

# CHAPTER 1: PROJECT OVERVIEW

## SUMMARY OF THIS CHAPTER

- The Project has been conducted by members of the Centre for Corporate Law and Securities regulation at The University of Melbourne. It has been funded over the three-year period by an Australian Research Council grant and has received in-kind support from Philanthropy Australia Inc.

### Project aims

- The key project aims have been to:
  - s Obtain a national profile snapshot of NFP companies limited by guarantee for the first time.
  - s Obtain the views of those working in the NFP sector.
  - s Identify what is working in the current regulatory regime and what is not. For example: Is a company limited by guarantee the most appropriate legal structure? What type of information should be disclosed and to whom? Who is the most appropriate regulator for NFP organisations?
  - s Make law reform recommendations and engender further debate.
- The principal method of data collection has been a detailed written survey. A questionnaire was sent to the Chief Executive Officer of all registered companies limited by guarantee as appeared on the public register at 1 March 2002. A good response rate (estimated to be 39%) was achieved.

### Purpose of this Report

- The main purpose of this Report has been to make recommendations for reform and to identify areas requiring further deliberation. An important feature has been to record the results of the survey comprehensively so that we, and others, can use it for future research. We hope that in this way the data will form a useful snapshot of the NFP companies that can be referred to and used for a variety of purposes by policy makers and the NFP sector itself. More detailed analysis of particular issues has or will be covered in articles published elsewhere (and, in some instances, reproduced on the Project website), or taken up in future projects.
- In addition to this Report, the Project website has other materials that might interest those working in the NFP sector, policy makers and those providing advice to NFP companies, see <http://cclsr.law.unimelb.edu.au/activities/not-for-profit/>.

## CONTENTS

<a href="#">1.</a>	<a href="#">Project background</a>	13
<a href="#">2.</a>	<a href="#">Research team</a>	13
<a href="#">3.</a>	<a href="#">Collaborative partner: Philanthropy Australia</a>	14
<a href="#">4.</a>	<a href="#">Project aims</a>	14
<a href="#">5.</a>	<a href="#">Importance of the sector</a>	14
<a href="#">6.</a>	<a href="#">Some legal issues affecting NFP organisations</a>	15
	<a href="#">6.1. Myriad of possible legal structures</a>	15
	<a href="#">6.2. Directors' duties</a>	16
	<a href="#">6.3. Board selection</a>	16
	<a href="#">6.4. Multiple accountability</a>	16
	<a href="#">6.5. Conflicts of interest</a>	17
<a href="#">7.</a>	<a href="#">Research methodology</a>	17
	<a href="#">7.1. Data collection</a>	17
	<a href="#">7.2. Survey group</a>	18
<a href="#">8.</a>	<a href="#">Significance of survey results</a>	18
<a href="#">9.</a>	<a href="#">Purpose and structure of report</a>	19
	<a href="#">9.1. Purpose</a>	19
	<a href="#">9.2. Structure</a>	19
<a href="#">10.</a>	<a href="#">Other project materials</a>	20

### 1. PROJECT BACKGROUND

The 'Accountability and Corporate Governance of Not-for-Profit Companies Project' (the Project) was conducted from March 2001 to December 2003. The earliest genesis of the Project was years spent teaching students about a company law regime that did not seem to fit the not-for-profit (NFP)<sup>1</sup> context. For example, dividends and reductions of share capital are concepts with no relevance to a company formed to meet the needs of a NFP organisation. Experience on NFP Boards, as well as anecdotal evidence, also informed us of problems with the complexity of legal structures and disclosure requirements. These cause considerable difficulties for those working in the NFP sector. There is evidence suggesting that the number of NFP companies is increasing gradually, however, NFP companies still represent a small proportion of all registered companies.<sup>2</sup> This fact, combined with the absence of a strong sector lobby group, means that the particular needs of NFP companies have often been overlooked.<sup>3</sup>

In this Project we have used both our considerable corporate law expertise, and our combined academic and personal experience in the NFP sector (see Appendix 3). The experience and profile of our collaborative partner, Philanthropy Australia (see Heading 3) has also significantly benefited the Project. The results should be of particular interest to policy makers concerned with corporate governance and accountability in the NFP sector.

