

Protocols with NGOs: The Need to Know

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Among a number of competing concepts of democracy, two stand out for the purposes of this paper: democracy as a body of active citizens working together for public and private purposes; and democracy as a set of constitutional arrangements designed to disperse and balance power. Where, in practice, these are in balance, democracy is healthy.

In those societies where constitutional arrangements are weak, for example, where governments may be unaccountable to the people, corporations unaccountable to owners and customers, and corporate–government relations corrupt, Non Governmental Organizations (NGOs), consisting of active citizens, may be an important force for democracy, an opposition where none exists. They may restore the constitutional deficit with an activist surplus.

In democratic societies with accountable government, strong regulation of the corporate sector and an absence of endemic corruption in business–government dealings, the role of NGOs is problematic. NGOs compete with other people for access to government and other centres of power. Democracy as an institutional concept needs to balance the interests of the organized and the unorganized. An organized and active citizenry on some issues may be good for the activists; but it may be bad for everyone else.

In the interests of an open and informed policy arena, and as a contribution to balance the two concepts of democracy, this *Backgrounder* proposes the use of protocols for the management of relations between NGOs and democratic governments, and between NGOs and corporations (and charitable foundations). The purpose of a protocol is to ensure that provider organizations—government, corporations, foundations—assess the standing of an NGO before granting the NGO access to resources. The providers should insist on this NGO information on behalf of the primary ‘owners’ of the organization—citizens, shareholders, trustees—and make it available so that those owners may assess the use made of their resources. In this way, unorganized interests may reclaim some of the power that government and corporations sometimes cede to organized interests.

PROTOCOLS: THE NEED TO KNOW

The foundation paper in the Institute of Public Affairs' NGO Project—*NGO: Way to Go**—concluded that NGOs are a legitimate vehicle for the advocacy of public policy and should not be subject to any form of regulation, unless they receive privileges from the state.

Democracy is enhanced by an open debate among interest groups, and NGOs' credibility in this realm of ideas rests in the value they add to public debate, subject only to the usual tests of veracity and relevance. The state has no business in controlling NGOs. Equally important, however, the growth of NGOs, fuelled by the very success of liberal democratic market regimes, has enhanced the range and intensity of issues now given voice by the activity of NGOs. In doing so, NGOs have made the task of resolving and accommodating issues more complex. Formal democratic institutions, in particular, democratically elected governments, have to cope with the electorate's enhanced ability to voice their concerns. This has reached the stage that some NGOs seriously challenge the legitimacy of democratically elected governments.

For example, in July 2001 Britain's Development Secretary Clare Short condemned international aid agencies' part in the protests at the G8 summit in Genoa. She remarked: 'These are NGOs from Britain, well-meaning good people who collect £200 million a year in charity. Our government gives £3 billion a year and they want to claim to speak for the poor of the world'. The response from an NGO journalist was, 'NGO relations are already strained with a Labour government whose democratic legitimacy—and the claims it makes to speak for the poor—rests on just 25 per cent of eligible British voters'.¹

If there is a contest between governments and civil associations to represent opinion, are there legitimate grounds to test the representative credentials of those who purport to represent society? Some NGOs are being given representative status by governments on the basis that they represent broad interests, such as consumers or environmentalists, when in reality they express the interest of a few activists. Moreover, some of these organizations are directed and driven from abroad, with few local members. Some NGOs are given standing on the basis of their expertise,

even though they undertake no research, do not subject their statements to independent peer review, have little technical expertise in the topics upon which they make pronouncements, and base their utterances more on emotion than evidence. Their activities are sometimes driven more by fund-raising than advancing the public good.

Governments rely heavily on a myriad of intermediaries to articulate the demands of citizens. All kinds of organized lobbies, including political parties, provide a link between the electorate and the government. The 'old hands'—trade unions and corporations—are not only well known, they are regulated. Each is registered for commercial or industrial purposes. It is possible to enquire about their organizational structure, as well as make judgements about their behaviour. The 'new hands' are advocacy NGOs; they are less obviously interest- or constituency-based than the old. They are either identity-based—female, homosexual, indigenous and the like—or ideas-based—environmental sustainability, human rights, equality, etc. In both instances, they seek to appeal to universal ideals rather than specific interests. Unlike corporations and unions, NGOs are neither directly accountable to market forces nor regulated by the state. Unlike the old hands, the new 'NGOs' credibility and legitimacy depends heavily on their capacity to provide technical, organizational, and political services to underrepresented groups'.² Advocacy NGOs stand accused of making demands on the community without necessarily having the backing of a constituency. These NGOs often lay claim, not only to a constituency interest, but also to the public interest. In these instances, their ideas matter more than their support base. Clearly, this is a challenge to government, which, in addition to being arbiters of private interests, are also formally the repository of the public interest. The difficulty for governments is to judge not only the efficacy of the views of NGOs, but the weight of their opinions.

TO ASSIST THOSE WHOSE INTERESTS ARE NOT ORGANIZED TO MONITOR THE ACTIVITIES OF THOSE WHOSE ARE, THE UNORGANIZED SHOULD KNOW SOMETHING ABOUT THE ADVOCATES THAT HAVE ACCESS TO GOVERNMENT

The close relationship between the old intermediaries and governments was often described in pejorative terms, such as the ‘corporate state’. It suggested favourable deals between those who had access to governments; it implied losses to those who failed to gain access. Such criticism may be well-founded. Having a voice in the councils of government is of immense importance. Politicians will take note of the number of voices represented by each group, be it trade union or industry group or corporation. The corporate model may be to the public benefit (if for example, the participants decide to enhance free trade), or it may be to the public bad (if participants enhance protection). If free trade was always good, the fact that it had few supporters in the 1950s and 1960s, but sufficient support in the 1980s and 1990s, determined its chances of success as a policy. Clearly, while ideas may be the stuff of public policy debate, in a democracy, ideas need constituencies in order to ‘get up’.

