DEFINING THE NONPROFIT SECTOR:
AUSTRALIA

Mark Lyons
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Comparative Nonprofit Sector Project
Institute for Policy Studies
The Johns Hopkins University
Baltimore, Maryland 21218
U.S.A.
PREFACE

This is one in a series of Working Papers produced by The Johns Hopkins Comparative Nonprofit Sector Project, a collaborative effort by scholars in over twenty countries to understand the scope, structure, and role of the nonprofit sector using a common framework and approach.

The Working Papers provide a vehicle for the initial dissemination of the work of the Project to an international audience of scholars, practitioners and policy analysts interested in the social and economic role played by nonprofit organizations in different countries, and in the comparative analysis of these important, but often neglected, institutions.

Working Papers are intermediary products, and they are released in the interest of timely distribution of Project results to stimulate scholarly discussion, and to inform policy debates. A full list of these papers is provided on the inside of the back cover.

The production of these Working Papers owes much to the devoted efforts of our project staff, in particular Regina Rippetoe, as the program manager, and Wendell Phipps, the project's secretary. We also want to express our deep gratitude to our colleagues on this project, to the International Advisory Committee that is helping to guide our work, and to the many sponsors of the project listed at the end of this paper.

The views and opinions expressed in these papers are those of the authors and do not necessarily represent the views or opinions of The Johns Hopkins University, its Institute for Policy Studies, or any of its officers or supporters, or the series’ editors.

We are delighted to be able to make the early results of this project available in this form and welcome comments and inquiries either about this paper or the project as a whole.

Lester M. Salamon    Helmut K. Anheier
Project Director    Associate Project Director
The Johns Hopkins University
Institute for Policy Studies
DEFINING THE NONPROFIT SECTOR: AUSTRALIA

Introduction

Australia has many nonprofit organizations but no recognized nonprofit sector. That is to say, while many Australians send their children to private schools, belong to sports and social clubs, support charities, identify themselves with a religion, belong to a trade union or a professional association, save through a credit union, and seek social change by joining advocacy groups, they do not see these various organizations as belonging to a single sector. As a result, nonprofit organizations do not act together, government policies towards them are piecemeal, and the public perceives the organizational world as divided into only two sectors: government and business.

It might be more accurate to say that while there is little recognition in Australia of a single nonprofit sector, nonprofit organizations are recognized as a distinct class of organization in different fields of activity. Within each field, nonprofits are identified by one (or more) generic names but these differ from field to field thus inhibiting the emergence of a concept of a single sector across these various fields. For example, in the social services, nonprofit organizations are commonly known as community organizations, but sometimes as charities or as voluntary or non-government organizations. In health, nonprofit hospitals are known as private hospitals, but sometimes as religious or charitable, to distinguish them from for-profit hospitals; other nonprofit health organizations are known mostly as non-government organizations or as charities. Nonprofit schools are known as private or non-government schools. In sport and recreation, “club” is most commonly used to describe nonprofit organizations. “Association” is most commonly used by nonprofits representing the interests of business and professional groups though the latter sometimes use society or institute in their titles. “Association” is also used as a generic term in legislation establishing the most popular method for incorporating the nonprofit organization. “Union” is now applied generally to organizations of employees in a particular occupation or industry, though it has a wider use, as in credit union or student union. The term “foundation” is commonly used to refer to nonprofit organizations that seek funds for particular purposes such as health research or a school. The term is also used sometimes to apply to grant-making organizations although the older term of “trust” is more commonly used to describe these bodies. And so on. Although some terms aspire to describe all or most of the sector, there is no general agreement about which is the most appropriate: nonprofit sector, third sector or civil society.

This terminological proliferation is understandable. People identify with and generalize about fields of activities far more easily than types of organization. And so sport, health, lobbying, education, the environment are the first identifiers people reach for to describe their organized activity. Within each of these fields one or two terms are used to describe those organizations that are neither part of government nor business, but different terms are used in different fields.

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1 Mark Lyons is the Director of the Centre for Australian Community Organisations and Management (CACOM).
Australia’s nonprofit organizations in different fields are affected by the same forces: by social and economic changes that encourage people to form, join, support or drop out of nonprofit organizations; by governments, which regulate their activity, often support them and sometimes take them over; and by for-profit firms that often support and sometimes compete with them. But these forces impact in different ways on nonprofits in different fields. They are mediated by the institutional structure of the field. To fully understand the development of Australia’s nonprofit organizations, it will be necessary to take account of the different dynamics of these different fields.

Such detail is beyond the scope of a short paper. What this paper will do is briefly sketch the historical background to Australia’s nonprofit sector, outline the main legal forms taken by nonprofits and look at the major issues that are raised when the structural-operational definition developed by the Johns Hopkins Comparative Nonprofit Sector Project is applied to the array of Australia’s nonprofits. It concludes with an overview of the place of nonprofit organizations in contemporary Australian society and their likely future as Australia moves into the new millennium.

**Historical Background**

It is little more than 200 years since Europeans first settled the Australian continent. During the second half of the 19th century, Australia consisted of six self-governing colonies of Great Britain. It is less than 100 years since those six British colonies federated to form a single nation. Even today, it is the English monarch who is Australia’s head of state. Australia has always had a high proportion of migrants in its population. During the 19th century, most of these came from Great Britain which included what is now the independent Republic of Ireland. They brought with them many of the institutions, the aspirations and the quarrels of “home.” But Australia was a different environment and these institutions, aspirations and quarrels developed in some different ways. Several of these imported ideas and practices had a direct bearing on the development of Australia’s nonprofit sector. These included middle-class notions of charity, a strong lower-class tradition of mutual association and democracy and, later in the 19th century, a powerful commitment to amateurism in sport. They also included animosities based on religious and class divisions. By the late 19th century these imports had taken root and were beginning to develop peculiarly Australian forms.

Although Australia began as a penal settlement, a thriving society of free settlers and ex-convicts soon developed. These were mainly from the low and middling orders of the British Isles and shared the democratic aspirations of their class. By 1860, most Australian colonies had granted manhood suffrage and early in the new century extended the right to vote to women.