The Project has been funded for the three-year period by an Australian Research Council (Department of Education, Training and Youth Affairs) grant under the Council's 'Strategic Partnerships with Industry - Research and Training Scheme' (SPIRT Grant). Our industry partner, Philanthropy Australia, has provided in-kind support during this period.

### 2. RESEARCH TEAM

The chief investigators have been Ms Susan Woodward and Professor Ian Ramsay from the Centre for Corporate Law and Securities Regulation (CCLSR) at The University of Melbourne. Research assistance has been provided by Ms Shelley Marshall (from January 2003 to September 2003).

Other people have been involved in a variety of capacities during the course of the Project: Mrs Sally Sievers (member CCLSR) provided specialist input at various times; data entry (in relation to the survey) was undertaken by Mr David Rose; Mr Bruce Smyth and Mr Malcolm Anderson have, from time to time, provided expert statistical advice and analysis; Mr Michael O'Neill provided research assistance May 2001–December 2002; some administration assistance was provided by Ms Amy Kirwan, Ms Jacqui Zaleberg and Ms Eleanor Jackson; and Ms Rhonda Black has provided editorial assistance with this Report. Brief profiles are provided in Appendix 3 for Ms Woodward, Professor Ramsay, Ms Marshall and Mrs Sievers.

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<sup>1</sup> We have used the term 'not-for-profit' to cover the broad range of organisations operating for social or community purposes, such as those providing charity, recreation, advocacy, art or religion. The main characteristic of such organisations is that funds or profits are used by the organisation solely to further its social/public purpose, rather than being distributed to members or officers (known as the non-distribution constraint). The term is intended to be much broader than the traditional, legal definition of a 'charity'. The term 'not-for-profit' has been preferred to 'non-profit' because it more explicitly recognises that these organisations, and indeed the sector, often make (substantial) profits, even though they are not distributed to members. The independent Charities Definition Inquiry recommended the use of the term 'not-for-profit' for similar reasons (*Report of the Inquiry into the Definition of Charities and Related Organisations*, 2001, pp. 91–6). One person who provided feedback on the Summary of Preliminary Findings (March 2003) suggested that the term 'not-for-distribution' would be a more accurate term but, although we think there is merit in the suggestion, we have used the more widely used term 'not-for-profit'.

<sup>2</sup> On the basis of figures provided to us by ASIC, from 1 March 2002–1 March 2003, there were an additional 197 companies limited by guarantee registered by ASIC. However, there are over a million proprietary companies limited by shares compared with just over 10,000 companies limited by guarantee.

<sup>3</sup> See S. Woodward, 'Not-for-Profit Companies - Some Implications of Recent Corporate Law Reforms', 1999, 17 *C&SLJ* 390; and M. McGregor-Lowndes, 'Regulatory Infrastructure for Nonprofit Organisations', Working Paper No. PONC 97, August 2000, Queensland University of Technology. The formation in June 2002 of a National Nonprofit Round Table (initially called the 'Third Sector Round Table') may mean that in future there is a sector group able to represent the needs of NFP companies in the way that organisations like the Business Council of Australia represents 'for-profit' interests: 'Non-Profit Groups Link up to Present United Front', *Financial Review*, 26 June 2002, p. 11 and E. Cham, National Director Philanthropy Australia Inc, 'A New Focus for Australia's Non-Profits', 2002, 50 *Australian Philanthropy Journal* 3.

This Report has been written by Ms Woodward and Ms Marshall. This Report includes material available as at 31 August, 2003, unless otherwise expressly stated.

