



Government Submission

VicSport Response to the Review of Not-For-Profit Regulation

May 2007



Review of Not-For-Profit Regulation
State Services Authority
GPO Box 14912W
MELBOURNE, 3001

17th May 2007

Re: Review of Not-For-Profit Regulation

To Whom It May Concern:

Attached is a response to the Review of Not-For-Profit Regulation submitted by VicSport as Victoria's peak body representing the community sport and active recreation sector.

It should be noted this response may not identify and cover every issue of concern to our extensive member group. That an issue is not addressed in this paper in no way indicates any such issue is not an important consideration for a particular sub-membership of our industry.

I thank you for the opportunity to provide input into the Review of Not-For-Profit Regulation.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Kate Roffey".

Kate Roffey
CEO
VicSport

VicSport - Response to the Review of Not-For-Profit Regulation

VicSport is the peak body representing Victoria's sport and active recreation sector. As an independent member based organisation, VicSport represents the needs and concerns of over 170 member groups which includes state sport and active recreation organisations, university, TAFE and school sport groups, organisations who represent specific sectors of the community such as Womensport and Recreation Victoria and the Disability Sport Advisory Committee, and Local Government Authorities. Through our extensive network VicSport supports around 10,000 clubs, and over 1.8 million participants, workers and volunteers across Victoria.

As the peak representative organisation, one of VicSport's key roles is to advocate for change and ensure policy and decision makers are aware of issues impacting on the sector. As such, VicSport provides the following response to the Review of Not-For-Profit Regulation.

Community Sport & Active Recreation as a Genuine NFP Sector

According to the review outline, NFP organisations are defined as:

Organisations that operate for social or community purposes, do not distribute profits to members, are self-governing and independent of government.

By any definition available there is no doubt the community sport and active recreation sector is a not-for-profit sector. Virtually without exception the community sport and active recreation sector is made up of NFP organisations that are owned and managed by their members, and are registered as either independent self-governed incorporated associations, or companies limited by guarantee. These organisations are funded primarily via income from membership fees with additional support coming from government grants, fundraising and sponsorship. As NFP organisations, any profits made are invested back into the organisation for further capacity building rather than distributed to members.

The primary role of community sport and active recreation organisations is to either directly provide, or facilitate the provision of, low-cost participation opportunities for members. Conservative estimates indicate the NFP community sport and active recreation in Victoria provides physical activity opportunities for around 1.8 million Victorians. The activities these organisations offer play a vital role in promoting better physical and mental health outcomes for Victorians, as well as creating vital capacity within communities.

In addition to being not-for-profit, community sport and active recreation organisations are for the most part small volunteer run organisations. The *Community Sport Counts*¹ report published by Sport and Recreation Victoria indicated 75% of Victoria's sport and recreation organisations are voluntary in nature. It is estimated within the sport and active recreation sector, around 80 to 90% of all activity is undertaken by volunteers, and approximately 40% of all volunteers across Victoria work in the sport and active recreation industry. ABS statistics released in August of 2006² showed 62% of the total number of people who held recognised roles within sport and physical recreation organisations volunteered their time.

In terms of size, the majority of Victoria's sport and active recreation organisations are small community-focused organisations. According to the *Community Sport Counts* report, 53% of Victorian sport and recreation organisations have an annual income of less than \$25,000 per year. An additional 22% of the sector brings in less than \$25,000 to \$100,000 annually. 2006 ABS statistics showed across Australia the average sports club or team organisation was found to have 4 employees and an income of \$325,300.

Clearly the sport and active recreation sector is not only a bona fide NFP sector, its size and the role it plays in promoting better health, social inclusion and community capacity building make it a vitally important part of Australia's broader NFP community.

In the context of any discussions around the NFP sector it is important to be cognisant of the impact, both positive and negative, these changes will potentially have on the extensive community sport and active recreation sector.

Tax Deductibility Status

It is important to note a significant way in which the community sport and active recreation sector differs from many other NFP groups and that is their ineligibility to apply for tax deductibility status.

