

Dear Sir/Madam,

**RESPONSE TO PRODUCTIVITY COMMISSION ISSUES PAPER ENTITLED  
'CONTRIBUTION OF THE NOT FOR PROFIT SECTOR'**

This response provides answers to the following questions from the Productivity Commission (PC) Issues Paper entitled 'Contribution of the Not for Profit Sector'. These answers address the research goals the PC suggests in the light of its terms of reference.

**Q. Comments are invited on the Commission's proposed approach of adopting a broad view of the sector for the purposes of assessing its contribution and narrowing the study's focus to consider the specific policy and capacity issues raised in the terms of reference.**

**A.** The terms of reference are very wide but the proposed PC research focus is very narrow. This focus should be widened and briefly define the fund management and related legal structures, including fund ownership, management and endowment expectations, of all key organisation types in the non profit sector, especially the large and powerful ones. Comment should also be made on how these non profit structures are different from or relate to common commercial structures. This is necessary to understand how to 'optimise the sector's contribution' as the PC terms of reference require. The latter also require the PC 'to examine recent changes in the relationships between government, business and community organizations and whether there is scope to enhance these relationships so as to improve outcomes delivered by the sector'. This requirement cannot be met without the broad approach recommended above and below to meet the PC terms of reference and goals. The entire non-profit sector particularly requires clarification in order to support the G20 London Summit Leaders Statement and Declaration on Strengthening the Financial Systems (2.4.09) as fast, effectively and flexibly as possible. Carbon pollution reduction and offset development requirements also require particular attention in this context. The Senate Standing Committee on Economics report entitled 'Disclosure Regimes for Charities and Not for Profit Organizations' (2008) requires related consideration.

Assuming that the government pays the PC for its work, its terms of reference must be centrally and effectively addressed. They are very broad but the PC apparently seeks to narrow them when it states that 'Measurement of the sector's contribution will encompass all those organizations usually included within the sector (*and will follow convention by excluding organizations which can distribute surpluses back to members such as body corporate and financial and insurance mutuals*)(p. 12)'. The convention fails to meet the PC aims or terms of reference. It is too narrow and maintains the normal ignorance of key funding and related legal ownership, management and endowment structures. These must be understood for effective measurement and comparison of an organization's capacity to meet the PC identified goals of *service delivery, advocacy, connecting the community and enhancing the community endowment*. (One assumes the concepts of 'management' and 'endowment' may include 'service delivery' and/or the provision of money in pension or lump sum form, or related benefits and that 'advocacy' and 'connecting the community' may also be considered in this context of community service provision and endowment.)

The NSW Council on Social Services (NCOSS 2008) report entitled 'Community Connexions, Addressing the Information and Communication Technology (ICT) Needs of the NSW Non-government Welfare Organizations Human Services sector requires early consideration in the above context and in the light of the recent report of the National Health and Hospitals Reform Commission (NHHRC 2009) entitled 'A Healthier Future for All Australians' which stresses the importance of the development of an effective electronic patient record, as President Obama also did in the US recently. This is a big project which gains its urgency from the current international financial crisis. It is necessary to maximise the benefits of such development for patients and communities rather than to see big financial or other commercial interests suited, to the detriment of others. A related discussion of health and the national human rights consultation process is attached because both are relevant to the PC goal of communication and advocacy.

The objects of the Radiocommunications Act (1992) should also have focused all national broadband inquiries onto the ICT needs for educational and entertainment media content more effectively than was the case, because the communications choices people make are driven by the service content available, not only by the cost of its carriage. The act seeks management of the radiofrequency spectrum to maximise the overall public benefit by ensuring efficient allocation and use of the spectrum. It also seeks provision of the spectrum for use by agencies involved in the defence or national security of Australia, law enforcement, the provision of emergency services, or for use by other public or community services. Government and the current PC inquiry should assist all industries and communities to participate in broader, more open, regional planning to identify the content necessary for more effective management and skills development, as well as entertainment product, to achieve the diverse goals of sustainable development as broadly as possible. The 'education revolution' is ideally addressed in a related planning context.