Where does this leave those who are not represented by old or new groups, and whose major recourse is simply to participate in elections? They have a formal voice, but a muted one. To assist those whose interests are not organized to monitor the activities of those whose are, the unorganized should insist on knowing something about the advocates that have access to government. This is not to argue that governments should always have a right to such information. Concepts of rights, however, are raised the moment an NGO wants something from government. An NGO that seeks access to government enters into a contest with the unorganized. Any weight given to the opinion of an NGO must, of necessity, be weighed against the opinions of other NGOs, and the unorganized. Although each constituent has a right to see their member of parliament, in practical terms it is clear that the weight of opinion granted to an individual is not great. If their standing is exceptional, their opinion will carry weight, but that will depend on their expertise in the field, or on their direct involvement in the issue. A certain amount of displacement occurs when the organized are granted access to government. This is not necessarily a bad thing—NGOs, like political parties, help to aggregate and filter opinion, and in doing so, they contribute to the work of politics. But such displacement needs redress, and one way to do that is to give the unorganized a right to know

something about the groups who, collectively, displace them.

The same logic may be applied to corporations and foundations. Corporations are called upon to act in various ways beyond their strict responsibility to their shareholders and to the law, for example, to be socially responsible.³ Foundations are asked to support causes somewhat distant from their original charter, for example, not simply to alleviate the suffering of the poor or sick, but to support political agendas to solve poverty.⁴ For example, Royal Dutch/Shell released a report in February 2001 extolling the virtues of sustainable development. The company credits three NGOs with helping to draft the report. Why did Shell rely on NGOs to give legitimacy to its report? Why did it not ask a panel of scientists, or several governments’ environment protection authorities? Clearly, Shell made the judgement that it would be more credible in the eyes of its shareholders and customers to involve the NGOs. The primary owners, the shareholders, were displaced. The relationship between the corporation and the NGO should be explicit. The shareholder should know with whom the company is dealing. They need sufficient information to be able to judge whether the NGO’s views coincide with their own. They also need to know their expertise, their membership and their sources of funds. Shareholders needs to maintain their standing *vis-à-vis* any other players. One way of doing so is to seek information that establishes the standing of others.

The right to speak on behalf of others does not generate a government right (or corporation or foundation right) to regulate NGOs. Governments should not, however, grant NGOs privileges greater than those accorded any citizen. They should not assist NGOs nor give them *access* to policy forums unless NGOs have *standing*. Corporations and other funding bodies such as charitable foundations should do likewise. One way of managing the relationship with interest groups is to use a protocol. A protocol, for the purposes of this discussion, means a publicly available statement containing the information about

CORPORATIONS RISK PLACING THE DEMANDS OF NGOS AHEAD OF THE INTERESTS OF THEIR CUSTOMERS, SHAREHOLDERS, EMPLOYEES AND CREDITORS

an advocacy body, which a government, corporation or foundation can use to establish the standing of the advocacy body. Those NGOs granted standing should make the *information* available by way of a publicly accessible register. The benefit of a protocol is that it enhances the openness of the relationship and the accountability of both parties to their constituencies. It also provides a protection for bodies that wish to *deny* access to groups because they lack standing. The key assumption in the protocol strategy is the recognition of the *primacy of the granting body*. For example, government derives legitimacy from the formal act of democratic elections. Corporations derive legitimacy from their legal obligations to their shareholders. The legitimacy of foundations is based on their charter. Where NGOs seek something from one of these bodies, their standing—their legitimacy—should be proved to the satisfaction of the provider. A protocol suggests that when a government wishes to invite an NGO into the processes of government, the government should know with whom it is dealing. Moreover, the salient characteristics of the organization should be revealed to the public.

The key questions in the proposal that provider organizations should insist on a protocol are: What level of access generates the right to know the standing of an NGO? And what are the measures of standing, and what information should be made available to satisfy the measure? These questions are applicable to all providers, but in this *Backgrounder*, the questions shall be explored for the government of the Commonwealth of Australia.

STANDING AND THE STAKEHOLDER PLOY

The casual nature of the proof of standing in NGO–government relations in Australia may have arisen for a number of reasons. The most obvious is an admirable openness in the operations of government in Australia, in particular the value of consulting with, and being seen to consult with, the electorate. Second, is the fact that major NGOs, established many years ago, were of a representative nature and were registered and scrutinized for other purposes. Corporations, and employer and employee bodies were forced to reveal much about themselves before

they approached government. NGOs of the day may also have been of such standing in the community (church-based, for example), or with expertise so clear and narrowly defined (the Red Cross, for example), that the issues of standing did not arise, or if they did, did not generate too much scrutiny or controversy.

In the last 30 years much of this has changed; there are far more NGOs making far greater claims to represent, or to be expert, or to know the mind of the electorate. Indeed, the whole notion of standing, the right to be heard, has taken a particular twist. Debate about the nature of the relationship between civil society and government, and civil society and other significant centres of power, particularly corporations, has suggested the idea of stakeholder democracy or stakeholder capitalism.⁵ While the notion that everyone has a stake in the future of society is comforting, it also implies a new form of collectivism. This trend has been detected by, among others, David Henderson and Vaclav Klaus⁶ who, in recent lectures, have reflected on the rise of NGOs and their penchant for collective solutions to societal problems. For example, the proposals that corporations should have a responsibility for matters that are not in their domain—corporate social responsibility—and that governments must be accountable in an ever-expanding number of ways—that is, listen to and be accountable to NGOs—are a means to grant privilege to one set of opinions over another. Typically, those who are politically organized are heard in preference to those who are not. Corporations are in a similar position and risk placing the demands of NGOs ahead of the interests of their customers, shareholders, employees and creditors. For example, BP has decided to market itself as an environmentally friendly corporation. BP sells non-renewable fossil fuels, and, more recently, it has begun investing in a renewable resource, solar energy. It is positioning itself for the future, which involves a transition to renewable fuel, at the same time trying to sell fossil fuels to those concerned about the environment. This transition would have come about regardless of the existence of any environmental NGO. So why deal with NGOs? Because some of its customers believe the NGOs rather than a fossil-fuel producer about the future of the environment. BP feels that it needs Green NGOs to help it in its transition: ‘We work very, very well with the different non-governmental

organizations in the environmental sector'.⁷ BP has in fact conceded not only its ability to determine its own future by ceding some of its power to Green NGOs, but has thereby conceded on behalf of its shareholders, employees, creditors and customers their standing as direct agents in the corporation. At the very least, where a corporation believes it may be assisted by creating links with NGOs, it should have them prove their standing to the satisfaction of its direct stakeholders, and it should make clear the nature of the relationship. Is the NGO to set the standard by which BP is to perform? What information obligations does BP have towards Green NGOs? At the very least, it should ask similar questions of the NGOs, and satisfy its owners that they are still in charge, that they are still the primary stakeholders.