### 3. COLLABORATIVE PARTNER: PHILANTHROPY AUSTRALIA

Philanthropy Australia has, as our 'industry partner', provided valuable in-kind support for the Project. Philanthropy Australia is the national membership organisation for grant-making trusts and foundations. Its mission is to promote and protect the interests of family, private, corporate and community giving in Australia. Its members have an overarching interest and concern to ensure that grants made by them are distributed to well-managed NFP organisations. Philanthropy Australia has also been instrumental in the formation of the National Nonprofit Round Table - a new group whose primary focus will be to represent the NFP sector to government and the broader community. See <http://www.philanthropy.org.au/>.

### 4. PROJECT AIMS

Put simply, the key aims of the Project have been to:

- Obtain national baseline data on NFP companies limited by guarantee for the first time.
- Obtain the views of those in the NFP sector, particularly those working in NFP companies.
- Identify what is working in the current regulatory regime and what is not. For example, is a company limited by guarantee the most appropriate legal structure? What type of information should be disclosed and to whom? Who is the most appropriate regulator for NFP organisations?
- Make law reform recommendations and engender further debate.

### 5. IMPORTANCE OF THE SECTOR

Official estimates suggest that NFP institutions contribute almost \$21 billion or 3.3% of Gross Domestic Product (GDP) in 1999 to 2000. When imputed wages for volunteer services are included, the contribution of NFP institutions increases to 4.7% of GDP. They also make a significant contribution to employment, accounting for 6.8% of total employment in 1999 to 2000. In comparative terms, NFP institutions add more to GDP than the mining industry. Even without an imputation for volunteer services, the NFP sector is larger than both the communications sector and utilities sectors.<sup>4</sup> Given its size and the nature of the many services it provides, it is clear that a strong NFP sector is vital for Australia's long-term economic prosperity. Increasingly the sector's importance is being recognised worldwide, but in Australia there has been only limited research into NFP companies.<sup>5</sup>

<sup>4</sup> See 'Non-profit Institutions Satellite Account', ABS Cat. No. 5256.0 released 28 November 2002. See also earlier figures from the Australian Nonprofit Data Project (a collaborative project between the Centre for Australian Community Organisations and Management (University of Technology (Sydney) and the Australian Bureau of Statistics) as reported in M. Lyons & S. Hocking, *Dimensions of Australia's Third Sector - Report of the Australian Nonprofit Data Project*, Centre for Australian Community Organisations and Management (CACOM) University of Technology, Sydney, 2000, especially p. 81.

<sup>5</sup> For earlier Australian studies see C. McDonald, *Board Members' Involvement in Nonprofit Governance* Working Paper No. 16, Program on Nonprofit Corporations, Queensland University of Technology, 1993 (Qld); J. Radbourne, *Recruitment and Training of Board Members for the 90's and Beyond*, Working Paper No. 24, Program on Nonprofit Corporations, Queensland University of Technology, 1993, and P. Steane and M. Christie, 'Nonprofit Boards in Australia: A Distinctive Governance Approach', 2001, 9 *Corporate Governance* 48.

## 6. SOME LEGAL ISSUES AFFECTING NFP ORGANISATIONS

An outline of the main legal issues that were considered by the Project follows:

### 6.1. Myriad of possible legal structures

The legal nature of NFP organisations is even more varied than in the ‘for-profit’ sector. This complexity has important implications for accountability, governance and regulation of the NFP sector.

Many, particularly smaller organisations, are incorporated under State-based associations legislation<sup>6</sup> - an option not available to ‘for-profit’ organisations. By contrast, many of the large welfare organisations are church-sponsored and have no clearly defined identity of their own. They receive their legal status by Acts of Parliament that allow their sponsoring denomination to hold property. In order to determine the exact legal nature of each organisation within a church’s umbrella, it is often necessary to work through a complex (and largely confidential) combination of legislation, trusts, incorporated associations and companies.<sup>7</sup> It is not even possible to identify the total number of NFP companies in Australia. The Australian Securities and Investments Commission’s (ASIC) records do not separately identify this group. Neither the Australian Nonprofit Data Project<sup>8</sup> nor the recently released ABS Satellite Accounts<sup>9</sup> distinguish the number of NFP companies from other forms of organisation. However, it seems their number is on the increase, if only very gradually.<sup>10</sup>