The PC apparently seeks to focus on case studies in the community and social services sector, which get their primary funds through petitioning the government (p. 11). In confining the study to this comparatively impoverished part of the non profit sector, the PC would neglect major opportunities to identify and serve many related community aims more broadly. The poorest community members, those who represent them as petitioners to government and many others, may be serving themselves very poorly by not being able to understand the non profit or profit driven undertakings of many potentially related larger organizations with much greater knowledge, power and money than the small ones have. Examining the powerful as well as the comparatively powerless is necessary to identify more mutually or commonly productive and wide-ranging links which may be made between stakeholders in non profit organizations and stockholders in profit driven modes of operation, to serve all broader organizational and community goals better. This is particularly true in housing and the recent White Paper on Homelessness entitled 'The Road Home' (2009) specifically encourages closer collaboration between specialist homelessness services and mainstream services. People found it comparatively easy to house themselves in the US because of lax borrowing requirements. Default on these was then a major cause of the international financial crisis. Housing requires close attention and strategies for more affordable and greener housing are ideally addressed together.

The PC states that ‘the defining characteristic of a non profit organization is that it does not distribute profits to members’ (p. 7). This suggests that the non profit organizational structure can be usefully compared to the commercial organizational structure which distributes profits (or losses) to its stockholders. Many non profit organizations may be funded or have their funding augmented by government, as well as provided by members or other contributors. In this case a stakeholder management model, in which the fund is managed to maximise the interests of the stakeholders, (i.e. all those who have an interest in its effective management) is probably necessary, instead of the stockholder management model which is normally applied in profit driven organizations. The key stakeholders are ideally those who contributed to the fund and so may appear to own it, and those for whose benefit the fund was established. One assumes the latter are the ideal beneficiaries.

It seems from Table 2 entitled ‘Activities usually included within the not for profit sector’ (p. 10), that such non profit activities may be ideally linked to broader service categories of the Australian and New Zealand Standard Industrial Classification (ANZSIC) System. In contrast, the current National Waste Policy inquiry paper of the Department of the Environment, Waste, Heritage and the Arts, suggests that activities related to the product development chain, which may also involve recycling, are mainly related to the ANZSIC manufacturing categories. (It should be noted, however, that ANZSIC defines construction as a service, even if a tangible product such as a house is built, and related materials recycling takes place). Activities related to ANZSIC primary production categories may be carried out in regional communities and environments which may also greatly benefit from effectively planned non profit sector activity in future, as a result of national or regional strategies to protect the natural environment. This includes protection or restoration of the quality of air, land, water and all their biodiversity. Such non profit or profit driven strategies are now ideally identified and prioritized with partners in government and industry, and in related regional environments to assist carbon pollution reduction and offset development to enhance environments, focused on the poorest.

Ideally, the PC research particularly helps to align the services of Finance and insurance and Property and business services so that all consumers and communities are better served. The key funding, legal and related ownership, management and endowment structures discussed on pages 8, 9 and 11 are ideally investigated in this national context. Consideration should include the key funding, ownership, management and endowment structures related to foundations and to industry superannuation funds which appear left out. Box 1 entitled ‘How big is the not for profit sector’ (p.8) lists a range of non-profit organizational types but I have little or no understanding of many key distinguishing features and related strengths and weaknesses of these in terms of their capacity for *service, advocacy, connecting the community or enhancing its endowment*. The Bill and Melinda Gates Foundation is perhaps the largest charity in the world, and charitable ‘foundations’ are common. Why is this concept missing from the list on page 8? Industry superannuation funds, which are advertised as non profit structures, are not on the p. 8 list either, yet their size and potentially positive national and international influence is huge. These investment forms superficially appear to have the competitive potential to out-perform and so reform more secretive, earlier and often dysfunctional investment types in order to provide greener, more stable and more affordable services and endowments.

