



AUSTRALIAN EVANGELICAL ALLIANCE

and

MISSIONS INTERLINK

**Joint Submission to the Productivity
Commission's Study into the
"Contribution of the Not for Profit Sector"**

May 2009

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Executive Summary

*'The voluntary sector, in all its diversity, has in common both some distinctive forms of governance and a set of values which are not determined by the financial bottom line or by an electoral mandate. These values include not just what you do, but how you do it. Voluntary organisations also have a set of distinctive relationships with their different stakeholders: those who fund them, use their services, and work in or with them.'*¹

There is a need for NFP organisation to give an account of its activities and achievements in relation to its mission and values to a wider audience, and to show how particular projects have contributed to this, in order to maintain public support for its cause.

A consistent theme across the sector is the inadequacy of resources available to organisations. Making the best possible use of resources to meet the organisation's core objectives should therefore be the sector's equivalent of maximising value for shareholders in the business sector.

There is also a growing recognition that NFP organisations 'add value' to our society in general and also into the workplace, for example in areas where they may be competing for contracts against commercial or public sector providers. The added value that NFP organisations provide comes from their experience 'on the ground'; it is as much about the way that they work as the results they achieve.

The Treasury in the UK, for example, has acknowledged the following as features of NFP organisations, which, at their best, can add value:

- Specialist knowledge, experience and/or skills;
- Particular ways of involving people in service delivery;
- Independence from existing and past structures or models of service;
- Access to the wider community without institutional baggage; and
- Freedom and flexibility from institutional pressures.²

¹ Commission on the Future of the Voluntary Sector, (Deakin Commission), 1996, *Meeting the Challenge of Change, Voluntary Action into the 21st Century*, NCVO p.101

² HM Treasury [UK], 2002, *The Role of the Voluntary and Community Sector in Service Delivery: A cross-cutting Review*

Supporting Organisations

Australian Evangelical Alliance Inc

The Australian Evangelical Alliance Inc ABN 54 056 007 820 is a fellowship of well over 600 Australian churches, organisations and individuals. It is a catalyst for Christian unity, cooperation and mission across the Christian community within Australia. Its mission is to serve the Christian community by:

- Linking people and networks in strategic partnerships;
- Stimulating and communicating Biblical thinking in church and society about contemporary issues;
- Providing services to optimise the use of resources;
- Encouraging and supporting innovative ministries; and
- Giving voice to Christian concerns.

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Missions Interlink

Missions Interlink is the Missions Commission of the Australian Evangelical Alliance. It constitutes a network of 130+ mission agencies which exist to link, support and train those who are interested in cross-cultural mission. This means linking mission agencies, training providers (colleges), service agencies, individuals and churches together in order to help advance the work of global mission. Missions Interlink is not a mission agency and it doesn't send anyone overseas. It is the peak body representing cross-cultural mission organisations within Australia.

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1. 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.

The Study Is Too Narrow

We are disappointed to see the focus is so narrowly concentrated on social services. This appears to conform to a stereotypical and uniformed attitude that exists in government and bureaucratic circles that "the not for profit sector = social services". Other areas of importance will be largely omitted from this study as it is currently scoped. The resulting study will therefore not be a study of the not for profit sector per se, rather it will be a study limited to the social welfare section of the sector only, and more specifically those organisations that have government contracts. The Productivity Commission's report will, therefore, for all intents and purposes, be self-serving, ultimately of little use, and dare we say it a waste of taxpayer's money.

While the government's focus is necessarily on issues of efficiency and effectiveness of funded service providers, a focus on that alone will grossly underestimate the contribution made by the sector to the well being of the wider Australian community and will lessen the validity, usefulness, and impact of the overall Productivity Commission's research study. Therefore some attention needs to be placed on the measurement of the broader contribution of the sector.

Also it should be noted in this instance that the stated broad-brush of member groups ignores the morphing of Wesley Central Mission, Salvation Army and some others into large 'charities' from originally being Christian organizations, while lesser Christian-based not-for-profits, namely 'missions' have been overlooked. We would point out the fact that foundational to mission is the appropriate expression of 'the love of God to fellow human beings.' Hence we make this appeal as a NFP organization for our views to be included in the Productivity Commission purview.