First, the Industry Commission (now known as the Productivity Commission) in its report *Charitable Organisations in Australia* noted a trend towards the use of companies limited by guarantee as the preferred legal structure for newer organisations, even for those within the church-sponsored group.<sup>11</sup>

Second, several of the State Associations Incorporation Acts have given the Registrars of incorporated associations power to direct associations incorporated under their Act to instead register as companies limited by guarantee under the *Corporations Act*.<sup>12</sup> In Victoria at least, many associations have received such a direction.<sup>13</sup>

Third, there are a variety of legislative provisions which effectively require certain NFP organisations to incorporate as companies, either to obtain grants or for licensing. For example, the *Aged Care Act 1997* (Cth),<sup>14</sup> the *Aged or Disabled Persons Care Act 1954* (Cth)<sup>15</sup> and the *Registered Clubs Act 1976* (NSW).<sup>16</sup>

Last, in addition to companies registered as companies limited by *guarantee*, there is a significant group of other companies (that is, companies limited by *shares*) that also fall within the general term, NFP companies. For example, it is increasingly common to find NFP organisations with

<sup>6</sup> For example, *Associations Incorporation Act 1984* (NSW) and *Associations Incorporation Act 1981* (Vic).

<sup>7</sup> See Industry Commission 1995, *Charitable Organisations in Australia*, Report No. 45, AGPS, 1995, Appendix C, pp. 10–13, 16–17 and 204. A general insight into the relative distribution of organisations by form of legal entity was given by the Industry Commission in this report: see p. 17 and Appendices C and D. See also Charity Definition Inquiry, *Report of the Inquiry into the Definition of Charities and Related Organisations*, 2001, available at <<http://www.cdi.gov.au>> p. 278.

<sup>8</sup> M. Lyons & S. Hocking, *Dimensions of Australia’s Third Sector - Report of the Australian Nonprofit Data Project*, Centre for Australian Community Organisations and Management (CACOM) University of Technology, Sydney, 2000, especially p. 81.

<sup>9</sup> See ABS ‘Non-profit Institutions Satellite Account’, ABS Cat. No. 5256.0 released 28 November 2002, Glossary p. 43.

<sup>10</sup> The growth in the number of incorporated associations is much greater. For example, in Queensland alone the average number of new incorporations is between 600 and 1000 per annum. See also n. 2.

<sup>11</sup> Industry Commission 1995, n. 7, Appendix C, p. C11.

<sup>12</sup> See A.S. Sievers, *Associations and Clubs Law in Australia and New Zealand*, The Federation Press, 1996, pp. xvi, 100–1.

<sup>13</sup> The survey highlighted some examples. One respondent stated that the ‘GST pushed [an] earlier Incorporated Association “over the line”’: response no. 731. Another stated that the Victorian Government ‘was pushing larger incorporated associations from the state jurisdiction’: response no. 210. In New South Wales, the Department of Fair Trading advised one organisation that it was unable to be an incorporated association due to the scale of its turnover: response no. 185.

<sup>14</sup> Section 8(1).

<sup>15</sup> Section 7(3)(c).

<sup>16</sup> Section 10(1)(b).

trading offshoots. These offshoots are companies limited by shares that operate as ‘for-profit’ subsidiaries of the NFP, parent organisation.<sup>17</sup> However, as previously noted, ASIC statistics do not identify the number of NFP companies on the register, or whether they are companies limited by guarantee or companies limited by shares.

The myriad of legal structures for NFP organisations results in disclosure and other requirements differing for organisations that carry out the same type of activities. For example, a sporting association that is, for historical reasons, a company limited by guarantee, will have different legal requirements to meet than an equivalent organisation that has been established as an incorporated association. Thus, variation in the disclosure required will be based on this rather arbitrary distinction, rather than a more logical one, such as size.