Ideally, the PC provides a broad brush understanding of the whole of the non profit sector in order to assess whether some structures may serve community goals better than others. For example, the attached submission to the current Victorian Competition and Efficiency Commission Inquiry into a Sustainable Future for Australia discusses a related prescribed private or public funds non-profit management model, in the Australian Treasury paper entitled Improving the Integrity of Prescribed Private Funds. A PPF is described as a trust to which businesses, families and individuals can make tax deductible donations for the purposes of disbursing funds to a range of deductible gift recipients. A PPF cannot distribute to another PPF or to a public ancillary fund (PAF). The PAF is a common structure for community and fundraising foundations. With the exception that they need not seek contributions from the public, and control requirements, PPFs have the same characteristics as PAFs and accordingly must comply with all the other requirements of a public fund. Such Treasury approved financial structures appear to deserve consideration by industry superannuation fund managers, governments and others, to support projects aimed at improving social welfare and achieving a low carbon future in which biodiversity is also valued more highly. The Senate report on 'Disclosure Regimes for Charities and Not for Profit Organizations' (2008), which I have not read, may have other suggestions.

Commercial and other voluntary associations have existed since feudal times to assist the expansion of primary, manufacturing or service businesses and for associated family or community *service delivery, advocacy, connexion or endowment*. Some of these associations were later made compulsory and supported by statute. Risk management services, (usually in the form of insurance), which ideally guard a specified individual, organization or community against specified risks, may be related investments. In the context of the broad study recommended above, a clear distinction is necessary between the pool of money which may be in a 'fund', 'trust' or 'foundation' and the ownership, management and endowment assumptions which legally support these or similar pools of money. These definitions and distinctions are important because the legally designated owner of funds may or may not be their manager, which may also have consequences for how well the funds are managed for the assumed 'beneficiaries' or related 'stakeholders'.

According to the Treasury paper entitled 'Improving the Integrity of Prescribed Private Funds (PPFs)' a 'trust' is a pool or stock of assets, as distinct from an institution. In Barron's Dictionary of Insurance Terms, a 'trust' is described as 'a legal entity that provides for ownership of property by one person, for the benefit of another' (Rubin, 1991). A 'foundation' is a common term in charitable discourse, which is ideally reflected in financial discourse, to prevent confusion and recourse to costly legal battles. However, the term is not defined in Edna Carew's 'The Language of Money' or in Barron's Dictionary. One assumes courts may rule in regard to whom or what a foundation serves. This may not be good enough if management needs clear and consistent definitions for effective organizational functioning from scientific rather than pre-scientific perspectives.

Good scheme design, supported by plain language and open operation for clear comparison and accountability may be major protections for any community and the individuals which make it up, whether the organization which ideally represents them is huge or small. Those who feel powerless but who call for this may serve themselves as well as all deserving others because the process can also encourage major reduction

in costs which result from dysfunctional financial and related provision at the highest levels of operation. On the other hand, to focus PC study only on those most disadvantaged in society runs the risk of alienating some employed taxpayers who may regard some non profit clients as 'undeserving' of dependence on the taxes others have had to pay. In my view, the price of housing and renting for all low income earners makes 'social housing' an understandable source of potential resentment from working people paying high rents who cannot afford a house. The PC capacity to understand and convey structures which would reduce housing costs for all lower income people, would be very beneficial because the housing system currently seems primarily designed to serve investors rather than people needing homes. More effective housing funding systems need to be designed to promote greener and more affordable housing. The attached article entitled 'An ideal trust structure for the beneficiaries: An example from an Australian superannuation fund and a bank', is a tentative exploration of one aspect of how this improvement might be achieved.

In summary, the PC study should follow the broad terms of reference given to it and thereby assist the creation of many better managed institutions, whether these are non profit or profit driven. The study goals are outlined in the PC terms of reference and in the related goals of assisting the achievement of the non profit sector aims of community service delivery, advocacy, connection and enhancement of the community endowment. The range of non profit funding, legal ownership and related management and endowment designs should be studied to identify potential improvements which could be made across many related national and regional boards. The examination is ideally designed to improve general understanding and identification of apparently appropriate linkages between non profit organizations, government and any apparently related commercial organizations which define stockholders or others as their main beneficiaries. In general, the recommended research approach is designed to promote reform of many organizations so they achieve all nominated national, organizational and related personal goals better.

