



environmental defender's office
new south wales

Financial Reporting by Unlisted Public Companies

06 August 2007

The General Manager
Corporations and Financial Services Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600

To Whom It May Concern,

Re: Financial Reporting by Unlisted Public Companies

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to provide comment on the Discussion Paper entitled *Financial Reporting by Unlisted Public Companies* (hereafter 'Discussion Paper').

The EDO is a community legal centre specialising in public interest environmental law. The EDO has 20 years experience in litigating environmental matters and participating in environmental law reform processes. EDO functions include legal advice and representation, law reform and policy work, scientific advice and community legal education. The EDO is a company limited by guarantee.

The EDO notes a recent trend by governments in Australia seeking to ease the regulatory burden on businesses - both large and small. The EDO has previously noted the important public interest benefits of retaining certain types of mandatory regulation. [1] The current inquiry is in keeping with this general theme by seeking to exempt unlisted public companies from reporting requirements.

This submission makes comment on three relevant aspects to the proposal:

1. Differential Reporting Regime
2. Accounting Standards
3. Triple Bottom Line Reporting

Differential reporting regime

The Discussion Paper seeks public submissions on the Federal Government's proposal to introduce amendments to the corporations law that will exempt some unlisted public companies from the financial reporting requirements in section 292 of the *Corporations Act 2001*. Currently, all public companies are required to prepare an annual report that includes a directors' report, financial report and auditors' report.

In short, the EDO does not support the establishment of a differential reporting regime for unlisted public companies. Although the EDO understands that financial reporting may be particularly onerous for some not-for-profit public companies, it is nonetheless important that all companies that have raised monies from the public, or that have received financial grants from government bodies, prepare an annual report of their activities covering financial, social and environmental performance. This is consistent with transparent and accountable governance as it allows the public to clearly determine how these monies are used. Reporting is also consistent with principles of Ecologically Sustainable Development (ESD), a globally recognised concept which seeks to marry economic, social and environmental considerations into all levels of decision making. It involves a "triple bottom line". [2] The concept is the prevailing philosophy guiding governments today, and has

been affirmed by the 2002 *World Summit for Sustainable Development*, to which Australia is a signatory. Furthermore, all Governments across Australia have accepted the principles and objectives of ESD in the *National Strategy for Ecologically Sustainable Development*. It is therefore important that principles of ESD inform this current process.

Amendments exempting small proprietary companies from financial reporting requirements have recently been introduced. The Discussion Paper discusses the application of similar amendments for small unlisted public companies. However, it is important to note that proprietary companies and unlisted public companies are qualitatively different. Proprietary companies are essentially private, and have no use of public monies involved in their operations. On the other hand, unlisted public companies operate through raising public monies and often receive financial grants from the Federal and State Governments.

The Discussion Paper proposes that for those unlisted public companies that receive public funding, an alternative reporting arrangement could be introduced that requires such companies to prepare special purpose financial reports to the grantor rather than a general purpose financial report through the *Corporations Act 2001*. The EDO submits that this approach is insufficient. It is important to note that public funding, although granted by a government agency, is still money that comes from the community. The public has an equal right to receive this information. The EDO is therefore of the view that all public companies should be required to report annually, even if they have a not-for-profit focus. This ensures that these companies remain transparent and accountable to their shareholders and to the general public by allowing individuals, NGOs and government bodies to track their performance. Stakeholders should be able to clearly identify a public company's use of public monies, its investments, its environmental performance and the social impacts of its activities.

The maintenance of the current regulatory regime is therefore essential. Indeed, the Victoria Government, in examining the issue of regulation for not-for-profit organisations, observed that regulation in the not-for-profit sector has measurable benefits:

Regulation is a tool used by government to help to build trust and confidence in the sector and facilitate its important work. Regulation ensures that standards of service delivery and public health and safety are maintained. [3]

Therefore, in light of the above discussion, the EDO does not support the introduction of a differential reporting regime exempting unlisted public companies from mandatory reporting requirements.