One example of the stakeholder approach in action is the use of a Code of Conduct in relations between NGOs and governments, and between NGOs and business. A Code is *not* a protocol between the organizations, rather it is an agreement that an organization will behave in a certain manner. In this way, an apparently harmless Code can be a weapon to hold a corporation to scrutiny by an NGO.⁸ The new dialogue of stakeholders and the device of Codes of Conduct imply equivalence in standing between the government/business/foundation and any other player. In other words, legitimacy by advocacy! The Code of Conduct is a device designed to make an organization justify itself; non-compliance in the use of, or adherence to, a Code implies a lack of legitimacy. A corporation or an industry⁹ may adopt a Code based on a judgement it makes about the need for enhanced relations with the NGO sector. In many instances, however, a Code is pressed upon a corporation by an NGO with the purpose of modifying corporate behaviour. The Code is a strategic instrument, which may be employed by a corporation to forestall or deflect criticism, or it may be an instrument the corporation uses to enhance its operations. A corporation, as in the BP and Shell examples, will want 'to position its genuinely desired outcomes as socially responsible', but NGOs will want 'to sustain their own long-term credibility by demonstrating their ability to influence'¹⁰ the corporation.

A further danger with the Code strategy is that governments may seek to impose these on business,

in addition to existing legal requirements. The key feature of a recent proposal by the Australian Democrats for a Corporate Code of Conduct to be imposed on all Australian large corporations operating offshore is the standing it gives to NGOs to bring an action against the firm, and on the broadest of grounds.¹¹ The extraordinary feature of the growth of corporate Codes of Conduct is the number and the stature of companies that have chosen to use them.¹² Corporate Social Responsibility (CSR) is a fashion that seems to have taken hold in a

number of multinational corporations and finds its expression through Codes. The CSR fashion seems to have arisen out of pressure by NGOs on corporations to act as more than generators of capital; they are urged to be good citizens, where 'good citizen' means supporting the objectives of NGOs, particularly, the principles of 'sustainability'.

In the government arena, the Blair Government in the UK has devised a Compact¹³ on relations between government and the voluntary and community sector, which seeks to recognize the *legitimacy* of the voluntary and community sector's role, and its own responsibilities to promote a healthy sector. The UK Compact is not a legally binding document, but its underlying principle—that the sector is fundamental to a democratic and socially inclusive society—while deceptively inviting, nevertheless compounds the weakness of the stakeholder approach. It enhances the tendency for government to share legitimacy with the community sector—an important part of which is advocacy NGOs—and thereby demotes the electorate. The Blair Government's concession undermines the formal elements of responsibility that governments have to constituents, by passing the right to judge the actions of government, and often the right to set the standards by which a government will be judged, to a sub-group.

The stakeholder dialogue assumes that everyone—civil society—has an equal stake in the decisions of government and corporations. For example, if everyone has a stake in the decisions of a corporation, it follows that the formal obligations that

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corporations have to their customers, owners, employees, creditors and the law, are downgraded. The idea that those with a direct part to play in a particular decision, or those directly affected by a decision, are on an equal standing with any other person, has the result of weakening the benefit in having a direct contractual relationship or a formal political relationship.

Using stakeholder dialogue to intrude on the formal relations between provider and provided is a subtle and potentially destructive form of displacement. In a situation where a corporation fails, there is a formal, though contested, order of creditors. In the case of governments, the pecking order is just as important. No-one should displace the voter, save those who have a direct standing on a particular issue. While every citizen has a stake in the decisions of government, not everyone has the same stake in every decision. This is not to argue that the issues for whom there is no immediate human constituency, classically the natural environment, should not be represented. Rather, it suggests that if anyone pretends to represent any opinion or persons, then their access to resources should be subject to proof of their standing.

ACCESS AND OBLIGATION

The obligation on any constituent to prove standing depends on the level of access sought. Governments grant access to individuals and organizations for many reasons. For constituents, the primary reason is that, as citizens, they have a right to see their member of parliament or, if possible, a member of the government. The range of constituent-to-government interaction is usually limited to meetings with a member of parliament, and standing arises because the individual is a constituent. Should someone seek access to a Minister, it is usual to grant an interview where the individual has a direct involvement in the issues covered by the portfolio, that is, where matters decided by the Minister affect them, or where they are particularly knowledgeable and may be able to assist the Minister.

The standing of organizations usually arises from their ability to represent a class of persons, or because they have an expertise in the area. A Minister will generally seek advice on the bona fides of the

organization. Rarely will such information be shared with the electorate. In addition to lobbying the Minister, individuals and organizations may make submissions to government or parliamentary inquiries. Such submissions carry the name of the organization, and may, as part of the submission, argue the case for their right to represent a constituency or claim an expertise, but these are rarely requirements of the submission process itself. In a more permanent relationship, a Minister may appoint certain persons to the Minister's or government's advisory council. Such committee membership is from time to time made public, but although the individuals are named and some details given to suggest their expertise, it is rare for the organization they may represent to be named or details made available. Beyond access for the purposes of meeting and giving advice, there are other levels of access which involve government funding, or the delivery of government services. The Commonwealth funds certain peak councils, especially in the welfare area, as a deliberate means of forcing a community sector to aggregate its opinions. Still, there is little material made available to the public for them to judge the standing of such bodies. Many NGOs receive taxation benefits, for example, tax-free status, or gift deductibility status. In order to gain such standing, they must prove their bona fides to the Australian Taxation Office and in some instances to a government department as well. The information gathered for the purposes of tax status is not made available to the public. At the most complex level of access, an NGO will deliver a government service or programme. Usually, this is on a commercial basis, as with employment programmes, and the NGO may be a sponsor to a service organization. Church groups and development NGOs perform at this level, and the requirements for proof of standing are rigorous. The considerable information about such service delivery NGOs is not made available to the public because the matter is a commercial relationship.