Our Society

A Pluralistic Society?

Dr Geoff Tunnicliffe, the Director of World Evangelical Alliance, visited Australia in June 2008. During his visit, he made a comment: that society should not be defined as secular, but rather as

pluralistic. Pluralism means that all people have a place at the table. It is not a secular table; it is a pluralistic table, and therefore no one party can claim to have absolute control of the table. ³

Dr Tunnicliffe also stated that as we live in a world of cultural differences, each part of our pluralistic society needed to be involved in building relationships across those cultural differences. He summarised it in a simple six step process:

1. You can't serve and help someone you don't understand.
2. You can't understand others until you have learned from them.
3. You can't learn important information from someone until there is trust in the relationship.
4. To build trust, others must know that you accept and value them as people.
5. Before you can communicate acceptance, people must experience your openness – your ability to welcome them into your presence.
6. Openness is being willing to step out of your comfort zone to initiate and sustain relationships in a world of cultural differences.

In 2005 British Home Office Minister Fiona Mactaggart said that “mutual understanding is important for building strong, active communities in which citizens have the power to shape their future. By furthering our knowledge of the many faiths in our diverse society, this...contributes to that goal”. ⁴

We believe that it is essential for all sectors within our society to recognise the value of each other and their potential input into the future here in Australia. That can include both the multicultural component of our society, as well as Governments, Business and Third Sector all recognising the value of each other in their input into our society.

The Needs Of Our Society

We are encouraged to see that the consultation papers talk very much about the social inclusion program and yet disappointed to see that they fail to recognise that the promotion of the spiritual dimension of the human person is just as important a part of our society as promoting the material needs of the poor, the physical needs of the sick or the aesthetic needs of the culturally deprived.

³ Tom Slater, “Church and Society: Challenging the secularist claim” Australian Evangelical Alliance Magazine “Working Together” Issue 3 2008, page 1

⁴ Alan Nichols, “Issues Facing Australian Society and Churches” Australian Evangelical Alliance Magazine “Working Together” Issue 1 2005, page 4

It is important to recognise what are basic human needs. The following represents some areas of human needs that do need to be met as well as some ideas as to how they can be met:

- **Physical**
 - * Health services
 - * Health promotion
 - * Disability services
 - * Aged Care and Child care
- **Intellectual**
 - * Education
 - * Training
 - * Science and Research
- **Spiritual**
 - * Religion
- **Aesthetic**
 - * Arts and Culture
 - * Heritage
- **Material**
 - * Relief of Poverty and Disadvantage
 - * Ecology⁵

The Social Inclusion program should be about how people express their concern for the other in the broadest sense of what it means to advance human wellbeing. On that basis, it should be recognised that the advancement of the spiritual dimension of human living should be included.

Stronger Community

“Investment is the key to the creation of stronger communities and, ultimately, to a stronger nation. But this is not only about dollars. We could dream a much larger dream about investment since, one way or another, we all make a social and emotional investment in the kind of society we are becoming. We could, for instance, choose to dream of a society where each of us understands that we are all part of one vast, vibrating web of interconnectedness. We could invest in the idea that all our actions – the way we save and spend our money, the way we occupy our time, the way we respond to the needs of strangers, all the ways we live – have consequences for the health and well-being of the whole. At its utopian best, this would be a dream about a nation – or even a neighbourhood – where our natural individualism is submerged beneath a concern for the common good; where, as a guiding story, competition gives way to a more egalitarian spirit of co-operation; where the shared values of citizens are shaped by a powerful sense of belonging to each other.”⁶

⁵ Father Brian Lucas, MODERNISING CHARITY LAW Religion - Some Comments, April 2009 [this discussion paper was a part of the CPNS conference on “Modernising Charity law” held in Brisbane from Thursday April 16 2009 to Saturday April 18 2009]

⁶ Hugh Mackay, *Real Communities*, Article on Australian Policy Online of 14 May 2009 page 3 See website - http://apo.org.au/sites/default/files/Real_communities_Mackay_Ed24.pdf

We would ask the Productivity Commission to give serious consideration to what Hugh Mackay is saying. NFP organisations contribute so much into the creating of a stronger community. As ways to measure are explored, don't limit it all to being about dollars. The value of NFP organisations is found in their connection with the community and their involvement of the community in fulfilling their vision and mission, whatever it may be.