Although Australian colonists shared the *laissez-faire* liberal views of mid-century England, they modified these to suit their situation. Governments played a vital role in encouraging business enterprise, by bringing in labor and capital and building an extensive infrastructure of railways, ports and roads (Butlin, Barnard and Pincus, 1982). They ensured that every child received an education. But in other areas of social policy, governments were reluctant to intervene. Rather than directly providing for the poor and the sick, they encouraged leading colonists and their wives to form and support nonprofit organizations to provide needed services. These were commonly called “public charities.” In turn, governments subsidized these organizations, mainly on a dollar for dollar basis,
but increasingly, especially into the 20th century, at a higher rate. Government regulation increased with the level of government subsidy. Often, although the timing depended on other factors, governments came to administer these nonprofits directly, in effect, nationalizing them (Dickey, 1987).

Despite strong efforts by the middle-class elite to prevent it, all colonies experienced outbursts of sectarianism or conflict between Catholics and Protestants. In part, these were colonial reflections of the disputes occurring within Ireland and the industrial cities of Britain. The vehicle chosen by the colonial elites to prevent sectarianism was a system of public education which would teach all children the tenets common to all Christian religions. This proposal, advanced early in the second half of the century, was resisted by the Catholic bishops and clergy who insisted that Catholic children be educated in Catholic schools. This encouraged a Protestant backlash and the formation of separate Catholic and Protestant sub-cultures (Lyons, 1998). One consequence of sectarianism is a large number of nonprofit Catholic schools. For over a century they have educated 20 percent of Australian children. Sectarianism also encouraged the growth of other nonprofits, providing health and social services and various recreational opportunities. Many of these were defensive, in the sense that they were formed so that children, the poor and the sick of one religion would not have to receive support from, and thus possibly be proselytized, by other religions. By no means all of these new religious-inspired charities were sectarian in intent or in character, but the existence of sectarianism certainly encouraged the strong commitment needed to begin and maintain these private charitable initiatives.

By the late 19th century the Australian colonies enjoyed a significant comparative advantage in the production of wool and other staples, such as wheat and gold (Schedvin, 1987). Per capita, they enjoyed the highest income in the world; an income which was relatively equitably distributed. As a result most Australians, those who enjoyed regular work or were self-employed, were able to make provision for possible hardship such as sickness or unemployment, and to save to purchase their own home via mutual associations, mostly imported from Britain, such as friendly and building societies. Friendly societies, which by the early 20th century covered almost one half of the population, provided for more assistance to prevent families slipping into poverty and hardship than did the conventional charities and the government, when they sought to assist those that had no protection (Green and Cromwell, 1984; Kewley, 1973).

The same spirit of mutual support drew many working men into trade unions and prompted many small farmers to form cooperatives to market their produce. In both cases, people were acting collectively to improve their positions in markets which were heavily biased against them as individuals. Their commitment to collective action was pragmatic rather than ideological, but it created a powerful tradition nonetheless. Business interests, towns and villages, self-employed tradesmen and professionals also discovered (or rediscovered, for this was the lesson of medieval guilds) the value of organizing to protect and advance their economic interest and their family’s well-being. Australia’s open, democratic political system imposed no barriers and the early success of some groups encouraged others.

For most of the second half of the 19th century, the political system was particularly fluid, with no single defining issue. In this climate, the trade union movement organized to elect members to parliament, but found it difficult to keep them focused on the trade unions’ concerns when they
were there. In New South Wales, the Trades and Labor Council determined to form an extra-
parliamentary Labor party to select and stand candidates across the colony. To strengthen this, it
added the device of requiring all those elected from the new Labor party to pledge that they would
vote according to the majority view of their party in parliament. This created the first disciplined
political party (Nairn, 1973). In response, a number of extra-parliamentary voluntary associations
associated with business or middle-class interests: trade associations, women’s groups, and groups
associated with the Protestant church collaborated to form a Liberal party (Rickard, 1976). Thus was
formed the bifurcation of parliamentary politics into a division between labor and capital which has
lasted for a hundred years.

Sporting associations proliferated during the 19th century (and subsequently). The good
climate year around, plenty of space and most of the working population with some leisure time
encouraged sport, both as a participatory and as a spectator experience. The success of trade unions
in winning a 44-hour week played an important role in this. So too did the amateur sports movement
that encouraged participation in sport as character-building and a source of manly virtue. But
participation had to be for the love of the game. All associations with monetary reward or with
gambling had to be removed. As a result, by the end of the 19th century the for-profit organization of
sport (but not gambling) had been almost extinguished (Cashman, 1995). Identification with place
and nation was also reinforced by sport. Many joined local football clubs as supporters. Even before
the formal creation of an Australian nation, national identity came to be powerfully tied to the
success of Australians in the sporting field. Like sport, recreation and other leisure activities were
invariably organized along mutual lines.

Australia’s participation in the first world war powerfully affected the country. The industry
protection provided by the war’s interruption of trade encouraged Australian business, as did the
experience of leadership it provided to thousands of young men. But events at home and abroad also
intensified class conflict. Several recessions and the Great Depression meant that, overall, living
standards increased little during the 1920s and 30s. Conservative business interests dominated these
two decades. The early 1920s saw the first attempt to articulate a theory of social formation based on
associations, but it came to nothing (Hughes, 1996). They also saw the formation of powerful ex-
service groups, a notable growth in professional and trade associations and the beginning of
businessmen’s service clubs like Rotary. The Depression weakened Australia’s charities and
friendly societies alike. In the late 1930s, with government encouragement, new mutual finance
institutions, building societies and credit unions, also began to flourish in the post-war decades.