The obligation to prove standing and to supply information, in order to gain access to government, generally becomes more formal and onerous as the degree of access increases. However, and data will be presented below on these matters, there are few rules in the area and almost no conception that the proof of standing should be judged by the electors as well as the government, or that the criteria should be a matter of public interest.

INFORMATION

When it comes to consultation and policy development, the World Bank¹⁴ asks of NGOs, ‘who is in and who is out?’ Government, corporations and foundations could pose the same question. The answer will depend on the nature of the NGO and the requirements of the government, corporation, or foundation. The Bank identifies five different functions that NGOs perform, in fact implying five types of NGOs. These are:

1. Representation—aggregate citizen voice (unions, churches, NGO peak groups).
2. Technical expertise—advice/lobby (advocacy NGOs, think-tanks, professional associations).
3. Capacity-building—support other NGOs, (foundations, training organizations).
4. Service-delivery—implement projects or provide services (service NGOs, mutual aid societies).
5. Social functions—foster collective recreational activities (sport and cultural clubs).

For our purposes, the first two are the most important in the policy-making arena, although from time to time, capacity-building and service-delivery organizations may also act as advocacy organizations. It is also more likely that where an NGO delivers a service, there is already a contract in place with far greater information requirements than are necessary for a protocol.

The World Bank¹⁵ selection criteria for NGO ‘partners’ are based on the following qualities (depending on the nature and purpose of a particular task):

1. Credibility: acceptability both to stakeholders and government;
2. Competence: relevant skills and experience, proven track record;
3. Local knowledge;
4. Representation: community ties, accountability to members/beneficiaries, gender sensitivity;
5. Governance: sound internal management, transparency, financial accountability, efficiency;
6. Legal status; and
7. Institutional capacity: sufficient scale of operations, facilities and equipment.

Where an NGO wants access to a government or a corporation or a foundation, it should be granted on the condition that the NGO is competent in the areas

relevant to the particular task required. Each of these competencies requires proof. Specifically, an NGO should provide data about their source of funds, their membership and the means of electing their office-holders. Similarly, they should provide data as to their expertise. Matters of institutional capacity probably have more to do with service-delivery than with policy issues, and are less relevant to a simple protocol. In relation to access to governments, the data should be made public. Business and charitable foundations should disclose such matters to shareholders, and to trustees or other such persons as required by their charter. We will use a brief survey of the information requirements of the Commonwealth Government to explore the level of access that may generate a given level of information. At the conclusion of the survey, some recommendations will be made about standing, access and information.

PROOF OF STANDING REQUIREMENTS OF THE COMMONWEALTH GOVERNMENT

The information requirements to satisfy proof of standing could be extensive and relate to membership, finances and competence of officers, as well as the conduct of the organization. On the other hand, they could be minimal—merely the aims and membership of the organization. The amount of information required to prove standing will vary with the purpose for which it is sought. The Commonwealth Government’s NGO information requirements vary considerably. For example, where Commonwealth Ministers grant NGOs access to government committees, information about NGOs is not gathered in any systematic or formal sense, and is not available to the public.

Guidelines for Ministerial conduct suggest only that, ‘In dealing with a lobbyist who is acting on behalf of a third party, it is important to establish who or what company or what interests that lobbyist represents so that informed judgements can be made about the outcome they are seeking to achieve’.¹⁶ Where NGOs have the responsibility to deliver government programmes, the requirements of standing, especially competence and expertise, are highly scrutinized. In the Department of Foreign Affairs aid programme, a great deal of material is gathered to assess the competence of an aid agency.

In other areas where NGOs have direct access to public funds, for example the Department of Immigration and Multicultural Affairs—Living in Harmony Community Grants Program—data requirements are more modest and not publicly available. In the Department of Family and Community Services, the data requirements are similarly modest. Where access to public funds is indirect, such as tax-free status, the information requirements are modest, and the nature of the data requirements is public, but the information about each NGO is not publicly available. A separate category of NGOs which receives government funds is political parties registered under the Commonwealth Electoral Act. Information about the use of public funds awarded to parties for elections is gathered and monitored, as are donations (effectively deductible gift recipient or ‘DGR’ status). However, no information gathered by the Australian Electoral Office to satisfy itself of the eligibility of a party for registration, such as membership numbers and the existence of a constitution, is available to the public.

The issues are: What information should governments’ collect to enable them to judge the standing of NGOs? And how much of that information should be made available to the public? Table 1, based on a brief survey of the information gathered and made public by the Commonwealth, suggests a hierarchy of information needs. The greater the role the Commonwealth wishes the NGO to play, the greater the data requirements. There are, however, inconsistencies in the information required of NGOs and in the public availability of the criteria. In all cases, the information gathered on NGOs is not available to the public. This means that there is no information on which the public may judge the merits of the

government’s selection of those who are given access to government resources. That is, the public has no way of judging those that have access to government who seek to speak on their behalf, in effect who displace them as constituents.

A number of portfolios and programmes illustrate the variation in Commonwealth practices and the degree to which the Commonwealth is aware of the importance of proof of standing and its public availability.

Issues in Family and Community Services

The Department of Family and Community Services released a discussion paper¹⁷ in July 2000 on future funding structures for 20 peak community-based organizations. The programme provides financial support to a large number of peak community-based organizations that represent the community and family services, welfare, disabilities and children’s services sectors. In return for funding, organizations are expected to contribute to government policies that support families and communities, and to carry information between the community and the Government on important social policy issues. The paper directly raises the issue of representation. The new funding model will need to ensure ‘that peak bodies truly represent the views and interests of their constituents’.¹⁸

The Department offered contracts to each of the 20 peak bodies for 1999–2000 based on a number of outcome measures. A key issue was the desire to support peak bodies that truly represent their sectors and are ‘consumer’ driven. Currently, the Department of Family and Community Services funds a range of

Table 1: Access to Commonwealth Government Resources and Data Requirements of NGOs

Levels of Access to Government Resources	Data Gathered on NGO?	Data available to the public?
Lobbying the Minister	No	None available
Submission to government/parliament inquiry	No	Name only
Minister’s or government advisory council	Little	If any, name only
Research funding	Some	Name only
Funding a peak council	Some	Name only
Receipt of tax benefit	Some	Name only
NGO delivers programmes	Considerable	Name only

Source: Author.