It is recognised the debate over the issue of exclusion of community sport and active recreation organisations from charitable status eligibility at the time of the last federal review of the Income Tax Assessment Act is outside the bounds of this review. In any discussions around the NFP sector however, it is important to be aware of the negative impact this ineligibility for tax-deductible status has on NFP sport and active recreation organisations.

Obviously, the primary impact lies in the inability of community sport and active recreation organisations to directly attract philanthropic support which could provide significant assistance to NFP organisations. In addition however there are a number of other less obvious impacts. By way of example, like any other organisation, NFP sport and active recreation clubs and associations require

legal, financial and governance assistance on a range of matters. Like other NFP groups, these organisations have very limited financial resources and as such do not have funding available to pay for the professional assistance required.

In recognition of the support NFP groups require, some excellent pro-bono programs, such as *Good Company*³, have been introduced to provide this much needed support. Unfortunately, most of these programs require the organisation have charitable status to receive support via these programs, thereby excluding access for NFP sport and active recreation organisations.

It is speculated this is a result of a misconception that groups who are not eligible for charitable status are for profit groups, rather than any direct desire to specifically exclude sport and active recreation groups. It is equally important to note any decisions made which provide support or benefit to organisations that are eligible for charitable status will exclude community sport and active recreation groups who do make a significant contribution to the NFP sector.

Many of the current discussions taking place in Australia around NFP regulation review refer to recent improvements made in the UK around 'charitable status'. While some of the initiatives being undertaken in the UK are excellent in their vision and scope it must be noted in 2002 the UK Government changed legislation to allow tax-deductible status to 'community amateur sports clubs' and clubs that promote 'healthy sport'. Under this legislation the vital sport and active recreation sector is captured as changes based on charitable status are made.

In Australia this is not the case. It is important any changes being considered, particularly those aiming to benefit NFP organisations, are assessed in the context of all NFP sectors affected, including the extensive community sport and active recreation sector.

Reducing the Regulatory Burden - The Impact of Compliance

Being a sector made up primarily of small community focused clubs and organisations whose administrative duties are for the most part carried out by volunteers, the burden created by compliance requirements has an impact at all levels. Increasing administrative burdens and potential personal liability are consistently rated as key reasons volunteers are hesitant to take on roles of responsibility in these organisations.

It is understood accountability and transparency are vital elements of good governance. All community sport and active recreation organisations, regardless of size, are encouraged to comply with required legislated requirements. It is equally important for government to realise the reporting regulations required must be appropriate for the size and type of organisation.

Many of the current regulatory requirements were developed for large-scale commercial businesses rather than small NFP organisations. As such, these compliance requirements are not only unnecessarily onerous for NFP organisations, they create a significant administrative burden for staff and volunteers. Obviously the more time volunteers must devote to administrative business, the less time available to direct to their core business of creating physical activity opportunities for all.

VicSport welcomes the Government's review of NFP regulation and the objective to reduce the regulatory burden by 25% over the next 5 years. As the peak body representing the sport and active recreation sector we cannot however stress strongly enough the need for any review to:

- i) afford the community sport and active recreation sector, as a vital and significant part of the broader NFP community, the full consideration it deserves in the context of any decisions made, and
- ii) ensure any changes made, whilst they may make regulation easier from the government's perspective, do not add to the already significant administrative burden these small, volunteer run NFP groups already carry.

Following are some suggested changes to the existing system which could help to alleviate the current burden while maintaining reporting integrity and member confidence.

1. Standardise structures

Currently there are a range of governance structures via which NFP organisations can operate, including incorporated associations, cooperatives, companies limited by guarantee, proprietary companies and trusts for example. It is argued this array of structures, created primarily for reasons of taxation, have created much of the confusion around accountability and reporting requirements across the NFP sector.

It has been recommended by many groups, including the Non-Profit Roundtable⁴ and University of Melbourne⁵, that the creation of a single specified NFP organisational structure with a single set of reporting requirements would assist organisations themselves in understanding and meeting their compliance requirements, and also help assure government and stakeholders of appropriate accountability and transparency.