## 6.2. Directors’ duties

The *Corporations Act* and the general law impose duties on directors and officers of all companies, regardless of whether they are NFP or ‘for-profit’ companies. It is clear (at least since the important decision of *Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115; 9 ACLC 946) that being an honorary director will not of itself be sufficient to exonerate a director from liability. In that case, J. Tadgell stated:

There is nothing in the Code [now *Corporations Act*] to suggest that the standard to be expected of a part-time non-executive director of a company not for profit is different from the standard expected of any other director of a profit-making company: both are required...to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.<sup>18</sup>

One can easily appreciate the policy reasons for this approach. There should be a high degree of accountability for directors of NFP organisations receiving donations from the public and/or government funding (as was the situation in the *Friedrich’s case*).<sup>19</sup> Directors’ legal duties are one accountability mechanism. Indeed, their importance is arguably greater in the context of a NFP company because many of the other accountability mechanisms (for example, stock exchange regulation, dividends/returns to members and the influence of institutional investors) do not apply.<sup>20</sup>

## 6.3. Board selection

NFP companies may experience difficulty in attracting Board members on a *voluntary basis* who are both:

- people with the financial, legal and corporate management expertise required for the organisation to operate successfully in a competitive funding environment (that emphasises a corporate management framework and accountability standards); *and*
- people who have experience or skills with the service provided by the company; government and non-government grant makers often make it a condition of their grants that the recipient has ‘client’ or ‘consumer’ directors on its Board.

## 6.4. Multiple accountability

The voluntary nature of NFP Boards combined with their multiple and complex accountability foci (for example, their accountability to grant makers, members, clients and regulatory bodies), have been identified by several socio-legal academics as significant impediments to good corporate governance practices in NFP organisations.<sup>21</sup> It is common practice for Board members to be

<sup>17</sup> See also Charity Definition Inquiry, n 1, pp. 93–7.

<sup>18</sup> *Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115 at 197. Although the court was not prepared to use its discretionary powers under s 535 of the *Companies Code* (now s 1318 of the *Corporations Act 2001* (Cth)) to relieve the non-executive director in that case (Mr Eise) from liability, J. Tadgell did treat the voluntary nature of his position as a relevant factor.

<sup>19</sup> *Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115 at 198. See also M. McGregor-Lowndes, ‘Nonprofit Corporations – Reflections on Australia’s Largest Nonprofit Insolvency’, 1995, 5 *AJCL* 417.

<sup>20</sup> See D.A. DeMott, ‘Self Dealing Transactions in Nonprofit Corporations’, 1993, 59 *Brooklyn Law Review* 139.

<sup>21</sup> For example, D. Leat, ‘Voluntary Organizations and Accountability: Theory and Practice’ in H.K Anheier and W. Seibel (eds), *The Third Sector: Comparative Studies of Nonprofit Organizations*, Walter de Gruyter, New York, 1990. For a summary of the arguments see C. McDonald, ‘Board Members’ Involvement in Nonprofit Governance’, Working Paper No. 16, Program on Nonprofit Corporations, Queensland University of Technology, 1993. See also A. Twaits, ‘The Duties of Officers and Employees in Non-Profit Organisations’, 1998, 10 *Bond Law Review* 320.

recruited to maximise one particular type of focus, for example, to consumers. While that Board member may possess characteristics uniquely suited to maximising that focus, it has been argued that the capacity for NFP companies to recruit and retain Board members possessing the characteristics that address *all* types of accountability is severely limited.<sup>22</sup>

### 6.5. Conflicts of interest

Board members of NFP companies may be appointed as nominees for sectional interests. For example, they may believe their role is to represent a particular constituency and to influence the Board in their favour. Or, in the case of a peak body, they may be there with the view to representing a State or divisional group. Such nominee directors may find themselves in a position of conflict - a conflict between the interests/concerns of their nominators and their legal duties to act in the best interests of the company.