Table 2: Total Funds Provided for National Secretariats of Peak Bodies

Peak Body	\$ Allocation for 1999–2000	\$ Allocation for 1 July–31 Dec 2000
Welfare		
ACOSS	467,227	233,613
Disabilities		
—services		
ACROD	269,953	134,976
—consumers		
Australian Association of the Deaf	114,134	57,067
Blind Citizens of Australia	165,386	82,693
National Council on Intellectual Disability	129,785	64,892
Deafness Forum of Australia	169,239	84,619
Head Injury Council of Australia National Caucus	112,758	56,379
of Disability Consumer Organizations	82,316	41,158
National Ethnic Disability Alliance	112,759	56,379
Physical Disability Council of Australia	112,432	56,216
Women with Disabilities Australia	112,432	56,216
Families		
—services		
Centacare Australia	107,720	53,860
Family Services Australia	153,822	77,044
Relationships Australia	105,730	52,865
—lone parents		
Lone Fathers Association of Australia	50,000	25,000
National Council of Single Mothers and their Children	36,538	25,000
Children's services		
Australian Early Childhood Association	301,101	150,550
Secretariat of National Aboriginal and Islander Child Care	129,785	64,892
Communities		
Volunteering Australia	129,785	64,892
Homelessness		
Australian Federation of Homelessness Organizations	301,101	150,550
TOTAL	3,164,003	1,588,861

Source: FaCS, 2000. 'Funding Peak Bodies', 4.

organizations that represent community-service providers, consumers or both. In practice, this system can lead to conflicting views being put to government from different groups claiming to represent the same sector. A 1997 review of the Community Sector Support Scheme questioned whether 'service provider representative organizations' should be included in the funding programme. The Review defined this group as 'those organizations whose primary function is to represent the views and interests of persons whose occupation is the provision of services in the health and community services field'.¹⁹

At present, it appears that some funded organizations do not have effective mechanisms in place to

consult properly with their membership and convey the issues raised to government. Eligibility criteria for funding will require peak bodies to have broad-based membership and mechanisms to represent consumers' views to government effectively. To qualify for a particular level of funding, for example, an organization would be required, among other things, to:

- Represent the whole or a major part of Australian society on issues, directions and policies relevant to outcome areas;
- Convey to government the consolidated views and aspirations of constituents and the community on issues within that area;

- Be managed and directed by consumers (or a typical cross-section of consumers).

The discussion paper is aware of the need to question the standing of NGOs, although the criteria on which decisions are based are not publicly available, nor are any details of the organizations, apart from receipt of funding. There is no way for the electorate to judge whether an organization is representative, how many members the organization has, or how those members are able to express a view within the organization.

Information Requirements for Taxation Assistance

One common way in which the Commonwealth assists NGOs is to grant access to tax concessions. Many advocacy NGOs have tax-exempt status. For example, as a not-for-profit organization, the Institute for Public Affairs is exempt from Income Tax.²⁰ Under the current system, the Australian Taxation Office generally encourages organizations to self-assess their entitlement to tax concessions. Where administrative approval is a pre-requisite to a concession, the decision-maker is normally the ATO. Endorsement by the ATO is a prerequisite for charities and gift-deductible bodies in relation to income-tax exemption, receiving deductible gifts, and refund of excess imputation credits. In some situations, these decisions are not made by the ATO but by other bodies with appropriate expertise. For example, for various gift deductibility categories, decision-makers include Departments for the environment, foreign affairs, the arts, health and education, and the CSIRO. Where other administrative bodies are involved, there is commonly a shared responsibility, with the ATO looking after the more direct taxation aspects.

The current information requirements for deductible gift recipients (DGR)²¹ for the Australian Tax Office are minimal. To be endorsed as a deductible gift recipient, an applicant must have an Australian Business Number (ABN), satisfy the gift fund requirements, be in a category set out in the income-tax law, satisfy any special conditions for the category, and be in Australia.²² At its simplest, the gift fund requirement is to maintain a fund that receives gifts only for the principal purpose of the fund, authority or institution, and that is, there is no siphoning of funds for other purposes. A society or association is non-profit if it is not carried on for purposes of profit or gain to its individual members. A fund is a public fund where it is intended that the public will and does in fact contribute, and the public participates in administration of the fund.

Secrecy provisions preclude publishing data held by the ATO on particular organizations. An exception is deductible gift status. The fact that an organization can receive tax-deductible gifts is included on the publicly available *Australian Business Register*. Again, there are no data available about the organizations.

Some prominent NGOs (and their public funds for the receipt of gifts) are named in the DGR Table. Amnesty International, the Australian Conservation Foundation Incorporated, the World Wide Fund for Nature, the Herbert Vere Evatt Memorial Foundation Incorporated, the Sir Robert Menzies Memorial Foundation Limited, the Centre for Independent Studies and The Menzies Research Centre Public Fund are required to furnish only statistical information about gifts to the fund. They are listed in the *Australian Business Register* and this information is publicly available to allow people to find out whether gifts they make may be income-tax deductible.

The remainder of the information, which the ATO may gather to verify the status of the NGOs and their fund, is not made available to the public. Some of the information provided may be made available to other government agencies authorized by law to receive it.

Table 3: Income Tax Exempt Charity (ITEC) and Deductible Gift Recipient (DGR) endorsement statistics in early January 2001.

	Received	Endorsed	Refused
DGR	18909	15242	2110
ITEC	41538	37159	1586
Total	60447	52401	3696

Source: ATO submission to *The Inquiry into Charities and Related Organizations*, January 2001, 26.