The decade after World War II marked an important watershed for many Australian
nonprofits. During the war, the Commonwealth government had become solely responsible for
administering an income tax which until then applied to probably no more than 20 percent of the
population. The wartime Labor government proceeded to extend it to cover to all the working
population. In return, it dramatically expanded the range of government pensions and benefits and
provided large amounts of Commonwealth funding for health services (Watts, 1987). These and
related changes finally led to state governments taking over the administration of public hospitals
(except those run by other nonprofits such as religious orders). One consequence of this was a
diminution in philanthropy. Hospitals had been the main recipients of Australian philanthropy
during the 19th and early 20th century; their incorporation into government, along with a gradual
increase in levels of personal income tax led Australians to conclude (falsely) that they were highly
taxed and that governments looked after those in need. In the 1950s and 1960s a popular view developed that poverty had been eradicated in Australia. When its continued existence was convincingly demonstrated in the late 1960s and early 1970s, the conclusion drawn from this rediscovery was that government needed to do more. The tradition of individual philanthropy had been significantly weakened.

At the national level, a Liberal/Country Party (conservative) government was in office from 1949-1972. It was reluctant to follow the path foreshadowed by Labor when in government and expand the range of state-provided services. Instead, it continued with the practice laid down since the early 19th century of subsidizing nonprofit organizations to provide a continually expanding range of social services. It also encouraged the transformation of friendly societies into health insurance organizations by subsidizing the costs of nonprofit insurers. This only delayed the inevitable decline of a once vital institution. Such an arrangement could not insure the whole population. It was increasingly criticized and in the 1970s, except for private hospital costs, it was replaced by a single government insurer. The conservative government also began the practice of funding Catholic and other private schools. In so doing it signaled the final decline of sectarianism in Australian life. A subsequent Labor government expanded support, targeting most resources on the poorer parish schools. It was fortunate that it did, for without increasing government support the Catholic church, faced with a dramatic decline in members of the religious orders who staffed its schools, would never have coped with the huge expansion of secondary education in the 1970s and 80s.

In the 1970s, the Commonwealth government came to be influenced by a combination of ideas from the second wave of feminism, the community development movement and various rights movements. It encouraged the formation of new nonprofit, community-based organizations which it funded to provide a further range of social services (Lyons, Nyland and Saunders, 1994; Brennan, 1994). State governments followed suit. Government funding also went to the older social service nonprofits as well, enabling them to grow considerably. Government funding also, for the first time, enabled the emergence of nonprofit professional theater, opera and ballet companies. Prior to this, nonprofit arts organizations had been more for the recreation of their members as for the edification or entertainment of the public. That role had been taken by for-profit entrepreneurs.

Since the Second World War, the ethnic composition of the Australian population has changed remarkably, the result of large scale immigration from countries in continental Europe and then from Asia. This ethnic diversity has expressed itself through a vast array of nonprofit organizations, from cultural and educational associations, to religious organizations, to welfare societies. Aboriginal Australians have also developed a network of nonprofit associations from legal and medical centers to cultural and social service organizations, to housing and employment cooperatives, to local councils and to development corporations that act as a local government to remote communities. These have mainly emerged since the 1970s and the replacement of paternalistic and sometimes repressive policies with growing government support. It has only been since 1971 that aboriginal Australians have been counted in the population census and only since 1992 that the law has recognized that aborigines inhabited and possessed the land before the British conquest which began in 1788.

The past two decades have seen important changes in the global economy. Two industries, the media and financial services, have been transformed in ways that have dramatically impacted
upon two fields of nonprofit activity. Many sports have become major sources of mass entertainment and as a result are courted by television companies. This has transformed the upper echelons of many sports, with national associations selling television rights for large sums while leading local clubs strike million dollar sponsorship deals and employ their elite players on generous contracts. The transformation of many nonprofit sporting associations into for-profit businesses has begun.

The globalization of financial markets has also led most of the remaining mutual finance institutions, such as building societies and insurance companies, to de-mutualize or convert to for-profit status. Only credit unions, which are mostly smaller organizations where the directors are closer to the membership, have resisted the trend. Responding to similar market pressures, smaller producer cooperatives have amalgamated into large multi-million dollar agri-business and food producers. They presently seek ways to raise private equity capital without abandoning their commitment to democratic member ownership.

A number of other dramatic social and economic changes over the past two decades have also impacted upon the nonprofit sector. The decline of manufacturing employment and the growth of a service economy, increasing numbers of women in the work force and longer hours worked by those in full-time employment, changes in leisure behavior, and the increasing percentage of the population from non-English speaking countries, including Asia, have all combined to weaken many traditional membership associations such as the Christian churches, trade unions, scouts and guides, service clubs and so on. Over the past 15 years, the percentage of the population who volunteer has declined by about 10 percent, to less than 20 percent of the adult population (Lyons and Fabiansson, 1998).

Charitable trusts (or endowed foundations) have been relatively unimportant in the development of Australia’s nonprofit sector. Large bequests have tended to go the existing nonprofit or government institutions such as universities or hospitals, rather than to endow a trust. Many trusts are administered by for-profit or government trustee companies where they form a small part of company business. Although there are some noticeable exceptions, most trusts are conservative in their giving, supporting medical research and long-established charities and cultural institutions.

Major Types of Organization

In Australia, two or more people are free to form an association to pursue any purpose, providing that purpose is not illegal. If the object of the association is other than to make a profit, there is no requirement to register it with any government authority. Only if members of the association wish to generate an income which might be taxable, raise funds from the public, employ people or limit their liability for debts which might be incurred by their association, is some form of registration with government authorities required. The result is an open environment for nonprofit activity but, as we shall see, a complex and sometimes contradictory one.

Unincorporated Association

By far the most common organizational form adopted for nonprofit activities is what is known as an unincorporated association. Unincorporated associations are formed to pursue a myriad
of goals and interests from arranging baby sitting to protesting aircraft noise; from raising funds for a local school to organizing opportunities for members to pursue particular enthusiasms, such as tropical fish breeding or bell ringing. Usually, they have some form of constitution or written rules.

Although there is no obligation on such associations to incorporate and thereby gain a legal personality and protection for their members, there are several good reasons for doing so. For instance, it is not possible for an unincorporated association to own property or to receive testamentary gifts. Neither can an unincorporated association enter into an enforceable contract. For this reason, governments now generally require an organization to be incorporated before it can receive government funds.