**Q. Comments are invited on whether the findings and recommendations of previous inquiries remain relevant to the operations of the not for profit sector. Of those that continue to be relevant and have not been acted on by government, which are the most important for improving the efficiency and effectiveness of the sector?**

**A.** It is useful and interesting to be provided with the recommendations from previous inquiries and to see that many of them which have not been implemented relate to funding and taxation. I am not familiar with the research of the Australian Bureau of Statistics (ABS) on networks of 'mutual support, reciprocity and trust', and cannot easily conceptualise how such terms might relate to non profit or commercial activity. On the other hand, the concepts *community service delivery, advocacy, connecting the community or enhancing the community endowment* superficially make clear and broad descriptive sense regarding any activities carried out on a non profit or commercial basis. These terms also appear to lend themselves to reasonably effective measurement, whereas the terms 'mutual support, reciprocity and trust' superficially appear more subjective and difficult to measure with consistent reliability. (Regard often depends on our knowledge.)

To support the research direction outlined earlier and to deal with related funding and taxation issues which have been raised by recent inquiries, a strong focus on ‘the UK Government’s Office of the Third Sector approach to Measuring Social Value Project’, is recommended. This is undertaken by a consortium of private sector and not for profit organizations (p. 19). The purpose of the project is to ‘.....place financial worth on the social value that an organisation creates through its activities, outputs and outcomes (UK Government 2008). A goal of the project is to increase the evidence base of the impact of the not for profit sector. In the light of a rather superficial but respectful knowledge of recent UK local government reforms, and based only on a superficial reading of research options on page 19, I recommend serious consideration of the UK approach to achieve all objectives. Government should allocate its funding wherever it gets best value for money for the taxpayers. The UK approach appears designed to shed light on this. Its design also appears to encourage people from the non profit and profit sectors to understand and learn from each other. Australia operates in an international market, so commonalities between UK and Australian community development may have additional advantages, particularly in regard to future investment in sustainable development and research. This may also avoid US research directions which do not recognize the potential of good government and which have thereby undermined it for decades, to support their own commercial interests to the detriment of American citizens regarding health care and other community matters.

**Q. Comments are invited on the concepts of ‘service delivery, advocacy, connecting the community and enhancing the community endowment’ as a means of categorizing the roles and modalities of contribution to the sector.**

**A.** The concepts of service delivery, advocacy, connecting the community and enhancing the community endowment seem very good because they appear to be comparatively clear, comprehensive and measurable functions or activities in relation to commercial as well as non profit organizations. This ideally allows vital comparative knowledge to be provided to non profit stakeholders, commercial stockholders, governments, communities and individuals. I do not understand ‘modalities’. I think the ANZSIC classifications should drive research which also takes account of the funding, legal and related management and endowment structures which also underpin service provision and which were alluded to in earlier discussion. As also indicated earlier, I assume that the concepts of ‘management’ and ‘endowment’ may include ‘service delivery’ and/or the provision of money in pension or lump sum form, or other benefits and that ‘advocacy’ and ‘connecting the community’ may also be considered in this context of community service provision and endowment.

**Q. Do you agree that a conceptual framework is important?**

**A.** I strongly agree. Without effective research conceptualisation and related categories for study, the research product may be worthless, limited in scope and/or understanding, unreliable, or otherwise limited in its potential to achieve the goals and terms of reference.