Environmental NGOs

NGOs and their funds not listed by name in the DGR Table are listed by other Government Departments. For example, environmental NGOs' public funds are placed on the register of environmental organizations kept by the Department of the Environment and Heritage. The Treasurer and the Minister for the Environment and Heritage decide whether to register the organization and its public fund. The information gathered by the Ministers in order to satisfy them of the veracity of the organization is not publicly available. There are 200 environmental NGOs currently listed on the *Register of Environmental Organisations*. The *Register* is a Commonwealth government tax-deductibility scheme that enables environmental groups to receive endorsement as DGRs. Approximately 260,000 Australians donated gifts to environmental organizations listed on the *Register* in 1998–99.²³

The majority of these organizations have established themselves as legal entities, and this is a prerequisite for their entering financial agreements with the government to undertake projects funded through the Natural Heritage Trust programmes. Organizations listed on the *Register of Environmental Organisations* fall into the following categories:

- Approximately 84 per cent are incorporated bodies;
- 8 per cent are trusts; and
- 6 per cent are companies limited by guarantee and semi-government organizations.

These organizations are traditionally non-profit, have regular elections to determine their office holders, and rely on volunteers to manage the organization and to undertake activities designed to protect and enhance the environment. They also rely heavily on donations from the local community to cover their running costs. A number of organizations are also involved in commercial activities, such as running an environment shop, conducting raffles, and selling arts and crafts donated by the public.

The Department of Environment and Heritage maintains the *Register*, and, by direction of the

Environment Minister and the Treasurer, lists environmental organizations and their public funds on the *Register*. As of 30 June 2000, 197 organizations and 196 public funds²⁵ were entered on the *Register*. Only the names appear on the *Register*, no information about the organizations is available. The *Register of Environmental Organisations* has been a successful mechanism for generating donations to a range of voluntary conservation organizations. The *Register* came into operation in 1993–94, and in its first year, donations through it amounted to \$4.3 million. This figure rose to \$25.3 million in 1998–99 and is estimated to be around \$30 million in 1999–2000.²⁶ Table 4 sets out the level of donations each year since 1993–94.

The number of environmental NGOs has increased substantially in recent years. As they become established and consider their long-term viability, they are increasingly recognizing that, in order to remain economically viable, they need actively to seek financial assistance from the government and the community. In addition, as organizations become more aware of the provisions of the new tax system, they are applying for income-tax-exempt charity status in order to obtain exemption from a range of Commonwealth, State/Territory and local government taxes.

Development NGOs

Analogous to the environmental arena, the Minister for Foreign Affairs controls the Overseas Aid Fund sub-category of DGR's, and the register is available through AusAID. Information about the NGOs is not available to the public from this source. The Department of Communications, Information Technology and the Arts keep the *Register of Cultural Organisations*. The Treasurer and the Minister for Communications, Information Technology and the Arts decide whether to register the organization and its public fund. Information about the NGOs is not available to the public.

In cases where governments fund NGOs, accreditation and information requirements are

Table 4: Donations Received: Register of Environmental Organizations

Financial Year	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99
Total Donation	\$4.3m	\$5.9m	\$10.0m	\$11.3m	\$16.6m	\$25.3m

Source: Submission to *The Inquiry into the Definition of Charities and Related Organisations*. Department of Environment and Heritage (Environment Australia). December 2000.²⁴

Table 5: AusAID NGO Accreditation Criteria Table (Abridged)²⁸

Criteria	Examples of Indicators	Possible Verifiers
A AGENCY IDENTITY AND STRUCTURE		
It is voluntary, not-for-profit and non-government.	VOLUNTARY: Governing body is drawn from the organisation's constituency and members are not remunerated ...	Constitution, Memorandum Articles of Association, or Trust Deed
	NOT-FOR-PROFIT: surplus funds cannot be distributed to members/shareholders.	List of Governing Body members' names and occupations
	NON-GOVERNMENT: independent from any Government institution.	
It is a legal entity with identified office holders with a documented structure of responsibilities and appropriate systems to ensure accountability.	Responsibilities of the Governing Body and its members are outlined in its Constitution or Articles of Association.	Certificate of Incorporation, Constitution, Memorandum and Articles of Association...
	The NGOs Objectives outlined in the Constitution, Articles or Trust Deed specifically include development/aid activities in developing countries.	Evidence that appropriate procedures have been followed if conflict of interest issues have arisen (e.g Board minutes).
B DEVELOPMENT PHILOSOPHIES AND MANAGEMENT PRACTICES		
It has a demonstrated record of undertaking effective aid projects consistent with the objectives of the Australian Aid Program.	Track record over two years of a project which achieved demonstrable development outputs. Successfully managing at least one completed project.	Documented record of development activities undertaken by the agency.
It has development philosophies not inconsistent with the objectives of the Australian Aid Program.	Agency policies showing an understanding of development principles include cross cutting issues; such as gender, environment, human rights, etc.	Organisation Profile. Documented policies approved by the Board or Governing body.
D. LINKAGES WITH THE AUSTRALIAN COMMUNITY		
It is clearly identifiable as Australian and can demonstrate responsive interaction with an Australian community base.	Agency has procedures in place to enable any member or supporter to have free access to, and to make copies of, all decisions of the governing body.	Evidence that Agency encourages new membership/supporters.
It provides accurate information about the nature of the organisation, its objectives and its activities in its public presentations.	Publicity material shows due respect to the dignity, values, history, religion and culture of the people with whom it works consistent with principles of basic human rights (ACFOA Code of Conduct).	Annual report. Promotional and educational documentation submitted.
E. FINANCIAL SYSTEMS & RISK MANAGEMENT		
It has effective management, administration and financial systems for accounting for funding.	Documented policies and processes for accounting for funding.	Table of contents of Operation Manual and specific extracts.

Source: <http://www.ausaid.gov.au/ngos/display.cfm?sectionref=4984793623>

extensive. For example, in the foreign-aid arena, an accreditation process aims to provide AusAID, and the public, 'with confidence that the Australian Government is funding professional, well managed, community based organizations, that are capable of

delivering quality development outcomes. Accreditation acts as a front-end risk management process and ensures accountable use of funding with minimal activity overview by AusAID'.²⁷ This boast from the Commonwealth raises the issue of public

confidence in placing public money in the hands of NGOs. Such confidence is probably well-placed where the accreditation criteria are extensive and well-monitored.