There are a number of legal forms and devices available to members of unincorporated nonprofit associations to address the problems created by their lack of incorporation. With two exceptions, they require the association to obtain a legal identity by incorporating.

Trust

The major exception is a form of organization known as a trust. A trust is essentially an obligation assigned to one or more people to administer an asset (property or a sum of money) for a given purpose. It provides a solution to the property-owning problem and was popular for many sporting and recreation organizations until the 1980s when, in most states, it became relatively easy to incorporate as an association. Most trusts are permitted only a limited life.

This restriction does not apply to a particular type of trust, the charitable trust. The charitable trust is a popular form of nonprofit organization. A charitable trust may be formed for a purpose, without needing to specify particular beneficiaries, providing its objects fall within one of the four heads of charity. These are defined by the courts as encompassing: relief of poverty, advancement of education, advancement of religion and other purposes beneficial to the community. A charitable trust may exist in perpetuity. Charitable trusts are numerous. A number of large hospitals, religious orders and older social service organizations are constituted in whole or in part as charitable trusts. Most private schools and universities operate active charitable trusts in the form of building funds, scholarships or development foundations. Many testamentary trusts, that is, trusts set up to administer funds dedicated to a particular purpose specified in a will, are charitable. A trust, however, is not a legal person and continues to suffer from a number of the problems faced by unincorporated bodies. Trusts are not required to be registered. As a result, it is not known how many trusts or charitable trusts there are.

Although charitable trusts are not legal persons, they may be incorporated (and thus given a legal personality) under certain circumstances. Generally this is done by special act of parliament. In Australia, many religious denominations, such as the Catholic or Anglican church, acquire a legal identity in a particular state through state legislation incorporating a trust formed to hold their property (MacFarlane and Fisher, 1996). Many quite large health, education and social service organizations that are sponsored or “owned” by churches or religious orders claim a legal identity by virtue of such acts. Many have recently sought a more conventional form of incorporation.
Friendly Society

A common form of association in the 19th century was the friendly society. These were governed by friendly society acts but such legislation did not provide incorporation. Friendly society legislation is still current in most jurisdictions and several hundred friendly societies still exist in Australia, but as a form of association it provides few benefits and appears old-fashioned. As a result, it has fallen into disuse.

There are several ways by which an unincorporated nonprofit association might incorporate, although two of these are more common than the others. These two common forms are as a company limited by guarantee or as an incorporated association.

Company Limited by Guarantee

A company limited by guarantee is a particular form of company. Unlike the common form of public company, it is unable to limit its liability to the value of its shares. Instead, its members guarantee to pay a certain sum, usually very small, if the assets of the company are insufficient to discharge its debts upon dissolution. By and large, only a nonprofit association can incorporate as a company limited by guarantee. By contrast, it is possible for a nonprofit association to incorporate as a proprietary company but it is uncommon. Large nonprofits, those with an annual income of over a million dollars, nonprofits that derive significant income from trading, and nonprofits that operate in more than one state are generally encouraged to incorporate as a company limited by guarantee. In 1996 there were about 9,000 companies limited by guarantee in Australia.

Incorporated Association

The simplest way for an unincorporated association to obtain a legal identity is to incorporate as an association under associations incorporation acts which exist with small variations in all states and territories. The first associations incorporation legislation was passed in South Australia in the mid 19th century. It was framed in order to create an easier method for nonprofit associations to incorporate than was available under company law. Legislation with a similar purpose was introduced by other states and territories during the past 40 years. This form of incorporation is available only to nonprofit associations. In 1996 there were a little over 100,000 incorporated associations in Australia.

Cooperative

Another common form of incorporation is the cooperative. The cooperative form is generally used by groups of producers (e.g., dairy farmers) to market their products, or consumers to lever a lower price for a favorite product. In both cases, members seek by cooperation to increase their market power. However, in Australia’s two largest states, New South Wales and Victoria, associations formed for what are clearly public purposes (such as to run a refuge or manage low income housing) might incorporate as a community advancement cooperative (Magarey, 1994). Current reforms of state cooperatives legislation to bring about national consistency create two types of cooperative: trading cooperatives which can distribute profit to members and non-trading cooperatives, which cannot. In 1996 there were about 3,600 cooperatives in Australia.
Other Forms

In addition to these general forms of nonprofit association, legislation exists in all jurisdictions to facilitate the incorporation of nonprofit associations formed by special groups or for special purposes. In order to encourage the development of community infrastructure among Aboriginal and Torres Strait Islander people, Commonwealth legislation (the Aboriginal Councils and Associations Act) was passed in 1976 to facilitate the incorporation of associations formed by these people. In most Australian states and nationally, registration as an industrial organization (a trade union or an employer association) with the relevant industrial court gives the benefit of incorporation. In some states, legislation governing public education provides for the incorporation of parents’ associations attached to individual schools. Strata title legislation in each state and territory enables an apartment or office building to be sub-divided between many owners, each possessing separate legal title to part of the building. Such legislation requires the creation of bodies corporate comprising of the owners of apartments or offices in an apartment or office building. The body corporate is responsible for maintaining the common areas and generally looking after the collective interests of individual owners.

Two other methods of incorporation are available to nonprofit associations, but are now rarely used. These are incorporation by royal charter or by special act of parliament. These methods were more common in times past. They are used only by organizations which are well established or which have high social standing. The Red Cross, for example, is created by royal charter while several of the long-established social service organizations, such as the Benevolent Society have their own Act. Several of the churches are also incorporated by statute.

Taxation Treatment of Nonprofits

The lack of coherence in public policy toward nonprofit organizations is nowhere more clearly evidenced than in their treatment by the taxation system. No particular form of nonprofit organization receives special treatment from the tax system by virtue of its form. Rather it is the purpose of the association that determines how it is taxed. Indeed, the taxation system does not require an association to be incorporated to receive relevant benefits that are earned by virtue of its purpose. Taxation laws affecting nonprofit organizations do not appear to embody any consistent principle but to have developed haphazardly in response to problems and special pleading by particular interests. Case law is no more consistent and neither is the administration of these laws by the Australian Taxation Office (Lyons, 1993a). Taxation officials will often insist upon clauses in a nonprofit’s constitution that establish its nonprofit character more clearly than does the legislation under which it is incorporated. Such clauses include the requirement that on dissolution, remaining assets are passed to a similar nonprofit organization and prohibiting the payment of directors fees. These requirements have no specific legislative basis.

