Church Agencies will be making submissions to the Inquiry addressing a range of issues, some specific to their particular sphere of operations. The diversity of submissions from Catholic Church Agencies illustrates both the range of activities in which Catholic Church Agencies

operate and the diversity and complexity of many of the issues being considered.

We look forward to discussing these important issues further with the Committee as the Inquiry progresses.

Australian Catholic Bishops Conference
August 2008

**Response from Catholic Education Authorities to the Senate
Inquiry into the Disclosure Regimes for Charities and
Not-for-profit Organisations**

Catholic schools in Australia

The National Catholic Education Commission, under the direction of the Australian Catholic Bishops, represents Catholic education authorities in Australia. There are over 691,000 students in 1,700 Australian Catholic schools, employing 75,000 staff. Almost 18% of Australian schools are Catholic. These schools are found across the continent, addressing both the needs of their local communities and supporting the nation's need for a skilled, educated workforce. These schools educate 21% of Australian school students. While the schools give priority to students from Catholic families, 20% of the students are from non-Catholic backgrounds.

Catholic schooling: a demonstrable public benefit

Catholic schools have been a major component of Australian education for over 175 years. During that time they have adapted to changing circumstances and changing times. In recent decades, as both the Church and Australian society have changed, Catholic schools have continued to develop and to grow in quality and public esteem. Parents, students and staff of Catholic school strive to be Christ-centred communities which witness to the Faith. They have distinctive goals and features which derive from a core of philosophical and theological truths which are central to their character and mission. Catholic schools strive to meet the needs of the Australian people as we confront major national challenges such as reconciliation, the demand for greater social equity and the needs of the Australian community in the 21st Century.

Current accountabilities

Introduction to existing accountabilities of the Catholic Education Sector

The Catholic education sector, as a recipient of significant government funds, is already subject to a high degree of government accountability and financial reporting. All Catholic (and other non-governmental) schools submit detailed financial summaries each year to the Department of Education, Employment and Workplace Relations (DEEWR). These comprehensive data collections include the entire financial results each year and include over 50 separate reportable figures. All Catholic schools also participate in the GST system, including the completion of monthly or annual BAS returns containing broadly summarised transaction data.

Governance frameworks

Catholic schools in each state and territory are subject to supervisory structures. These structures particularly include the supervision by and accountability to the curriculum authorities in each state and territory. Most states and territories have teacher registration authorities which lay down the qualifications for teaching staff. States and territories provide some funding for Catholic schools but, quite appropriately, in return require schools to be accountable, publicly, for the funds provided. The final level of supervision is that provided by the public as it compares school results in public examinations and other tests, like the current Naplan.

Income Tax Exemption

The Commission strongly supports the existing income tax exemptions for the education sector. This is because:

- The Catholic education sector which is largely funded (over 70%) by government support. Moves to tax schools would largely be a circular and wasteful process of government taxing government – and would not match the equivalent treatment of schools in the government sector.
- Income tax reduces the flexibility of schools to develop reserves to cover significant future expenses (includes those planned for and unforeseen, and both those of a recurrent and capital nature).
- Income tax would have an immediate and detrimental impact on schools fees, which would threaten the financial viability of a significant number of schools.

Minor trading operations

Schools are involved in some commercial ventures that are directly related to school operations. The most significant of these would be student canteens and uniform shops. Although run on a commercial basis, these operations are largely a service to student or parents and as a general rule they do not make a significant profit contribution to the finances of schools. It would be hoped that these operations would not be caught up in any new requirements for commercial conditions (such as payroll and income tax). Such a change would increase the complexity of such operations and force many schools to hand over to external corporate operators – increasing the costs of these ancillary services and the impact upon families.

Tax deductibility

The use of School Building Funds to accept tax-deductible donations has been an important part of the development of Catholic education in Australia. The Catholic sector is recognised by state and federal governments as being largely self-supporting (and substantially under-funded) in terms of capital development. Accountability for expenditure from School building Funds is

achieved via the annual audit process. Any withdrawal of tax-deductibility of school building funds would greatly hamper capital development in schools and would inevitably be badly received in school communities throughout the Commonwealth. Similarly, the recent introduction of tax-deductible scholarship funds has been seen as a valuable new initiative which works to support one of the key aspects of Catholic school ethos – equity of access for all students regardless of their financial position. The Commission strongly supports the status quo regarding Deductible Gift Recipient status for School Building Funds and Scholarship Funds.

