



Address launching Myles McGregor-Lowndes' and Bob Wyatt's book – *Reforming Charities – the Inside Story*

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I have had the privilege of meeting with many of the contributors to this book. It is a thoughtful narrative especially helpful for those of us in the thick of the ebb and flow of change over the past 15 to 20 years of reform of our sector. For those of us in Australia, it is a significant contribution that puts our events into the context of the earlier reforms of England and Wales, Canada, the US and New Zealand.

Those of us with a professional interest in the comparative material are very excited about these chapters. For most of us here today the sections on the Australian part of the story, and the Introduction and Concluding chapters make fascinating reading.

As Myles and Bob observe in the introduction, the narrative style of the contributors reflects the story telling bent of the sector. This makes it very readable.

This is a story of collaboration – reflecting not only the genesis of the book in an international forum in 2014 to “*capture an insider's view of charity regulation and policy*” over the past 25 years “*and to draw on insights for its future development*”.

The role of good writing in history, sociology or law is to make sense of the past and what has happened. “*The regulators in this book were encouraged to tell how they make sense of their regulatory agency, its actions, and its relationships with others*”.

“*Sense making has been used to provide insight into factors that surface as organisations address either uncertain or ambiguous situations*”.

However, this is a book about regulation first and foremost, and there are two themes for developments apparent from all jurisdictions included in the survey:

- (i) the new knowledge created by the “*invention of the non-profit sector*” and its academic investigation; and
- (ii) the emergence of responsive regulation in the emerging field which provides regulators with tools - “*the regulatory pyramid, risk compliance continuums, stick-and-carrot incentives, and co-option of third parties to do some regulatory heavy lifting*”.



There are no votes in charities or reform (or aid for that matter). So it takes heroes prepared to use their political capital to achieve good outcomes to achieve change, heroes because they tend to pay a price.

Ursula Stephens is one such hero. As McGregor-Lowndes and Wyatt describe her: “*Strong advocate for the charity sector, assisting to put charity reform on the Labor Party platform and negotiating the National Compact between the Australian Government and the charity sector*”.

Ursula was Parliamentary Secretary to the Prime Minister for Social Inclusion and Special Advisor to the Assistant Treasurer on the establishment of the ACNC. Her narrative of the “*complex web of intra-government committees with sector champions, sector consultation forums, and arduous national forums with State and Federal Governments*” will be of real interest to those onlookers interested in the process of legislative and regulatory reform, as well as a reminder perhaps to those involved of just what a long, arduous, and in the end, impressive piece of work it was.

Ursula Stephens’ chapter gives us a valuable insight into the political back story which had its origins well before this, but 2001 and the Charities Definition Enquiry was my first active foray into the reform space.

Then in 2003 came the Charities Bill - an opening salvo in the controversial advocacy debate - against the backdrop of academic elaboration of the influence of public choice theory.

Next, the Bill was referred to the Board of Taxation Consultation to determine whether a public benefit test should be introduced including a requirement of a dominant purpose of “*altruism*” as recommended by the CDI Report.

The heavily criticised Charities Bill was withdrawn prior to the 2004 election.

2004 saw the National Roundtable of Non-Profit Organisations chaired by Robert Fitzgerald.

Then the 2007 Election - and Labor introduced its Social Inclusion Policy Statement as part of its election platform.

One of the first actions of the new Rudd Labor Government was to abolish the so-called ‘gagging clauses’ - preventing charities receiving Federal Government funding for programmes from criticising it. Soon followed by The Australian 2020 Summit - The “Stronger Families, Communities and Social Inclusion” stream in which I had the privilege of participating (defying the obvious criticism that it was a PR exercise) actively debated the need for a charity regulator to reduce the burden of red tape and the provision of an independent voice to government. This led to the 2008 Compact between Governments and the sector.

But there were some missing parts: a credible voice of the sector (not the Government appointed NRNO) and data.

The Community Council for Australia was established in 2011 in a deliberate attempt to broaden a cross-silo representation of the sector to Government. This is not about power, but having a coherent voice to Government where it is warranted or needed.

In 2009 the Productivity Commission was instructed to undertake a research study which led to the Productivity Commission Report in 2010 “*on the contributions of the NFP Sector with a focus on improving the measurement of its contributions and on removing obstacles to maximising its contributions to society*”.

The 2010 election and the return of a minority Labor Government made it harder to progress the reform, but 2010 also saw the Henry Tax Review completed.