Most nonprofit organizations are exempted from paying tax on their income. These include social service, health, education, arts, cultural and religious organizations. They also include many business and trade associations that represent industries which the government wishes to foster, such as agriculture and manufacturing. Many sporting and some recreational associations are exempt and so too are social clubs, provided they include a Sporting facility. All the income of these nonprofits is
exempt from income tax, even income derived from business ventures in no way related to the primary purpose of the organization. However, some sporting and recreation associations, some trade and most professional associations are not exempt. Even for these bodies, application of the mutuality principle exempts membership subscriptions from the calculation of income for taxation purposes. Over the past decade, most nonprofit financial institutions such as friendly societies and credit unions have had tax exemptions, which they enjoyed for many years, withdrawn. This was done as part of a massive deregulation of financial markets, rather than as the outcome of a review of the taxation exemptions enjoyed by nonprofits.

Some nonprofit associations are exempt from other forms of taxation. The pattern of exemption varies, but in all cases includes a strange Australian invention, the public benevolent institution (PBI). The term was first used in legislation early in the 20th century but was not defined. It appears to have applied to organizations that sought to relieve poverty. A PBI has been defined by the courts as a nonprofit organization that provides identifiable forms of relief to persons who are clearly deserving and needing of assistance. It includes most social service nonprofits, but not those which largely operate programs designed to prevent impoverishment, such as family counseling, or programs such as community development which do not work with specified individuals. Taxes from which PBIs are exempt include wholesale sales tax, fringe benefits tax, payroll tax, land tax, stamp duty, bank charges and rates (or property tax). Some other nonprofits such as schools, religious institutions, and hospitals are exempted from one or more of these taxes.

The Australian taxation system allows donors to certain groups of nonprofit (and government) organizations to claim their donations as a tax deduction. So permitted are donors to PBIs, to school building funds and to sporting, cultural, environment and overseas aid and development organizations that are registered with the relevant Commonwealth government department administering these fields. A number of other bodies named in the income tax act are also able to give a deduction to their donors. Donations of over $2 are deductible. There is no upper limit. The exception is donations to political parties of which only $100 per year is tax-deductible.

In keeping with the general laissez-faire attitude of Australian governments towards nonprofit associations, few restrictions are placed on their operation. For example, although English case law restricting the political activity of charities applies in Australia, it is rarely invoked by the taxation authorities. Many nonprofit associations engage in activity that could be construed as lobbying. Some go as far as to endorse political parties at election time and even to stand their own candidates without apparently imperiling their tax exempt status. There have been only a few cases where this overt political action has led to tax exempt status being withdrawn. This easy going approach by government authorities is not the product of conscious intent. Rather, the authorities are ignorant of and disinterested in both the nonprofit sector and the level of support it is provided by the taxation system. Ministers and government officials who became angered by a nonprofit’s politicking are far more likely to cut any grants it might receive than to challenge its charitable status.

One area where there is an extensive amount of regulation is fundraising. All but one Australian state has in place legislation and regulations covering fundraising by (many) nonprofit associations. While ostensibly introduced to protect the public from fraudulent appeals, the legislation imposes some quaint restrictions on those classes of nonprofit organizations which are unable to claim an exemption. Churches, other church-sponsored nonprofits and schools are exempt.
Presumably, they are considered trustworthy. Regulations vary from state to state, making it difficult to conduct national appeals. For several decades, these charitable collection acts (as they were once called) shaped the popular perception of a charity. Charities were those organizations that sought to raise funds from the public by way of appeal. Registration under the act neither conferred a legal identity and nor did it qualify an organization for any of the various tax concessions available to charities or the more limited set of PBIs. Yet many, including board members and managers of these organizations, presumed that it did both (Lyons, 1993a).

In short, while the Australian legal and regulatory system places almost no restrictions on forming a nonprofit association, once formed, there are many choices to be made and many sometimes contradictory regulatory requirements to be met. Will the organization generate an income? If so, it should seek at least an income tax exemption from the Australian Taxation Office. Depending upon what it does, exemptions from other taxes may also be available. Some of these must be sought from state government authorities who will apply their own tests. Will the association incorporate? If so, which form should it choose? Would it employ people? If so, it must collect tax from its employees and will be bound by many other regulations and awards covering levels of pay, conditions of employment, occupational health and safety and so forth. Will it raise funds from the public? If so, it may be required to register with a state government authority; or with all state and territory governments if it wishes to raise funds nationally. And so on. Many of these regulations apply to all organizations; others are peculiar to nonprofits. Sometimes regulatory regimes produce contradictions. Legislation incorporating nonprofits allows them to remunerate board members; taxation authorities generally forbid it. Some of the legislation incorporating nonprofits permit them to distribute assets to members if they are liquidated; taxation authorities insist that to be eligible for nonprofit concessions, an organization’s constitution specifically prohibit such an action. In fundraising, what is required in one state may be prohibited in another.

**Defining the Nonprofit Sector**

The John Hopkins Comparative Nonprofit Sector Project has developed a structural-operational definition of nonprofit organizations so as to facilitate comparison of nonprofit sectors across countries (Salamon and Anheier, 1997). To qualify as a nonprofit organization for the purposes of the Project, an organization must meet five criteria. By and large, organizations that would be viewed as nonprofit in Australia fit readily within the five criteria. However, there are some cases where the criteria exclude organizations which some Australians would include as part of the nonprofit sector and in one important case, that of public universities, the criteria define as nonprofit an influential group of organizations which most Australians would probably locate in the public sector. These criteria are reviewed below.

