

## **Submission to The Review of the ACNC Acts**

*The hallmarks of a sociopathic leader: self-perceived superiority, impetuous decision-making, lack of remorse or empathy and ingratiating themselves with management (Darragh O'Keefe, 2017)*

### **Personal Background**

I am a retired medical practitioner and my interest in the subject of the review arises from my volunteer membership, for nearly four years, of an incorporated not-for-profit organisation. If the Review Panel requires, I am happy to be interviewed.

### **The Problem as per Media/Online Reports on Issues Involving Not-for-profit Organisations**

- “Top Coastguard officers stood down over ‘minor matters’”

Kathy Sundstrom reported on **3rd Mar 2017** in the *Sunshine Coast Daily* “it was only "technical issues" that saw its two most senior people stood down and "frogmarched" out of a meeting. Commander Ian Hunt and Deputy Commander Rod Ashlin were told to take time away from the QF6 Squadron on February 18. The two, who have more than two decades of experience between them, told the Daily days after they had "no idea what they had done wrong" and were frustrated with the way they had been treated. Sunshine Coast Coast Guard Squadron Commodore Andris Zalite had told the Daily an administrator had been appointed to run the affairs of the Mooloolaba flotilla until the investigations were complete. At a meeting on Wednesday night, the 70 members present had shown their support” (*for Hunt & Ashlin*).

- “Red Flags”

An article published in the *The Weekend Australian Magazine* of 10-11 May 2017 titled & written by Richard Guiliatt, describes the problems of massive fraud within Surf Life Saving (SLS) NSW and internal disputes between SLS Clubs & SLS Australia. The 'judiciary panel' process of dealing with SLSC officials who made "insulting" remarks about SLS Australia management on social media did not appear to afford justice to the club members in dispute with the national body, and "exemplifies self-serving managerialism".

- “Masons split over expenses, bonuses”

In an article titled published in *The Australian* of 8 July 2017, Michael McKenna reported “A public row has erupted in the secretive ranks of the Freemasons in Queensland, with allegations of expense rorts, dodgy rule-making and huge bonuses after the \$220 million sale of Masonic Care aged care homes. The head of the Freemasons' associated charity, the Board of Benevolence has resigned and been forced to repay more than \$70,000 in expenses claimed for travel, meals and office furniture.”

- “National coast guard body holds public meeting to address Port Douglas volunteer lockout”

It was reported in *The Cairns Post* on 17 July 2017 that “after a dispute between the Port Douglas Coast Guard and its volunteers from its Dickson Inlet base erupted last week when volunteers expressed a desire to leave the national coast guard body and join Marine Rescue Queensland. Former commander of the Mossman Port Douglas Coast Guard Ross Wood claimed the governing body had taken no notice of the requirements of the community. ‘They’ve gone in and physically changed the locks. We’ve been told if we go in there it’ll be classed as unlawful entry and we can’t use the boat because it’s all insured under the AVCGA,’ he said. ‘It’s absolutely unnecessary for them to do this, we thought we should handle this in an orderly fashion and we wanted to avoid putting the community at risk. All the money that we had and all the equipment we had was bought through grants with the Queensland Government or money raised locally from the community.... Over

the years we've raised issues with various levels of the AVCGA management and they basically ignored us. We are aware of other groups that so fed up with the AVCGA hierarchy that they want to go to a different structure.' All executive members of the QF10 flotilla, also known as Mossman Port Douglas Coast Guard, have also been informed to step down and cease operation.'

- **"Mallacoota: mediation session"**

EMV are

This is not a media report, rather it is an online extract from the Minutes of the EMV Marine Search and Rescue Working Group of 10 September 2017, in which an update was provided on an issue involving the Coast Guard at Mallacoota.