Alternatively, review and streamlining of state variations in association incorporation requirements would be of significant assistance for groups who operate in more than one state.

By way of example, most sport organisations in Australia operate on a federated model whereby a national organisation is responsible primarily for high-end elite development, and state sport associations are responsible for delivery of grass-roots programs. Traditionally, each of these organisations exists as a separate entity usually incorporated within their own state. For some small organisations in particular, significant rationalisations in cost could be achieved through consolidations of higher-level administrative operations.

Variations in requirements across states mean this is not a viable option for these small incorporated associations however. The alternative, to move to a company limited by guarantee for example, which is governed by a single federal Act, imposes additional constraints and compliance requirements on small organisations which simply do not provide return on investment.

In short, the complex array of governance structures and their varied compliance requirements, and the unnecessary variations in state based association incorporation regulations creates unnecessary administration complications for NFP groups. A simplified single NFP governance structure, or alternatively the standardisation of state-based associations incorporation requirements could easily improve accountability and transparency, while at the same time generating significant financial and human resource savings.

2. NFP sector specific financial reporting framework

While it is important to ensure financial accounts are kept at an appropriate industry standard, it is argued the commercial based accounting standards that currently apply equally to the NFP and business sectors are unnecessarily onerous and costly for the majority of NFP organisations.

In their 2006 publication *Not-for-Profit Sector Reporting: A Research Project*⁶, the Institute of Chartered Accountants in Australia concluded the development of a financial reporting framework specifically designed to meet the needs of NFP organisations would provide significant benefits to NFP organisations.

It is recommended consideration be given to introduction of accounting standards more appropriate to the NFP sector, in particular smaller incorporated associations. If necessary a sliding scale of requirements based on financial turnover and/or asset management could be introduced to allay accountability and transparency concerns. This would allow government to maintain more stringent requirements over larger organisations or those organisations registered as companies limited by guarantee for example.

3. Rationalise Auditing Requirements

According to Melbourne University's report into *Reforming Not-For-Profit Regulation*⁵:

In 2002 the average audit cost for medium sized companies was \$25,000. There is no reason to think these figures would be significantly different for NFP companies of similar size. Given 89% of NFP companies said that auditors charge for their services, this is a considerable cost to the sector. Whilst having accounts audited and maintaining audit independence may be important as a matter of public policy, the cost must be weighed against the benefits.

It is argued the unnecessarily onerous auditing requirements placed on relatively small NFP organisations are one of the single biggest drains on limited financial resources. Some sport and active recreation organisations, while they are NFP organisations by definition, do generate multi-million dollars worth of income through their programs. It is agreed organisations of this size should be required to undergo extensive audits of accounts.

The vast majority of sport and active recreation organisations however have incomes in the tens of thousands rather than multiples of millions. As noted previously 75% of community sport and recreation organisations have incomes of less than \$100,000. For these groups, in particular relatively small groups who fall into the prescribed association category, (and therefore must have their accounts audited), the costs in both financial and human resources, of having extensive audits completed are far in excess of the accountability levels that realistically should be required

It is recommended a full review of auditing requirements for NFP organisations be conducted with a view to implementing a range of requirements that more accurately reflect requirements based on size and structure of organisations.

4. Pro-bono support for NFP sport and active recreation organisations

As mentioned previously, the decision to exclude sport and active recreation groups from tax-exempt status means many vital pro-bono support options in the legal, governance and finance areas available to other groups are not accessible to the sport and active recreation community.

Many small NFP community sport and active recreation organisations cannot afford the expensive legal and accounting fees required to remain compliant with reporting requirements. These groups rely primarily on volunteer staff to fill these duties. Access to pro-bono support would provide significant assistance in helping alleviate ever-increasing administrative burdens.

It is recommended resources be made available to develop pro-bono support schemes for those NFP sport and active recreation organisations in genuine need of support.

5. Plain English Guidelines

One of the most common frustrations identified by NFP sport and active recreation groups is the difficulty they have in accessing easily understood information which clearly and concisely outlines their compliance duties.