**Formal**

To be included as a nonprofit organization, a group must have some structure or rules. This is necessary if an association is to have a life beyond that of its original founders. It distinguishes an organization from a group of friends who might meet regularly for a meal or give each other assistance from time to time with tasks such as moving house. The key test is whether there is a set of rules or a rudimentary constitution. This criterion would be readily accepted in Australia as it
clearly includes in the nonprofit sector the great number of small associations that numerically constitute the bulk of the sector.

Self-Governing

In part, this criterion elaborates the formality requirement. It tests if an organization is independent of other organizations. The test is met if an organization has its own constitution that gives some part of it, usually a board of directors, responsibility to make or approve decisions concerning the direction or fate of the organization. In Australia a further test would be whether or not the organization was recognized in law as an employer. This criterion ensures that large nonprofit organizations, which have branches providing distinctive services from separate sites, are none the less viewed as a single organization or management unit. If an organization is incorporated then it is reasonable to assume that it meets the test, even if its board is appointed by another nonprofit organization (as often happens with schools or social service organizations established by churches or religious orders).

Private

This test requires that an organization is structurally and operationally independent of government. An organization fails the test if the government, or some government office or agent, or the legislature, appoints all or a majority of the governors or directors of the organization. The test is simple and in most cases sufficient, but there are a number of important gray areas where results are not clear cut. These areas of uncertainty may be a consequence of close links between governments and nonprofit organizations in certain fields, often going back over a hundred years. They may also be a consequence of attempts by governments to create organizations that have many of the appearances of independent nonprofit organizations but which are, in the final analysis, controlled by government. For example, community health centers in one Australian state are apparently independent organizations governed by a board of directors elected from the local community. But they are staffed by employees of the government health department seconded to the organization and paid by the health department. The government reserves the right to dismiss such boards. In such cases, it is the self-governing test which becomes central to determining if an organization is nonprofit or government. Is the board of the organization really in control of it or is it there basically to advise the seconded public service staff? The answer would seem to be the latter.

Some people believe that use of the term “public” to describe a class of organizations indicates that they are part of government. This is not always true. Public companies are public not in the sense that they are owned by government but in the sense that their shares are publicly traded. Public hospitals are fully funded by government and subject to a large amount of government regulation. They were initially established as nonprofit organizations but over decades, in most cases, have effectively converted to government control. However, those owned by church bodies and other nonprofit organizations are still themselves nonprofit. In recent years there have been several cases where a long-established “public” hospital ceased to be funded by the government as part of realignment of resources in the health system. The hospital continued to operate, but as a private (nonprofit) hospital.
It is on this criterion that the question of whether Australia’s public universities are part of government or are private nonprofit organizations turns. By the simple test of control, they are not controlled by government. The Commonwealth government provides approximately 70 percent of the revenue of Australia’s public universities and uses that to exercise a great deal of influence over them. However, only two universities in the Australian Capital Territory are established by Commonwealth legislation. Most universities are established by acts of state parliaments, but that does not prevent them from being private organizations – several for-profit companies are incorporated by acts of parliament. The majority of governing boards of universities are elected by various constituencies; only a small minority of places are actually appointed by parliament (in effect by the government of the day). It seems clear that governments do not control universities. However, universities are treated as part of government for administrative law. For example, in most states, university accounts are audited by that state’s auditor-general. They may be subject to enquiry by the ombudsman. It seems simply to have been taken for granted that they were part of government. In a similar way, most university staff probably consider that they work for a government organization. But over the past decade or more, universities are beginning to act more and more like independent entities. They are still significantly influenced by government, but are not controlled. In law, and, by the rules of the Comparative Nonprofit Sector Project, universities in Australia should be counted as part of the nonprofit sector.

The status of political parties as part of the nonprofit sector is sometimes questioned on the grounds that they are trying to become part of government. In some countries a political party and the government become fused. This is not so in Australia where there are almost 100 registered political parties, but only a dozen that could hope to have their candidates elected to state or federal parliaments and only three or four that could expect to form a government. Australia’s experience is that when the parliamentary members of a party form a government, there will often be tension and sometimes open conflict between the party and the government over policy issues. This demonstrates the independence of party from government. That, and the organization of parties as membership associations, makes it appropriate to classify political parties to the nonprofit sector.

Non-Profit-Distributing

This is a crucial test. It is the criterion that distinguishes nonprofit organizations from for-profit firms. But, as with other criteria, there are gray areas. In most years any organization needs to make a surplus, or a profit, if it is to survive. What distinguishes a nonprofit organization from a for-profit firm is that making the largest possible profit is not an objective and to ensure that it is not, no surplus can be distributed to members or staff. But this criterion is not always clear-cut in its application. Some of the difficulty arises because it is not always easy to specify what constitutes the distribution of a profit to members. This can be illustrated by a consideration of cooperatives.

Cooperatives create a particular problem for applying the non-profit-distributing criterion in Australia. Incorporation as a cooperative cannot, as such, exclude an organization from the nonprofit sector. As noted above, many organizations that provide social or educational services and are largely or solely dependent on government grants or private donations are incorporated as cooperatives. This is because the cooperative form is selected by members of the organization as best expressing their determination to work as a collective. They have little or no financial stake in the organization. These cooperatives are clearly nonprofit organizations. The issue is more difficult
with consumer and producer cooperatives, those that are classed as trading cooperatives in the uniform legislation.

Some consumer cooperatives do not pay a dividend. Rather, they sell their product (e.g., books, wine) at a lower than market price to their members. It could be argued that this is some form of profit distribution. Alternatively, it might be said that their lower prices reflect their lower cost structure; lower because they do not have to make a return to shareholders. The return is not tied to ownership; rather it reflects the level of use of the cooperative by a member. In some respects, it resembles arrangements in many nonprofit social clubs which use surpluses from one activity (e.g., gambling) to subsidize other services such as food or sport. The difference is that in the cooperative the benefit is going to the individual; in the club it is going to the collective membership. In other aspects, it differs little from certain schemes employed by airlines or hotel chains to secure the loyalty of their customers. Those arrangements are not generally considered a distribution of profit. Similarly, credit unions claim to offer their members higher interest on deposits and lower interest on loans than is available in the market place, but the complexity of financial markets these days makes such claims hard to confirm. These days people belong to credit unions because they sense that they are more likely to work in their interest than are the large shareholder-owned banks. Mutual insurance companies may offer marginally lower premiums than for-profit insurance companies but few people would know if this was the case.