The Accreditation Criteria Table (Table 5) indicates that the Department of Foreign Affairs should know the identity and structure of the NGO, its development philosophies and management practices, its links with the Australian community, and its financial systems and risk-management. These criteria have been developed in consultation with the Australian Council for Overseas Aid (ACFOA) and the NGO community. They reflect both minimum standards required to receive government funding and the requirements of the ACFOA Code of Conduct for Non-Government Development Organisations.²⁹ In addition to information about the organizational attributes of an NGO, they are required formally to adopt, become a signatory to, and demonstrate compliance with, the ACFOA Code of Conduct.

SUGGESTED PROTOCOLS

Judging from the foregoing survey of the Commonwealth government information requirements, NGOs that have access to government (beyond the mere act of lobbying), are required to furnish information about their organization to government. Where the relationship between the provider and the NGO is substantial and involves the delivery of services, the data requirements—the implied protocol—are complex. In these circumstances, the need to know about an NGO extends beyond the essentials of the organization to its capacity to deliver and its accountability to its constituents. The ACFOA Code of Conduct, for example, represents the commitment of overseas aid agencies to conduct their activities with integrity and accountability. A Code of Conduct Committee monitors adherence to the Code and investigates complaints, which may be brought by any member of the public.

At the minimal level, the information requirements are less onerous, sometimes as little as the name and address of the organization. Perhaps the most disconcerting aspect of the Commonwealth's requirements is that for tax-advantaged status. The criteria for acceptance are very broad, it is not clear if

these are checked by an external agent, as opposed to self-assessed, and the information on which one may assess the standing of a tax-advantaged organization are not made publicly available. Information requirements for organizations that receive public funding on the basis that they are meant to represent a constituency, for example, in the peak welfare organizations, are not explicit and not available, nor is the information on which the assessments are made. The ATO submission to the Inquiry into Charities noted the lack of information provided by non-profits that enjoy tax concessions. There have been concerns about accountability to donors, possible erosion of confidence in the sector, the lack of data for policy development, and so on:

The Commission is concerned that accountability to donors and the general public is inadequate in terms of the availability of easily understood information and the transparency of operations. This may reduce donor confidence and ultimately public support for the sector.³⁰

In some overseas jurisdictions, legislation gives public access to various information about concessionally taxed non-profits, including administrator's decisions, constituent documents and financial data. For example, in the USA,

Registered charities must file (annually) form T3010 that requires detailed information on their revenues and expenditures, assets and liabilities, remuneration paid to senior staff, and more general information about their charitable purposes and activities. All of this information is available to the public.³¹

In terms of a protocol at a level beneath that required for service delivery, and clearly *not* including those that have a commercial contract to deliver government services, NGOs that seek access to government or to corporations should supply information within the following categories. The decision on how much information is sufficient to grant standing is, of course, a matter for the provider. It will vary with the degree of access sought. Whatever the detail of the protocol, the information should be made available to the public or to shareholders. The position with tax-advantaged foundations is slightly different. There is a clear obligation for governments to seek information not only about the foundation, but also about the organizations that receive their tax-assisted funds.

CATEGORIES OF INFORMATION TO JUDGE NGO STANDING

1. Governance

- **Legal status.** The Constitution or Articles of Association should be made available. These should be sufficiently detailed to prove the status of the organization and to identify office holders, along with the structure of responsibilities and appropriate systems to ensure accountability.
- **Operating Status:** Proof that the organization is *voluntary* in that the governing body is drawn from the organization's constituency and members are not remunerated; is *non-profit* in that surplus funds cannot be distributed to members/shareholders; is *non-government* in that it is independent from any Government.

2. Representativeness and Linkages to the Australian Community:

- **Membership:** There must be a verifiable list of the membership, in all categories in which they are available. That is, distinguishes members—people with voting rights—from supporters. List should not be made public. Provide evidence that new membership is encouraged.
- **Elections.** Document the process whereby the governing body is drawn from the organization's constituency; the process by which members are able to be involved in the policy-formation process and the procedures to ensure that any member or supporter has free access to, and ability to make copies of, all decisions of the governing body.
- **International Affiliation:** provide information on off-shore affiliates, associated parties; on the degree of non-resident input in terms of board membership and general membership, and extent of offshore funding.

3. Financial Accountability:

- **Financial statement:**
- Financial statements which will present the overall financial activities and financial position of the organization, prepared in accordance with generally accepted accounting principles and reporting practices.
- Information should include: a) significant categories of contributions and other income; b) expenses reported in categories corresponding to the descriptions of major programmes and

activities contained in the annual report, solicitations, and other informational materials; c) accurate presentation of all fund-raising and administrative costs; and d) when a significant activity combines fund raising and one or more other purposes (e.g., a direct mail campaign combining fund raising and public education), the financial statements should specify the total cost of the multi-purpose activity and the basis for allocating its costs.

- **The use of funds.** That monies are used in a manner specified by the NGO when it asks donors (and those funds are tax assisted) for donations. That is, money should not be diverted to other purposes. More specifically, information should be provided which shows:
- The percentage of total income from all sources that has been applied to programmes and activities directly related to the purposes for which the organization exists.
- The percentage of public contributions that has been applied to the programmes and activities described in solicitations.

4. Fund-Raising:

- Solicitations and informational materials must be accurate, truthful and not misleading.
- Solicitations shall include a clear description of the programmes and activities for which funds are requested.

5. Expertise:

- **The nature and extent of its claims to expertise,** other than membership interest. The qualifications, whether formal or by way of publications, of those who will speak or act on behalf of the organization in its representations to the provider, research undertaken, and whether research has been assessed by independent peer review.

This list could be gathered as part of the correspondence between a provider and an NGO. It seeks to establish the bona fides of the NGO, the fulfilment of which will be the acceptance by the provider of the NGO as being a body of standing. These requirements do not arise at large, but because the NGO wants access to the resources of a provider organization, and seeks to represent a body of opinion. The protocol is not a matter of imposing behaviour, but of making information available to the formal owners of the providing organization.

CONCLUSION

The single greatest failing of the Commonwealth's NGO strategy is that, other than in an administrative sense, it has no conception of standing for NGOs. It has generally not conceived NGOs as interest groups, at least in so far as insisting on a test of their standing. NGOs that seek access to government resources should be the subject of scrutiny, and the results of that scrutiny should be made available to the public. The acceptance of an NGO as a body with standing should lead to the publication of the data on a publicly accessible register. This simple procedure would reassert the dominance of the relationship between governments and their citizens, corporations and their shareholders, and foundations and their trustees, a dominance that has tended to be displaced by the all-too-ready willingness of providers to accept NGOs without at least questioning their credentials.