Recommendation

The NCEC recognises that there is a perception that there is a lack of transparency in the operations of some bodies which enjoy the exemptions arising from charitable status. However Catholic schools are in fact both highly regulated and accountable across the Commonwealth. If there is a problem regarding transparency related to the charitable status of Catholic schools, it rests in the lack of public awareness of means for accessing the available information. Consequently, NCEC sees little to be gained from a new body to oversee issues related to the charitable status of Catholic schools. NCEC would support measures to increase access to existing information and suggests that current Commonwealth departments could host a website to provide links to increase public awareness of the transparency of Catholic school operations.

Attachment 2

10th July 2007

The General Manager
Corporations and Financial Services Division
Department of Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir

I am writing to offer some comments with respect to the discussion paper *Financial Reporting by Unlisted Public Companies* (June 2007).

The Australian Catholic Bishops Conference is a permanent institution and the instrumentality used by the Australian Catholic Bishops when acting nationally and to address issues of national significance.

The Catholic Church in Australia operates through a number of different legal entities, which include unlisted public companies.

Church structures such as parishes, dioceses, religious orders, and many of the activities which they conduct, do not generally have identity in civil law. In order to comply with the Church's internal law, and as an aid to good governance, entities that are recognised in civil law are established to assist the Church in its dealings in the public forum.

A commonly used structure is the establishment of a Company Limited by Guarantee, which operates as a trustee/nominee for the particular Church entity or activity.

Within this structure the assets are generally held in the name of the Church entity (diocese, parish, religious order). The trustee/nominee entity is used when matters arise that require legal contracts or where necessary for other civil law compliance reasons.

Many of these Companies Limited by Guarantee do not hold any assets, and in many instances the only revenue consists of the fees required for compliance with auditing and ASIC requirements.

For example, in the case of the Australian Catholic Bishops Conference, it maintains three Companies Limited by Guarantee for such purposes. The annual revenue consists only of the audit fees and ASIC annual review fees. Such revenue is provided by the unincorporated entities for which the Company Limited by Guarantee acts as trustee.

It is respectfully submitted that the requirements for auditing and filing of accounts with ASIC are essentially irrelevant to this type of entity and brings about an unnecessary burden, not only by way of expense, but also staff time in preparing the accounts and forms.

I present this as one example that has not been addressed in the otherwise very thorough and helpful discussion paper.

With respect to the specific issues presented for comment, it would be our view that there ought to be a differential reporting regime for some unlisted public companies.

The criteria to determine those companies that are required to report and those that are exempt ought to be consistent with the general regime that operates in the States with respect to the Incorporated Associations.

In our view the matter of public reporting should not be determined according to activity. If there are certain activities that require transparency, then other areas of the law relating to registration or endorsement, for example, as charities by the Australian Taxation Office, are sufficient.

Entities that raise funds from the public ought to provide accounts as required by the various State legislation relating to charities or where applicable with the fundraising provisions of the Corporations Act.

Companies Limited by Guarantee that receive grants ought to be able to satisfy accountability obligations by providing their special purpose financial reports to the grantor.

Many of the Companies Limited by Guarantee operated by charitable and religious organisations have only a nominal membership, so the question of members seeking access to financial reports is generally not relevant in those cases.

The issue for comment in paragraph (F) relating to the harmonising of the financial reporting requirements of Companies Limited by Guarantee and Incorporated Associations is a significant one. It is a matter of concern that there is significant inconsistency not only between the Corporations Act and the various State regimes for incorporated associations, but among those State regimes as well. Overlapping this is a myriad of different laws relating to charitable fundraising.

A separate regulatory protocol for not for profit entities would be very helpful, provided that it does not simply replace the current level of reporting with a new regime built up with a new bureaucracy. It could be constructed in a way that provided layers of accountability depending on size measured by revenue. The process for incorporation, winding up, and financial management could be tailored equitably to meet different needs, particularly those of the multiplicity of various small entities that engage in community activities.

The approximate annual cost of preparing the financial accounts for the three entities operated by the Australian Catholic Bishops Conference is of the order of \$2,000 each. More importantly, significant and unproductive staff time is taken up in dealing with the auditors and preparing a set of accounts that essentially have little relevance to the operations of the Church entities for which they act as trustee.

Yours sincerely,

Rev Brian Lucas
General Secretary