As the process inched forward, it is important to note the role of political players in addition to Senator Stephens. As she acknowledges, the reforms would not have been achieved without the commitment and understanding of David Bradbury (Parliamentary Secretary to the Treasurer) and his most inquisitive and diligent staffer, Krystian Seibert.

At this time the NFP Reform Council was set up (chaired by Linda Lavarch). There was a lot of consultation but also criticism of the lack of outcomes - probably unfair given the size and complexity of the job in the contested space.

July 2011 saw a Treasury Scoping Study for a regulator, and in December we had the Exposure Draft for the ACNC Bill.

This Bill took 12 months to be passed - as Ursula describes, the result of complex political negotiations made more complex by the introduction without notice or consultation of concurrent Bills:

“*In Australia*” – redefining the requirements in ITAA 1997 in divisions 50 and 30 for what it means for charities to be ‘in Australia’; and

“*Better targeting*” that is, the proposal to introduce an unrelated business income tax (UBIT) – both Treasury favourites in response to the High Court’s decision in Word Investments.

However, the ACNC finally became law on 3 December 2012.

In the meantime, the NFP Tax Concession Working Group had been working away on proposals for a revenue neutral package of reforms, and then reported in 2012.

The Charities Bill introduced a Statutory Definition of Charity and was passed into law June 2013.

Before long, in September 2013 the Federal Election loomed with the announcement of policy of an elected Coalition Government to repeal the Charities legislation. Susan Pascoe tells the story in her chapter of what it was like to attempt BAU while having the guillotine over their heads. The vulnerability to political backtracking with an election promise to dismantle the reforms and with it the ACNC itself was most disappointing and destabilising. Until sector lobbying succeeded in halting the slide - although leaving much of the reform plan unimplemented or incomplete.

A full two years later, two very trying years for everyone in the Sector (not only the ACNC itself), the Senate indicated a Repeal Bill would not be passed and in March 2016 the Government announced it would not proceed with the repeal.

Ursula's lessons from all this?

- (i) How to get and sustain reform - a regulator not imposed but "*born of the sector*" and recommended by the Productivity Commission not a political party; and
- (ii) Good reform is worth fighting for.

Some Themes

For those practitioners like myself, who have been involved in the reform process over this time, and see it from the perspective of what change will mean for the charities we serve, we sometimes have a different perspective from both academy and politician.

The charities we serve inhabit 'contested space'. Politicians typically want charities to stay out of politics (and have at best an ambivalent view of advocacy and reform). Business wants charities to stay out of business or pay the same taxes as they do.

Ursula alludes to the parallel changes in a sector not united in its face-to government. We share her frustration. The sector representation was, and I would say, still is, silo-ed and disunited. The silos were apparent: education, international aid, churches, arts and culture, environment, philanthropy, trusts - the list goes on. This was partially addressed in 2011 with the establishment of the CCA.

However, there have certainly been significant achievements. We now know more about the size and economic clout of the sector: the 2010 Productivity Commission Report estimated the sector economic activity was \$43b. The data from AISs (not complete still because of non-reporting of basic religious charities) indicates a sector worth \$130b and counting. The data sets now available for public access and analysis are invaluable tools for public debate over the provisions of goods in Australia by this very significant part of the economy.



The landscape in Australia has changed, although it is still very early days to assess the ACNC's performance - however, the signs are good although the 'honeymoon' is not yet over. The ACNC is still just 'bedding down' into business as usual.

McGregor-Lowndes and Wyatt have done us a real service in examining what "*trust and confidence*" means - not only are charity regulators "*taxpayer funded certifiers of charity trustworthiness*", but "*it is critical that the regulators are trusted as well or their credentialing and promotion will be severely tainted*".

The lessons drawn from the older Regulators in England and Wales, the US and Canada are invaluable resources. New Zealand and Australia coming late to the party have been able to learn from them - although New Zealand has since been folded into the Department of Internal Affairs.

The editors draw out interesting themes - why were regulators established then, what was going on? In Australia the establishment of the ACNC was not in response to any crisis or scandal but meant to facilitate innovation in the new world of the internet, crowd funding and social investment.

McGregor-Lowndes and Wyatt ask some great questions.

- What will globalisation mean to the future?
- What will the demand for transparency lead to?

This book is a real gift. It represents a distillation of the working life of two key players, and as a sector we are most grateful.

One big take out for me as a participant in both the Regulatory Reform process and Governance of several charities - and as a practitioner acting for hundreds of others - is that the sector must grasp hold of its own future and advocate not just for itself but also the people and causes it is responsible for and whom it serves.

This book is very important - providing an invaluable resource for what will inevitably be further negotiations, campaigns and respectful engagements, with governments into the future.