The new language of Corporate Social Responsibility, and Codes and Compacts, are all

designed to allow new players a chance to define what is appropriate and what is not appropriate behaviour. They are predicated on an assertion of equal standing—that everyone has the same stake in any issue. Governments and corporations that have fallen into the CSR and Code devices have ceded the issue at the outset. They have ceded legitimacy too lightly and in the process have damaged their own legitimacy. Governments, corporations and foundations are not 'bad' and in need of further control, as is the orthodox NGO critique. Rather, they are legitimate centres of power operating within a formal democratic and legal framework. To undo that framework may come at the expense of weakening the contributions they make. New players are no doubt welcome, but the views put by NGOs have already been put in democratic forums. The various devices referred to above are a second bite of the cherry. NGO activity is not going to fade, but it can at least be put in perspective. Consumers and citizens need to know about NGOs that seek access to their resources. The simple device of a protocol should help put the owners back in charge.

ENDNOTES

- * A summary of which is available at the IPA website, www.ipa.org.au
- 1 Nick Cater, 2001, Reuters Limited via Alertnet, August 2001.
 - 2 Fox, J. and L. Brown, 1998. *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements*. Cambridge, Mass: The MIT Press, 21.
 - 3 Henderson, D. 2001 *Misguided Virtue: False Notions of Corporate Social Responsibility*. Institute of Economic Affairs, London.
 - 4 Holcombe R. 2000. *Writing Off Ideas: Taxation, Foundations, and Philanthropy in America*. The Independent Institute. California: USA.
 - 5 The term is used extensively in corporate management literature as well as in political science. For example, see Carroll, A. and A. Buchholtz, 1999. *Business and Society: Ethics and Stakeholder Management*. Cincinnati: South-Western. Mathews R. 1999. *Jobs of Our Own: Building a Stakeholder Society: Alternatives to the Market and the State*. Sydney: Pluto Press. Winter M. and U. Steger, 1998. *Managing Outside Pressure: Strategies for Preventing Corporate Disasters*. New York: Wiley. Kelly, G. D. Kelly and A. Gamble editors, 1997. *Stakeholder Capitalism*. New York: St. Martin's Press. Ackerman, B. and A. Alstott, 1999. *The Stakeholder Society*. Yale University Press.
 - 6 Henderson, D. 2000. 'Anti-Liberalism 2000'. *Wincott Lecture*. The Institute of Economic Affairs, London, 12 October 2000. <http://www.iea.org.uk>. Dr Vaclav Klaus, 2001. 'Dismantling Socialism: An Interim Report'. *CIS Lecture*. Centre for Independent Studies, 30 May 2001. <http://www.cis.org.au>
 - 7 ABC Lateline 13 August 2001. Greg Bourne, BP's regional president for South-East Asia and Australia.
 - 8 Manheim, J. 2000. *Corporate Conduct Unbecoming: Codes of Conduct and Anti-Corporate Strategy*. Tred Avon Institute Press.
 - 9 Some Codes are developed by an the NGO sector for an industry as a political tool, for example, Australian Asia-Pacific Mining Network, 1998. *Principles for the Conduct of Corporation Operations within the Minerals Industry*. 35pp.

- 10 Manheim, 2000, 31.
- 11 See the IPA submission on the Australian Democrats, *Corporate Code of Conduct Bill 2000*. On the IPA website, www.ipa.org
- 12 See the website for examples. <http://www.codesofconduct.org/>
- 13 Home Office, UK, 1998. *Compact on Relations between Government and the Voluntary and Community Sector in England*. 14pp.
- 14 The World Bank, 2000. *Consultations with Civil Society Organisations: General Guidelines for World Bank Staff*. NGO and Civil Society Unit, Social Development Department, 12pp.
- 15 The World Bank, 2000. 'Involving Nongovernment Organisations in Bank Supported Activities'. *Operational Manual: Good Practices*, 4.
- 16 Prime Minister, 1998. A Guide on Key Elements of Ministerial Responsibility. Department of the Prime Minister and Cabinet, Canberra, ACT, 10.
- 17 Department of Family and Community Services, 2000. 'Funding Peak Bodies: A Discussion Paper'. July 2000, 11 pp. <http://www.facs.gov.au>
- 18 FaCS, 2000, 1.
- 19 FaCS 2000. 'Funding Peak Bodies', 6.
- 20 It does not have Deductible Gift Status.
- 21 <http://www.taxreform.ato.gov.au/publications/2000/nat3132/part1.htm>
- 22 Chapter 2 Income tax ITEC endorsement. <http://www.taxreform.ato.gov.au/general/searchframe.htm>
- 23 The figure is based on data collected by Environment Australia from annual statistical data submitted by environmental organizations fulfilling a requirement of the *Register of Environmental Organisations*. The data quoted are from the statistics received for the 1998–99 financial year. Submission to *The Inquiry into the Definition of Charities and Related Organisations*. Department of Environment and Heritage (Environment Australia). December 2000.
- 24 A requirement of the *Income Tax Assessment Act 1997* is that environmental organizations listed on the *Register of Environmental Organisations* submit annual statistical data to the Environment Department.
- 25 Department of Environment and Heritage (Environment Australia). *Annual Report 1999–2000*, appendix 3.
- 26 See endnote 24—Register of Environmental Organisations Annual Statistical Data.
- 27 <http://www.ausaid.gov.au/ngos/>
- 28 <http://www.ausaid.gov.au/ngos/> The abridged Accreditation Table has excised, Section C: Approaches to Partnership and Development Collaboration.
- 29 Australian Council for Overseas Aid, 2000. *ACFOA Code of Conduct for Non Government Development Organisations*. 21pp. <http://www.acfoa.asn.au>
- 30 Quoted in submission by Australian Taxation Office to *Inquiry into Charities and Related Organisations*, January 2001, 20.
- 31 Quoted in submission by Australian Taxation Office to *Inquiry into Charities and Related Organisations*, January 2001, 20.

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