In none of the above examples does the cooperative distribute surplus profit as a dividend, as in the case of for-profit companies. Some producer cooperatives do distribute a dividend to their members but this is usually on the basis of the fundamental principle of cooperation and reflects the level of use made by the member of the cooperative selling structure. There is no relationship between the dividend and the degree of ownership or of control of the cooperative. That is still based on the other fundamental cooperative principle of one member-one vote.

Some people suggest that cooperatives and mutuals should be excluded from the nonprofit universe because they are large and operate on business principles. As has been noted above, this description applies to only some cooperatives and mutuals but it also applies to many nonprofits incorporated as companies limited by guarantee.

In Australia, most people probably associate the term “cooperative” with large rural producer cooperatives and would exclude them from the nonprofit universe. However many of those who are involved in these cooperatives firmly insist that they are not for-profit companies and find a closer affinity with the nonprofit sector than the for-profit. As noted above, new, uniform cooperatives legislation being introduced in all Australian states distinguishes between trading and non-trading cooperatives. Trading cooperatives, which include consumer cooperatives of the kind discussed above, are outside the scope of the structural-operational definition adopted by the John Hopkins project. Non-trading cooperatives should be included. The legislation does not apply to financial cooperatives such as credit unions, nor to mutual insurance companies. They should both be considered excluded by the Hopkins definition. Such exclusion does not place them in the for-profit sector. A more inclusive term such as third sector or social economy is required to encompass all forms of cooperatives and mutuals.
It is worth recalling that in 19th and early 20th century Australia, cooperative and mutual associations played a vital role in ameliorating inequalities generated by labor and financial markets. They did more to reduce or prevent poverty and its desperate consequences than the conventional charities and governments combined. They were not formed by people seeking to enrich themselves, but rather by people who sought to protect themselves or to provide affordable services that their members could enjoy.

**Voluntary**

This final criterion of the structural-operational definition in some respects is the most difficult of all to apply. It is given two interpretations. It requires that for an organization to be included in the nonprofit sector, it embody some meaningful degree of voluntary involvement. The great majority of nonprofit organizations rely entirely upon the voluntary efforts of their members. However, many long-established public-serving nonprofit organizations rely entirely upon paid staff to provide their services. Their boards, however, continue mostly to be volunteers. The payment of directors of nonprofit organizations is not prohibited by legislation incorporating nonprofits, but is usually required by taxation officials if the organization wishes to qualify for the various tax exemptions that are available to nonprofits.

Another interpretation of the voluntary criterion is that membership of an organization not be coerced or mandatory. This creates problems in Australia for some professional and employee organizations. For example, membership of a professional association is generally considered necessary for someone to practice the profession. It assures consumers that the professional meets certain standards of quality. In some cases, governments might further bolster this position. For example, membership of the relevant medical college is required before a medical specialist can be reimbursed for certain procedures from the national Health Insurance Commission. Similar requirements apply to some other occupations. In some industries, a particular trade union might persuade one or all employers to employ only union members. In most Australian states, university authorities collect from all enrolling students a membership fee for the university union, a self-governing body of students and staff that provides cafeteria services, and for the student union or representative council. This effectively makes membership of these bodies compulsory. In Australia, the existence of such arrangements would not be seen, de facto, to exclude an organization from the nonprofit sector. Generally, Australians would recognize such arrangements as the outcome of successful struggle by members of such associations to obtain advantages for their members. That, after all, was why the association was formed, voluntarily, in the past. Most members would belong anyway, even without the element of compulsion. In some cases, as with union closed shops and compulsory student union membership, these matters are still in contest today. As well, it is not clear in which sector a student union or a specialist medical college might be placed, if not the nonprofit sector. Owners of apartments are required to belong to a body corporate. Most pay their fee and ignore it; some actively involve themselves, voluntarily, to protect their own and their fellow owners’ amenity.

This complexity makes it extremely difficult to identify and thereby exclude organizations that have compulsory membership and thus do not fully meet this interpretation of the voluntary criterion. Their numbers are few.
The Nonprofit Sector and Australian Society

Nonprofit organizations have played and still play an important role in many parts of Australian life. They testify to a strong Australian tradition of collective action to solve problems and to enjoy shared enthusiasms. The breadth of this collective endeavor has been fostered by the prosperity enjoyed by many Australians over the past 150 years and by the reluctance of governments to involve themselves too directly in social affairs. Large numbers of private schools and nonprofit social service agencies testify to decades of religious conflict, now almost a century old and to an even older government propensity to fund private charitable endeavors rather than to begin its own. Large numbers of sporting associations and small community-based social service providers testify to the strength of popular movements to foster nonprofit associations in the late 19th and late 20th centuries, respectively.

As Australia moves towards a new millennium, some of these traditions are under threat. In many fields, collectively initiated activities are in decline. Many mutual and cooperative organizations have amalgamated and converted to, or been taken over by, for-profit companies; certain sports associations have been bought, or threatened, by large corporations, while many small for-profit businesses offer opportunities for people to engage in their enthusiasms without the necessity of involvement in a nonprofit association. In many fields of social provision, governments no longer exclusively subsidize nonprofits as providers. Traditional membership associations such as churches, unions, service clubs, scouts, and parent associations are declining in membership. Across the nation, the proportion of the population who volunteer is declining. Like other social institutions, Australia’s nonprofits face a major turning point. The picture is not entirely bleak. Australia’s greater ethnic diversity has generated new nonprofits; as younger members of Christian churches develop new ways of living their beliefs in the world, they initiate new, nonprofit endeavors; nonprofit schools started by various Christian and other religions are growing in number. Many new nonprofits are forming to give expression to the identities, enthusiasms and interests being constructed by a highly educated younger generation. The terms nonprofit sector, civil society and social capital are beginning to appear in educated discourse. But this sector-wide recognition will need to deepen and attract public acceptance if the nonprofit sector is not to suffer a slow decline.