- **"Charities to be hit by RSL scandal fallout"**

**It was reported in *The Australian* of 13 Feb 2018, that an inquiry headed by a former NSW Supreme Court judge, Patricia Bergin SC into the misuse of funds by a former NSW RSL president has "recommended sweeping changes to the operations and fundraising activities of charities after finding 'cronyism', 'ineptitude' and "abysmal failures' of governance within the branch led to the misuse of hundreds of thousands of dollars". The former NSW RSL president is being investigated by the police, while former NSW RSL councillors have been referred to the regulators, NSW Fair Trading, &/or ASIC &/or ACNC. Ms Bergin has recommended" 'consideration be given' to introducing a single, unified Australian statutory regime for the regulation of charitable fundraising' ".**

### **ACNC Limitations**

The ACNC is mainly concerned with financial accountability of charities & not-for-profit (NFP) organisations. Service quality is left to "relevant regulators" and, on the matter of internal &/or employment disputes, their position is clear:

**"The ACNC does not deal with internal disputes in charities unless there is a serious risk to public trust and confidence. For example, if the dispute is likely to result in a breach of the ACNC Act. If an agreement or compromise cannot be reached, consider using an independent mediator. An independent mediator may be needed when other attempts to resolve a dispute have failed."**

**Such limitations may diminish the power of the ACNC Commissioner to address the risk of misconduct by charities and not-for-profits, or those that work with them, so as to maintain the public's trust and confidence.**

### **Discussion**

The several media reports above are probably only a minority of such reports published throughout Australia in the past five years. While the truth of the reports is uncertain, they contain examples of the range of issues that have arisen in some of our major NFP organisations, ranging from alleged gross fraud to mismanagement of volunteers, which have the greatest ability to erode public trust and confidence in the sector.

**It is somewhat puzzling, that the above-mentioned head of the inquiry into the misuse of funds in the NSW RSL, Ms Bergin SC perceives the need for "a single, unified Australian statutory regime for the regulation of charitable fundraising". Isn't this the purpose of the ACNC Acts? Whether it is or it is not, obviously the system is not working properly, so her recommendation has merit. Incidentally, I only became aware of the existence of the Review of the ACNC Acts when I raised the matter of Ms Bergin's recommendation with a friend in government on 16 February 2018. I certainly didn't learn of it through my NFP organisation.**

A charitable organisation which is properly governed should have nothing to fear from closer scrutiny, and the adoption of a regime such as that envisaged by Ms Bergin SC will lead to the provision of greater transparency of governance of charitable organisations at the State and National level. I believe that government regulation of charitable organisations is inadequate and volunteers at the grass roots of such organisations are often powerless to prevent poor governance at the higher levels, especially if control falls into the hands of unscrupulous leaders.

One of the main issues is that of expenditure by leaders of NFP organisations and whether it has been abused through “publicly funded high jinks, rorts and general carry-on” to borrow a phrase of newspaper columnist, Grace Collier. Fraudulent use of such funds amounts not only to stealing from the public ie donors, both private & public, eg local government councils, but also to stealing from the volunteers who spend many hours of their own time in fund-raising, including through selling raffle tickets or working on sausage sizzles at Bunnings.

One way to assess this would be to examine annually full financial audits of the NFP organisation at each level, ie in the case of an organisation that operates nation-wide, auditing of each local element (say, Sub-branch), as well as at their higher or State level (say, Branch), and also at the National level, rather than simply examining a financial audit of the whole organisation, which may be what is being presented. An annual audit at each level should be freely available to members and donors, so details of income and expenditure of all parts of the organisation are made public. Particular attention should be paid to expenditure on travel and accommodation to attend meetings and conferences, in correlation with duration of business conducted as recorded in minutes of meetings. Presently, there may be insufficient transparency to inform the ACNC and the public more broadly that funds are being used for the purpose they are being given.