**Q. Do you have any suggestions on the key elements of the framework? Are there any specific issues in measuring the contribution of Australian based international development and aid organizations?**

A. It is important to approach research with a well informed historical, geographical and related structural understanding to achieve the aims which have been discussed earlier. Questionnaire research, if undertaken by a broadly and highly expert organization such as the ABS may be extremely good. However, there has been an explosion of comparatively mindless questionnaire research since the computer became popular because it has allowed one person to ask another questions which may be insufficiently thought through, before turning the answers into numbers and calling the result scientific. This academic or commercial research, which appears to be the dominant form in the US, is often poorly designed because it is not usually informed by much historical, cultural, economic or related institutional understanding of the comparative context of the communities or individuals to whom the questions have been posed. Such research often also takes answers at face value, as if each respondent perfectly understands and values the questions, in an identity of interest with the perspective of the questioner, and also answers them truthfully. The naïve attitude which drives such questionnaire research may also be very controlling of respondents and so suspect. Ironically, it often also treats issues for consideration from a perspective which may devalue genuine scientific expertise in preference for the popular view, as if, for example, the answer to whether a bridge is safe can be arrived at by polling the thousands of people who cross it. Most also seemed happy with the general international financial performance until it suddenly collapsed.

Learning from the people most directly knowledgeable about matters being researched and reporting on the findings is always a good idea. However, the arm's length questionnaire formulation may be comparatively ignorant. Especially when the questionnaire is long, its results may be meagre and therefore comparatively expensively uninformative as well as unreliable. Alternatively, if one addresses people face to face, one should not normally transcribe the tape recorded results of talking to each of them into a computer, as if their every word is priceless, in order to analyse the results of this later, using one of many forms of computer software now available for this. This bizarre process, which universities appear to have universally adopted in recent years, massively reduces the number of people one can talk to, learn from and report on because it is so slow and expensive. It is also possible that one or more of the research team will develop occupational overuse syndrome or a related medical problem and will need to access workers' compensation, thereby putting the total research project in peril indefinitely and necessitating additional expenditure on researcher rehabilitation and support equipment.

The sociologist Foucault would perhaps have been sceptical about the utility for the general population of this recommended national, regional, and organisationally coordinated quality management approach across health, welfare and related service provision. The historical theme uniting his studies of power and knowledge is that the industrial revolution and expansion of capitalism and the state promoted demographic studies (studies of populations) and physiological studies (studies of the body). In this process people may primarily be seen as 'subjects' (objects might be a better word) who are classified according to a variety of professional interests, and then counted and graded, in regard to whether they are comparatively scarce or numerous, rich or poor, healthy or sick, submissive or rebellious, improving or worsening in status, etc. As a result of study and grading these populations and bodies, the researcher will also find that the 'subjects' are comparatively more or less useful to the professional. They will be found, for example, to be more or less amenable to profitable investment, and more

or less able to be profitably treated and trained. Foucault provides valuable insights but fails to recognize that science is often captured by prescientific financial and legal modes of production. Democratic science learns from people and involves them as well as teaching how to improve environments to consider future generations. Engage with power to reform it.

**Q. Comments are invited on what factors are impeding the spread of knowledge among Australian not for profit organizations regarding how well they deliver their outcomes and key drivers of their efficiency and effectiveness in doing so. Similarly, the Commission invites comment on what factors facilitate the spread of such knowledge and how these might be enhanced.**

**A.** According to the PC, economic regulations ‘intervene directly in market decisions such as pricing, competition, market entry or exit’. Social regulations ‘protect public interests such as health, safety, the environment and social cohesion.’ (PC 2008, p.5). This division is problematic, because economic activity is undertaken with the social aim of supporting life and its associations. This matters because far too much secretive activity is approved in law and court practices are also tightly rule bound, unlike scientific endeavour, which openly investigates the world by judging and testing, in order to provide the evidence for improvement. One wonders whether the government sees the carbon pollution reduction scheme as a preparation for economic or social legislation. It seems unlikely that an effective scientific approach to whether the legislation is reducing carbon pollution will be able to be undertaken if the legislation is treated as economic.

When Hilmer wrote his report on national competition policy which led to the passing of the Competition Policy Reform Act (1995) he defined competition as, ‘striving or potential striving for related objects’ (1993, p.2). This should have led naturally to management partnerships using triple bottom line accounting – economic, social and environmental - for sustainable development. However, the Trade Practices Act (TPA) has no useful definition of competition and is wedded to outdated propositions that it is always for money and that the greatest number of market players provides the ideal conditions for the contest, which it is supposed can only do everybody good. In this paradigm, the consumer is conceived as another trader, is ignored or treated in a separate section. This paradigm is dysfunctional for *community service delivery, advocacy, connecting the community or enhancing the community endowment*. (One recalls Pope’s cartoon, ‘The invisible hand of the market’ where a poor woman is welcomed to a global auction by a suited man asking if she is with the meat producers or carbon traders.) The rich rule.