Accounting Standards

Although the EDO is of the view that not-for-profit public companies should still be subject to mandatory reporting, the EDO does not oppose the introduction of different reporting standards depending on the economic significance of a not-for-profit company. The Australian Accounting Standards Board has released an exposure draft proposing different accounting standards for not-for-profit companies. Under the proposal, not-for-profit companies with revenue in excess of \$25 million or assets in excess of \$12.5 million must comply with the full *International Financial Reporting Standard (IFRS)*. Smaller not-for-profit companies would be required to instead apply the *Small and Medium Entities Standards (SME)*. The Discussion Paper indicates that the adoption of the proposed SME standard would result in a significant reduction in the cost of complying with the financial reporting obligations. The EDO supports this proposal as long as the SME standard requires companies to report on their performance in environmental, social and financial terms.

Triple Bottom Line Reporting

Current reporting requirements under the *Corporations Act 2001* cover only financial reporting. The EDO submits that mandatory reporting requirements should extend beyond financial reporting. Consistent with a previous submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Social Responsibility, the EDO recommends that the *Corporations Act 2001* should be amended to require companies to report on their performance in environmental, social and financial terms. [4] As mentioned above, this 'triple bottom line' approach is consistent with Ecologically Sustainable Development (ESD), which requires the integration of social, environmental and economic considerations into all aspects of governance.

The EDO submits that such reporting should be based on national laws and basic international standards. The de facto world-wide standard on triple bottom line reporting is found in the Global Reporting Initiative (GRI). Its goal is expressed thus:

The Global Reporting Initiative's (GRI) vision is that reporting on economic, environmental, and social performance by all organizations becomes as routine and comparable as financial reporting. [5]

The GRI sets out triple bottom line requirements through its Sustainability Reporting Guidelines. The guidelines

require performance assessment and disclosure of economic, environmental and social policies, activities and impacts. More than 2400 organisations from 60 countries use these guidelines to produce their sustainability reports.[6] Indeed, in South Africa it is mandatory for all publicly listed companies to report in accordance with the guidelines.[7] The EDO would support the incorporation of the GRI Guidelines into Australian reporting requirements. The Commonwealth Government should release simple guidelines consistent with the GRI to assist small companies and NGOs with their Triple Bottom Line reporting. The value of Triple Bottom Line Reporting in highlighting the positive activities of not-for-profit organisations should be emphasised.

Transparent triple bottom line reporting is already crucial for many companies seeking to attract investment funds. It will become an increasingly important consideration for investors interested in information, for example, on carbon neutrality.

Should you have any questions regarding this submission please contact Robert Ghanem on (02) 9262 6989.

Yours sincerely

Environmental Defender's Office (NSW) Ltd

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Policy Director

References

1. *Submission into the burden of regulation in NSW and improving regulatory efficiency draft report 17 August 2006*. Found at: http://www.edo.org.au/edonsw/site/pdf/reg_nsw_comment060817.pdf (2 August 2007), *Investigation into the burden of regulation in NSW and improving regulatory efficiency- 24 February 2006*. Found at: <http://www.edo.org.au/edonsw/site/policy/ipart060224.php> (2 August 2007).
2. Lewis Hawke, 'Walking the talk on sustainable development in the public sector' (2004) *Public Administration Today* 50 at 50.
3. Victorian Government State Services Authority, *Review of Not-For-Profit Regulation* 1 March 2007 at p6.
4. Environmental Defender's Office (NSW), *Submission to Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Social Responsibility* (28 September 2005). Found at: <http://www.edo.org.au/edonsw/site/policy/csr050928.php> (30 July 2007).
5. <http://www.globalreporting.org/Home> (30 July 2007).
6. These can be viewed at the GRI Reports database.
7. David Kinley and Junko Tadaki, 'From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law' (2004) 44 *Virginia Journal of International Law* 931, 957.



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