The statutory provisions are more onerous for public companies than private companies<sup>23</sup>. Bearing in mind that a company limited by guarantee is a public company,<sup>24</sup> the issue of compliance with these statutory provisions will be pertinent to NFP companies. However, the concerns of NFP companies may not be consistent because, even within the category of companies limited by guarantee, there is differential treatment. In particular, companies limited by guarantee and holding a licence to omit the word 'limited' from their name<sup>25</sup> (a name licence) are not bound to comply with the related party transaction provisions contained in Chapter 2E of the *Corporations Act 2001* (Cth).<sup>26</sup>

## 7. RESEARCH METHODOLOGY

### 7.1. Data collection

The principal method of data collection for the Project was a written survey. We considered this approach to be the most useful way to obtain a relatively accurate cross-sectional snapshot of NFP companies. This was an important factor given the paucity of even the most basic profile data on this group. The survey was also seen as an effective way of obtaining large-scale empirical evidence as to whether existing companies regulation is perceived by NFP companies (or at least the predominant group of them) as adequately meeting their needs. In particular, for structural suitability, disclosure and accountability. The written survey had the advantage of allowing respondents to remain anonymous. It was also relatively cost-effective and enabled data to be collected on a national basis. Other advantages (and the disadvantages) of this form of data collection are discussed more fully in Appendix 1.

In addition to the survey, feedback was obtained from a variety of sources. In March 2003, a Summary of Preliminary Findings<sup>27</sup> was distributed to all survey respondents who had indicated that they wanted to receive the results. The accompanying request for feedback on the initial recommendations for reform was met with an enthusiastic response, and a number of respondents emailed or wrote to us with their opinions concerning the Preliminary Findings.

The Summary of Preliminary Findings was also distributed widely to the media, the original trialists, relevant the government departments (for example, the Department of Family and Community Services, relevant Departments/Registrars for incorporated associations in each State/Territory, the Federal Treasurer) and other contacts. We obtained some media coverage<sup>28</sup> and this generated further feedback. Several presentations have been made to a variety of audiences (both academic and those working in the NFP sector).<sup>29</sup> This too provided an

<sup>22</sup> See C. McDonald, n. 21, p. 3.

<sup>23</sup> See, for example, *Corporations Act 2001* (Cth), s 194 (replaceable rule, proprietary companies) compared with s 195 (public companies) on the issue of a director voting on matters involving a material personal interest.

<sup>24</sup> See *Corporations Act 2001* (Cth), s 112(1).

<sup>25</sup> See *Corporations Act 2001* (Cth), ss 150–1.

<sup>26</sup> This follows from para. (b) of the definition of 'public company' contained in the *Corporations Act 2001* (Cth), s 9.

<sup>27</sup> A copy of this Summary is available on the Project website at <<http://cclsr.law.unimelb.edu.au/activities/not-for-profit/>>.

<sup>28</sup> ABC Radio National interview at 8.15am on 4 March 2003; 'Non-profits may get new rules', *The Age*, 28 February, 2003; 'Donors query executive pay', *Australian Financial Review*, 5 May 2003.

<sup>29</sup> Presentations by Ms Woodward include: *Building Better Boards A Dialogue for Nonprofit Organisations*, July, Sydney, organised by Nonprofit Governance & Management Centre (inaugural conference attended by more than 400 people); seminar for the Centre for Philanthropy and Nonprofit Studies at the University of Queensland, September 2002; *Doing Well*, bi-annual ANZTSR (Australian and New Zealand Third Sector Research Association) research conference, Auckland, November 2002 (conference paper published on conference website at <<http://www.uws.edu.au/ashs/anztsr/>>); Annual ACROD (National Industry Association for Disability Services) Conference, a conference for the Chief Executive Officers of their member organisations (approx 200 people) Canberra, 19 May 2003; seminar for the pro bono clients of Freehills, solicitors, Sydney, 17 June 2003; and

opportunity for useful feedback. On two occasions organisations with an interest in the Preliminary Findings recommendations gathered feedback from their constituents to inform their positions.<sup>30</sup> This feedback was subsequently provided to us and has helped inform the recommendations made in this Report.