In working with many of these organisations it is clear some of these groups, under scrutiny, would fail a strict compliance test. What is also clear is a failure to comply is not being driven by any desire to cheat the system or abrogate due process responsibilities, but rather because the range of compliance requirements are so diverse, complex and in many cases onerous that these groups are simply not aware such a regulation existed.

One simple way to help small NFP organisations better understand and manage their compliance requirements would be to provide an easily accessible 'plain English' guide to compliance responsibilities under various NFP governance structures.

In addition, providing resources to allow peak sector organisations such as VicSport to offer appropriate educational support services for members would assist both members and government alike in their efforts to ensure full compliance with regulated requirements.

6. Streamlining of Government Grants

Currently there is little, if any, standardisation of funding and grants programs across government departments. The huge variations in application processes and reporting requirements make it unnecessarily difficult for NFP groups with limited administrative resources to successfully compete for government grants.

It is recognised government departments for the most part operate independently of each other. There is no doubt however there are some areas where standardisation of application and reporting processes would greatly assist organisations, particularly small volunteer based groups, with their grant application processes.

To provide an example, community sport and active recreation organisations access a range of grants offered by local government authorities (LGA's). By and large, there are essentially 5 core types of community accessible funding programs offered by LGA's. They are:

- Major Facilities
- Minor facilities and Equipment
- Community development grants
- Events grants
- Miscellaneous for example athlete support grants

Despite the broad categories of funding being similar across all LGA's, there are no standardised application procedures at any level. It is argued that by working as a collective, LGA's could introduce standardised grant application processes for those grants available for NFP groups. Not only would this significantly decrease the administration burden on NFP organisations, it would also provide valuable benefits to the LGA's themselves by improving the quality and standard of applications received.

7. Impact of other legislative changes on the NFP sport and active recreation sector

Despite its size and the important role it plays in delivering better health outcomes, building community capacity and creating social capital, the sport and active recreation sector is quite often forgotten when it comes to considering the impact legislative changes (that are primarily focused on and developed for other sectors), invariably has on it.

To provide an example, recent changes to the Occupational Health and Safety Act 2004, (which came into effect in July 2005), now requires 'mandatory reporting of fatalities, serious injuries or other incidents which expose persons to risks to their health or safety to the Victorian WorkCover Authority'. In addition, the OHS Act also stipulates the site where a notifiable incident has occurred is to remain undisturbed until either an inspector arrives at the site, or such other time as directed by an inspector when WorkSafe is notified of the incident.

While the new Act is not a radical departure from the old, the incorporation of incident notification and site preservation requirements into the Act means these requirements are now legally binding and failure to comply is an offence.

As the incident notification legislation was developed for, and largely pertains to big industry, there is no clarification around specific requirements for sport and recreation organisations and activities. While the requirement to report incidents in the work place "proper" is nothing new, departmental interpretation of the Victorian Act's broad defining of the workplace has meant sporting activities and events are currently being considered "workplaces".

Under this strict, and it is suggested unnecessarily onerous interpretation, these requirements apply to something as basic as a game of basketball. It is difficult to fully comprehend how many WorkSafe staff would be required to respond to the

numerous calls that could be expected during the course of a normal Saturday morning's sporting activities. Quite obviously the situation of a person being injured when taking part in a sporting activity for example, was not considered when these site preservation requirements were written. Site preservation is however a requirement of the legislation and as such a sport organisation considered to be in breach of this requirement would face substantial fines.

Clearly the impact of this legislative requirement on the NFP sport and active recreation sector was in no way considered at the time of reviewing the OHS Act. The administrative burden this poorly defined piece of legislation places on NFP organisations, not only in compliance with these requirements, but in simply understanding them, is however significant and unnecessarily onerous.

Unfortunately this example is by no means an isolated example of the community sport and active recreation sector being overlooked. If genuine efforts are to be made to decrease the administrative burdens on NFP organisations, the government must pay greater heed to the impact of poorly targeted legislative changes on NFP community sport and active recreation organisations.

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