The other big issue is the abuse of power in the management of volunteers, examples of which appear to have occurred in the cases referred to in the first, second and fourth media reports above; it may also be the case in the fifth report. An external integrity agency is required to ensure management of a NFP is in accord with its constitution and disciplinary action is in accordance with the principles of procedural fairness and natural justice. The disciplinary process should be prompt, open and transparent. The standing-down of accused at the outset without evidence of gross negligence or criminal action is abuse of authority and contrary to the presumption of innocence. Compelling the accused and, in turn, witnesses on request of the accused, to provide information within a limited period of time, is contrary to the principle that accused people are entitled to remain silent and are not required to incriminate themselves. There should not be a substantial imbalance of power in favour of the higher authority in a NFP.

### **Government Integrity Agencies Other than ACNC**

The Fair Work Ombudsman is an independent statutory office of the Australian Government, whose jurisdiction is set out in the Fair Work Act and whose services are free to all workers and employers in Australia. Its main role is to promote harmonious, productive and cooperative workplace relations. Presumably, “All workers” include those who are unpaid, such as those who volunteer time and effort to a NFP organisation.

In my State, the Queensland Government has six Dispute Resolution Centres (DRCs) within the State. “Mediation helps people settle disputes without going to court. Taking part in mediation can save time, legal fees and court costs for you and the community. Attending mediation is generally voluntary—for a mediation session to go ahead, both parties need to agree to attend. Before you apply for mediation you should be willing to meet with the other party to resolve the dispute. mediators don’t give advice or pass judgment. They guide you through a structured process, create an environment where all parties have a chance to speak and be heard and keep the discussion going smoothly so you and the other party can find your own solutions.” One disadvantage of this process is that there is a fee for mediation of workplace disputes at DRCs, as there is for non-government mediation. It would be interesting to know if this process has led to a resolution of the dispute involving the Mallacoota Coast Guard, referred to in the fifth media report above.

### **Conclusions**

**It is a sad reflection on Australian society that even volunteer organisations can fall prey to leaders with the personality traits described by O'Keefe in the opening quote, and serious problems exist in governance of NFP organisations, both in financial affairs and with personnel management. Furthermore, it seems that, at present, gross misuse of the funds of a charity has to be suspected or occur before external action is taken against such persons.**

Part of the problem might be in the limits to involvement by a regulatory authority such as the ACNC which in principle accepts complaints "only if within jurisdiction" and "cannot investigate certain kinds of complaints about charities. These include internal disputes within a charity" (Commissioner's Policy Statement 2012/06). Now if volunteers in a front-line element of a charitable organisation have reason to believe governance at the national level is suspect or inadequate and their approach or complaint to the national level is ignored or rejected, apart from expensive litigation, there is no avenue for higher referral or appeal.

If the ACNC cannot "maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector", in respect to personnel management within NFPs, there may be a place for the Fair Work Ombudsman. Mediation of workplace disputes at a State DRC or by using an independent, private mediator requires payment of a fee and may not resolve the problem. However, recourse to the Fair Work Ombudsman or to mediation will not address oversight and control of financial governance of NFP organisations.

I submit that the first object of the principal ACNC Act, which is "to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector" is not being achieved; it may be that the provisions and the regulatory framework are inadequate and/or the powers and the functions of the ACNC Commissioner are insufficient to enable the objects to be met and/or the office is under-resourced. The review of the ACNC Acts is timely.

#### **Recommendation**

**I endorse the recommendation of Ms Bergin SC, the head of the inquiry into the misuse of funds in the NSW RSL, that there should be "a single, unified Australian statutory regime for the regulation of charitable fundraising". If this is the role of the ACNC, then action is required to ensure the ACNC carries it out properly. If it is not the role of the ACNC, then perhaps it should be, in which case appropriate legislation may be required. While I am not suggesting a government take-over of any NFP, the Commonwealth Government should have oversight of all aspects of governance of incorporated NFP organisations, including internal disputes, so that volunteers can concentrate on providing a high-quality service in an environment with good financial governance and a just culture appropriate to their organisation.**

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