## 7.2. Survey group

A questionnaire addressed to the Chief Executive Officer (CEO) was mailed to every company limited by guarantee (except those recorded as superannuation trustee companies and those under external administration). The survey/Project was also advertised widely within the sector. The questionnaire was divided into six main parts: (A) general company profile, (B) legal structure, (C) stakeholders, (D) Board composition and experience, (E) Board structure and procedures, and (F) regulatory framework. The confidential questionnaire, with a detachable covering letter, was posted on 13 March 2002 to the registered office of these companies recorded on the national register maintained by ASIC at 1 March 2002. A follow-up letter was sent on 11 April 2002. The total number of returns was 2089, of which 1736 were completed returns. A follow-up telephone survey of non-responders was conducted in August 2002. No markers of sample bias were found. Taking into account non-receipts, the response rate is estimated to be 39%. This was a very pleasing response given the length of the survey (ten pages),<sup>31</sup> the detailed knowledge of the organisation required to complete it, and the fact that the vast majority of NFP companies rely on volunteers. Having the imprimatur of The University of Melbourne and Philanthropy Australia, as well as the earlier advertising within the sector, seems to have contributed to the response rate.

There is a more detailed discussion of the research methodology in Appendix 1.

## 8. SIGNIFICANCE OF SURVEY RESULTS

The survey has netted important profile data: it is the first national, large-scale snapshot of the nature of this NFP companies. The data is important for three reasons:

- i. Since the company law simplification reforms,<sup>32</sup> ASIC does not have data on the nature of the business conducted etc. ASIC's records cannot tell us if all companies limited by guarantee are NFP organisations.
- ii. Previous NFP data collection exercises,<sup>33</sup> including large-scale ones such as the Australian Nonprofit Data Project,<sup>34</sup> have not distinguished the legal nature of the organisations.
- iii. An understanding of the nature of the group being regulated is essential prior to deciding how and by whom the group should be regulated.

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*Piercing it together – equity, empowerment & change*, ACOSS (Australian Council of Social Service) Annual Congress, Canberra 13 November, 2003.

<sup>30</sup> At the ACROD conference following the speech given by Ms Susan Woodward, note 29, ACROD asked participants to fill out a survey. A workshop was held at the Freehills seminar note 29, after Ms Woodward's presentation, during which participants discussed the recommendations made, and generated group views on their value for the sector.

<sup>31</sup> A copy of the survey form is contained in Appendix 3.

<sup>32</sup> *First Corporate Law Simplification Act 1995* (Cth) and *Company Law Review Act 1998* (Cth).

<sup>33</sup> For earlier Australian studies see C. McDonald, *Board Members' Involvement in Nonprofit Governance* Working Paper No. 16, Program on Nonprofit Corporations, Queensland University of Technology, 1993. (This was a study that involved the analysis of 242 questionnaires collected from 1218 NFP organisations registered under the *Collections Act 1966* (Qld), however, the legal nature of the organisations was not discussed); J. Radbourne, *Recruitment and Training of Board Members for the 90's and Beyond*, Working Paper No. 24, Program on Nonprofit Corporations, Queensland University of Technology, 1993, (a study that involved surveys, interviews and observations of Board meetings of thirteen Queensland arts organisations; the organisations 'were selected randomly and represented a variety of art forms and legal structures', p. 7); and P. Steane and M. Christie, n. 5 (a study that involved the analysis of one hundred and eighteen questionnaires collected from three hundred and fifty NFP organisations; again there was no distinction as to the legal nature of the organisations).

<sup>34</sup> Lyons & Hocking, n. 8.