An attached submission accordingly responds to the Treasury paper entitled ‘An Australian consumer law: Fair markets – confident consumers’ (09) and argues laws should have clear objects and definitions of key terms which are as close as is reasonably expected to those in a dictionary. It also argues the TPA should be repealed along with associated outdated legislation. National competition policy ideally requires private and public sector service providers to compete on a national level playing field of standards which ideally apply equally to all operations. Separation of national policy from supporting service management ideally allows the outcomes of all competing service managers to be judged in regard to how comparatively effectively their management achieves the mission or standards which have been agreed more



broadly. The competition policy principles Hilmer and Australian governments envisaged should guide a new Competition Act under which the more sensible elements of the TPA and related outdated legislation are then incorporated in the form of updated regulations, codes of practice or guidance notes, as appropriate. This was the approach taken to the plethora of outdated, prescriptive and inconsistent safety legislation when new state occupational health and safety acts were introduced throughout Australia in the 1980s. It is also necessary to understand insurance. Risk is not ideally managed purely by financial measures which pass it on to others at a price and thereby multiply the risks and costs until the inevitable financial crash. Harm prevention and rehabilitation of environments require consideration.

Because of its broad development importance and strong focus on improving the plight of the poor, who are also those who are usually most disadvantaged in most other ways, the Declaration of Alma-Ata from the World Health Organization (WHO) International Conference on Primary Health Care in 1978 needs to be implemented urgently. Such implementation must be designed to reach the widest possible community. Otherwise the greatest benefits of any expenditure may be expropriated by those professional occupational groups which have vested interests in defining the supposedly disadvantaged in need of their protection and silencing all who challenge them. This problem of professional capture of expenditure, which privileges the wealthy and may ignore the situation and views of the poor, is a great burden for the poor to bear and may be a major cause of conflict, as it was in Iran. The appropriate forward direction is discussed in the response to the NHHRC report attached. The recommended route is also necessary for freer international markets and attaining Millennium Development Goals.

Current definitions of financial products and services in related law are driven more by the interests of financial service providers rather than the interests of most small producers, consumers, investors, taxpayers or communities. Financial trades are far from bargains struck on a level playing field of equal information and control. A clearer, more concise, more comprehensive, cost-effective and less biased definition of a financial product or service than the one apparently outlined in the Corporations Act 2001 is therefore offered, to reflect the industry key functions which were also discussed earlier. It is:

- A financial product or service is a facility or activity which aims to assist trade through assisting:
- savings and or/deposit custody
- borrowing and/or lending
- investment and/or returns on investment
- insurance, re-insurance or related hedging

Current financial and legal behaviour often rests on the accretion of self interested feudal assumptions and expectations rather than more open, broadly scientific approaches. The antidote is clarity and open comparison, which lawyers, financiers and others often hinder.

The best way forward in Australia to achieve sustainable development appears to be through generally improved management and especially the management of industry superannuation funds. These are non profit, cost-cutting vehicles which can be further

designed to outperform the opposition and also produce a much greener society through more open, stable, sensibly designed investments. Such investments are ideally openly planned and coordinated with government programs to achieve social and environmental goals through triple bottom line accounting. Cut many dysfunctional feudal costs, to make investment even more attractive. Democracy in Australia is not synonymous with capitalism and competition is not a dirty word. In this context I would also be grateful if you would consider my recent submission to the PC Inquiry into Director and Executive Remuneration which I sent previously along with other submissions on policy direction. If you ever want a dissenting voice, I'm your woman. (I can beat Michael Kirby every time but he has a much more powerful advertising machine and nobody has ever heard of me.)

Thank you for the opportunity to make this submission.

Yours truly

Carol O'Donnell,