



19 May 2009

Not for Profit Sector

Productivity Commission

GPO Box 1428

Canberra ACT 2601

ACL submission to the Productivity Commission's review of the contribution of the Not for Profit Sector

ACL welcomes the opportunity to contribute to the Productivity Commission's review into the contribution of the not for profit sector. Our submission focuses on the following terms of reference:

- Consider options for improving the efficient and effective delivery of government funded services by community organisations, including improved funding, contractual and reporting arrangements with government, while having regard to the need for transparency and accountability; and
- Examine the extent to which tax exemptions accessed by the commercial operations of not-for profit organisations may affect the competitive neutrality of the market.

Background

The Australian Government Procurement Policy Framework, in particular the Commonwealth Procurement Guidelines issued by the Department of Finance and Deregulation (Finance), determines the procurement process for government funded services.

ACL notes that value for money is the core principle underpinning Australian Government procurement and that this objective is enhanced by:

- a. encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
- b. promoting the use of resources in an efficient, effective and ethical manner; and
- c. making decisions in an accountable and transparent manner.

One key plank in ensuring this objective is the Competitive Neutrality framework. ACL contends that the coverage of this framework requires review as presently the framework does not extend to the commercial activities of charities and not for profit organisations in competing for Government tenders. Over the past ten years, and increasingly so within the past five years, charities and not for profit organisations have emerged as major competitors for Government contracts for the delivery of employment services and language and literacy programs.

Introduction

ACL is a leader in the provision of English language and settlement services. It is a wholly owned subsidiary of Navitas Ltd, an ASX listed company and is Australia's largest private sector provider of English language training.

ACL delivers a number of Commonwealth funded training and settlement programs where contracts are awarded following a competitive tender process where value for money, including price is a major factor. A number of charities and not for profit organisations are also significant providers in this space.

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ACL's interest relates to the public policy issues applying to commercial activities undertaken by charities and not for profit organisations.

To determine the pricing advantages enjoyed by charitable organisations in competitive tenders, ACL commissioned Deloitte to review the procedural fairness considerations for upcoming tenders for Commonwealth funded training and settlement programs. A copy of their report is attached.

The main issue for ACL is that the significant cost advantages enjoyed by charitable institutions through public subsidisation of commercial operations via tax and other exemptions, place non-charitable institutions at an equivalent disadvantage in submitting a price-competitive bid. Currently, in competing for Government tenders, charitable providers are not required to adhere to the principles of competitive neutrality that bind government agencies and other public institutions that rely on a mix of public and private funding, for example Universities or State or Commonwealth owned agencies.

The potential cost advantages are very material and estimated by Deloitte at between 10.4% and 14.2% which amounts to millions of dollars when applied to national training programs.

ACL has no issue with charitable and not for profit organisations pursuing commercial activity to fund benevolent activities, and indeed partners with a charitable organisation as part of its current delivery of some programs. However, it is ACL's contention that public sector tenders should incorporate provisions which aim to create competitive neutrality between private, public sector, charitable and not for profit providers competing for public service contracts, in line with clear best practice standards of public policy and procedural fairness.

Australia's Future Tax System (The Henry Review)

We understand that the tax benefits currently enjoyed by the commercial activities of charities and not for profit organisations will be examined by the Henry Review. However our request for changes to the Competitive Neutrality guidelines stands irrespective of the outcome of the Henry Review.

Improving the efficient and effective delivery of government funded services by community organisations

With a view to improve the value for money to Government in the delivery of its services procured through public tenders, ACL has previously made a similar submission to the recent Senate Inquiry into disclosure regimes for charities and not for profit organisations. We have also written in similar terms to the Department of Immigration and Citizenship, the Department of Education, Employment and Workplace and the Department of Finance.

Disclosure regimes

In December 2008 the Senate Standing Committee on Economics issued a report on charity regulation with a number of recommendations relating to improved regulatory systems for charities and not for profit organisations. These recommendations, if implemented, will result in increased transparency in the non profit sector but still leave the shortcomings in the Commonwealth's procurement process unaddressed.

Recommended changes to the competitive neutrality guidelines

In the interests of clear best practice standards of public policy and procedural fairness and to ensure the Commonwealth's objective of value for money is realised, we recommend a review to ensure competitive neutrality between private, public sector, charitable and not for profit providers competing for public service contracts.



The Deloitte's report identifies clear and justifiable arguments in support of tenders incorporating drafting principles which;

1. Take into account the financial advantage conferred by charitable status in 'value for money' considerations or similar provisions;
2. Take into account the use of non paid volunteers for commercial activities by some charities in contrast with other providers (public and private) use of paid employees;
3. Take into account the primary purpose of organisations bidding for contracts in 'suitability of service' considerations or similar provisions; and
4. Provide an effective and robust process for administrative appeal of tender award decisions on legal, procedural or factual grounds.

ACL is available to participate in any Productivity Commission policy round tables that might consider these issues in more detail.

Yours sincerely

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Helen Zimmerman
Group Managing Director

Attachment: Deloitte's Review of procedural fairness considerations for the upcoming tender process for Commonwealth funded training and settlement programs