While there have been extensive consultations with business groups about law reform proposals,<sup>35</sup> our survey can be regarded as the first real attempt to obtain the views of the NFP sector, and to identify any difficulties they may have in navigating the company law regulatory regime.

## 9. PURPOSE AND STRUCTURE OF REPORT

### 9.1. Purpose

Given the good response rate to the Project survey, we have been put in the enviable position of having rich and 'deep' data. For example, it has been possible for us to make both general observations about the profile of the respondents as well as being able to 'drill down' further. We have been able to see if there were variations based on company size, principal activity, tax status, receipt of government income, member vs. public-serving etc. Given the extent of our Project's funding, the 'downside' of such rich data is that this Report cannot go into the level of analysis that many of the sections warrant.

The main purpose of this Report has been to make recommendations for reform and to identify areas requiring further deliberation. Also important has been the comprehensive recording of the results of the survey so that we, and others, can use it for future research. We hope that the data will form a useful baseline that can be referred to and used for a variety of purposes. More detailed analysis of particular issues has or will be covered in articles, or taken up in future projects.

### 9.2. Structure

This Report is divided into eight chapters covering the different sections of the survey:

- introduction
- profile data
- regulatory framework
- legal structure
- Board size, composition, remuneration and experience
- Board structure, procedures and role
- stakeholder
- disclosure.

There is also a Summary of Recommendations and Appendices (containing further information about the methodology (Appendix 1), profiles of the research team members (Appendix 2), a copy of the survey form (Appendix 3) and standardised disclosure forms from the UK, NZ and Canada (Appendix 4) and a comparative table of the incorporated associations legislative regime (Appendix 5)).

Within each chapter, we have followed the pattern of:

- s stating the survey question
- s giving the basic results for that question (that is, overall frequencies)
- s reporting any statistically significant differences between the responses based on a range of key factors such as the respondent's principal activity, size, taxation status (PBI<sup>36</sup> or non-PBI), whether or not the company is primarily member serving or public serving, and whether or not the company receives any government funding
- s making observations on the results, where appropriate
- s making recommendations for law reform or indicating areas for further investigation in some instances.

There is a summary of key findings section at the beginning of each Chapter. We hope this enables readers to quickly identify which Chapters will be of interest to them and, within each Chapter, what they want to read in more detail.

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<sup>35</sup> For example, the Business Regulatory Advisory Group that has given input on reforms proposed as part of both the Simplification Program and the Corporate Law Economic Reform Program. This group is comprised of representatives of peak business (that is, 'for-profit') groups such as the Australian Institute of Company Directors, the Australian Stock Exchange and the Business Council of Australia. See also McGregor-Lowndes 'Regulatory Infrastructure for Nonprofit Organisations', n. 3.

<sup>36</sup> PBI means Public Benevolent Institution. This is a term used in the *Income Tax Assessment Act*.

## 10. OTHER PROJECT MATERIALS

In addition to this Report, the Project website provides other materials which may be of interest to the SFP sector and policy makers..

See <http://cclsr.law.unimelb.edu.au/activities/not-for-profit/>. One of the refereed journal articles can be downloaded in PDF format: *'Not-for-profit motivation in a for-profit company law regime —baseline data'* S Woodward (2003) 21 *Companies & Securities Law Journal* pp. 102–33. The *Law Reform Submission* to the NSW Department of Fair Trading in response to their Consultation Paper, 'Review of the Associations Incorporations Act NSW, S Woodward, S Sievers and S Marshall (June 2003) can also be downloaded in PDF format. The Project website was set up (within the Centre for Corporate Law and Securities Regulation, Law School, The University of Melbourne website) in March 2003 primarily as a location for the publication of the *Summary of Preliminary Findings*. This summary was directed mainly towards informing survey respondents who had indicated a desire to be notified about the results of the research. (These respondents were emailed with directions to the site or sent a copy by mail). Interest in the Project, up to 7 December 2003, has been shown by the Project's website title page receiving 3,456 hits.