There is, however, a dark side to nonprofits. Sometimes nonprofit organizations are formed to separate their members from the wider society, sometimes to denounce or object to other groups. Democratic politics requires a clash of organized interests, but it also requires that those interests exercise a degree of self-restraint. Some nonprofit associations ignore this and cause wide social division and conflict. In some fields, nonprofits have been criticized as encouraging elitism or as embodying an outmoded charity that stigmatizes and degrades its object. Yet no considered assessment could view these flaws as any more than a small part of a total picture.

Yet, in Australia there is no total picture. The absence of a clear concept of a nonprofit sector and a clear understanding of the contribution of nonprofits across many fields has hitherto not been a problem. Indeed, it may have assisted the growth of nonprofits overall. But over the past 20 years there have been two developments that suggest that this model of growth through indifference needs to change if the nonprofit sector is not to experience significant decline.
One change has been a growth in and a valuing of business enterprise, especially large scale corporate enterprise. In decades past, “business” was a less important descriptor than was “pastoralist,” “banker,” or “manufacturer.” Over the past 20 or so years, a clear and powerful concept of a business sector has emerged. Simultaneously, media coverage of business has increased dramatically and with it an assumption, argued especially by economists and financial journalists, that self-seeking, profit-making behavior is the essential source of well-being in a society and that competitive profit-seeking behavior should be encouraged across all fields of activity. This affects nonprofit organizations in many ways. At one level, it encourages the directors of large cooperatives and mutuals to look to convert them to for-profit firms (and enrich themselves in the process). At another level, it disparages selfless and unpaid activity of any kind (unless within the family). It creates a climate where entrepreneurs seek profits in fields where people had previously satisfied their collective needs through collaboration. In so doing, entrepreneurs convert people from citizens, neighbors or enthusiasts into consumers.

In addition, there has been a significant change in perceptions of the role of government. This has in turn engendered a considerable transformation of government. Governments are frequently compared unfavorably to businesses. Where firms can provide services, it is widely accepted that governments should withdraw. It is argued that governments should encourage competition between firms; where subsidies are still required, these should be allocated competitively. This transformation of government is impacting upon relations between governments and the nonprofit sector. Tension between the two sectors is increasing. Although government ministers still invoke the image of partnership between governments and nonprofit organizations, their officials decry its possibility. Relationships in most government funding programs are being restructured to resemble quasi-markets. Governments either subsidize consumer demand via quasi-voucher arrangements or try to create markets where the government is the purchaser and private organizations the provider of services. Any preference previously given to nonprofit organizations over for-profits is being withdrawn. Nonprofit organizations find that not only are they told to compete for funds along with for-profits, but they are probably not as efficient and should grow more like business or die. The partnership between nonprofits and governments that characterized the 19th and much of 20th century Australia is being discarded. Public discourse is entirely devoted to discussion of business and government, usually boosting the former and denigrating the latter.

In the face of this important attitudinal transformation, it is highly likely that the division of nonprofit organizations into different fields and the absence of a concept of a third or nonprofit sector to balance and challenge both business and government will become a burden to nonprofits themselves and to society. It becomes important that members of nonprofits in the various fields should operate as a single sector and with a single voice proclaim the virtues of voluntary activity, the contribution of nonprofits and the potential of collective action to redress problems and meet needs.

**Conclusion**

Nonprofit organizations have been and are still an important part of Australian society. In many fields they are significant providers of services; they express people’s interests, their heritage, their identity and their values; they testify to people’s ability to work together without coercion or
financial reward. In so doing they encourage such behavior and thus contribute to social capital. Australian society has encouraged the growth of nonprofit organizations and, in the long run, has benefited from it.

By comparison with most other countries Australia has a large nonprofit sector. Can the size and shape of Australia’s nonprofit sector be explained by existing theories of nonprofit organizations? The answer is, partly, many of the major theories of nonprofit organizations are developed within economics. They posit a model of for-profit firms competing in efficient markets as the norm and explain both governments and nonprofit organizations as a response to market failure. These theories point to important dimensions in the relationship between nonprofit organizations and their environment, but they are too simple to account adequately for the varied paths by which any society acquired the range of nonprofit organizations which it has today. When a number of these theories were tested against Australian nonprofit history, they were mostly found wanting (Lyons, 1993b). They were either contradicted by, or were unable to explain, the way nonprofit organizations developed in various parts of the Australian economy. Estelle James’s (1987) emphasis on the importance of social heterogeneity and the role of religion as a source of nonprofit capital was found to have the best explanatory power, but it fitted only part of the story.

Salamon and Anheier (1996) have proposed a social origins theory. This theory takes issue with the conventional view that state and nonprofit sector are alternative ways of responding to need. According to the conventional view, strong welfare states will have weak nonprofit sectors and vice-versa. Salamon and Anheier argue that while this conventional relationship holds in some cases, under certain circumstances a strong welfare state regime can have a strong nonprofit sector (as in Germany) and a weak welfare state, a small nonprofit sector (as in Japan). The relative strength of either sector is a consequence of the interaction of various social forces in the process of that society’s development as a modern nation.

It is relatively easy to “place” Australia in this theory. Along with the United States and the United Kingdom, Australia fits the so-called liberal model of a relatively small welfare state and a large nonprofit sector. The problem with the social origins theory, as with most explanations for the nonprofit sector, is that it focuses attention only (or largely) on levels of state social expenditure and the contribution of nonprofits to health, education and social services. The theory neither seeks to measure nor to explain the extent of mutual organizations, whether sporting or social clubs or interests groups. These constitute another side of the nonprofit sector, the side that tends to take the foreground in discussion of “civil society,” just as the so-called public-serving nonprofits are more prominent in discussions of “nonprofit sector” (Lyons, 1996). Just as explanations for the configuration of for-profit firms in an economy are multi-faceted, so too will be an effective explanation for the size and particular configuration of any country’s nonprofit sector. Such a fuller explanation will be capable of being described as a “social origins” theory but it will be more complex than any current formulation.
References