Overall the body of social capital related research had established the claim that community engagement diminishes the impacts of social disadvantage. Australian research was showing that social cohesion, measured by participation in sport and the ability to get help when needed, was associated with lower levels of negative social outcomes such as increased rates of imprisonment and early school leaving.⁷ Community engagement (including through volunteering) engenders other sources of cohesion, such as trust, and further establishment of support networks and norms.

Volunteers

The lifeblood of mission organisations is 'to meet need,' and so, many volunteer hours are donated in grass-roots community activities for wellbeing and development. The high cost of operations is also underwritten by people in the community who have an interest in the particular vision of the individual mission.

Recognition of the work of volunteers is crucial. There appears to be a lack of historical understanding throughout the Issue Paper on the NFP sector's relationship with volunteers, the cornerstone of a great majority of NFP organizations. Without volunteers our cultural, social, spiritual, political and economic lives would be dramatically different.

Major ways that NFP organizations contribute to economic, spiritual, social and civic outcomes is through the extensive and sometimes exclusive use of volunteers. They are invaluable to delivering the services for the NFP organisations. The unpaid labour used by **ALL** NFP organizations must be properly counted, assessed, evaluated and considered as part of any measurement study of the NFP sector.

⁷ Tony Vinson, *Community adversity and resilience: the distribution of social disadvantage in Victoria and New South Wales and the mediating role of social cohesion*. Ignatius Centre, Jesuit Social Services, March 2004

2. 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?

The National Roundtable state: *“One thing that is certain is that the existing legal framework and regulatory environment of the non-profit sector is in need of fundamental overhaul. It is time to provide a clear, consistent and coherent framework based on sound public policy considerations.”*⁸

In researching the background to this particular study, time has been spent reading many of the inquiries into the sector that have occurred over the past decade or two. These have proven to be quite insightful into the many varied issues which tend to compound this whole area of the regulation of the not-for-profit sector. Yet despite all this rhetoric most of the key recommendations from these inquiries and reviews continue to not be acted upon. Unfortunately the above statement by the National Roundtable of Nonprofit Organisations is still as relevant today as it was when they made it five years ago.

Through our reading, it should also be noted that on many occasions there seems to be a continual uncertainty as to what part of the sector the inquiries are relating to. The terms which have been used include “charity”; “non-profit organisations”; “social economy network”; “Community Service Welfare Organisations” and many more. This highlights clearly the difficulty in making any clear general statements about the NFP sector as a group.

Again we state that a narrow study as has been proposed may be of some benefit to some (especially the government), it will not assist in measuring the impact of the broader not for profit sector and will lessen the validity, usefulness, and impact of the overall Productivity Commission’s research study.

Regulatory Framework

Within the NFP sector it is recognised that appropriate regulation is necessary and beneficial, both to the organisation and its users or beneficiaries. And there is general agreement that for those

⁸ National Roundtable of Nonprofit Organisations, *Promoting Community Wellbeing*, May 2004 page 2

organisations that are deemed to be charitable and receive the benefits of charitable status (e.g. tax concessions) there is a clear and transparent regulatory system that meets the needs of charities and promotes trust and confidence amongst the wider public, including funders and donors.

However, regulation can also impose a burden on NFP organisations and there is a danger that in strengthening the extent to which NFP organisations are held to account, this burden will become disproportionate to the benefits to the public and will stifle innovation as NFP organisations become more risk-averse. Moreover, far from seeing themselves as being under-regulated, some NFP organisations are concerned that they are being asked for the same information from different regulators or funders, but are required to present it in different formats; or they must comply with a particular quality assurance system favoured by the regulator or funder, rather than one that meets the needs of the organisation. Such duplication of effort can be a considerable source of frustration for NFP organisations. This would be mitigated by a greater willingness to share information between regulators and with more negotiation with NFP organisations themselves.

Regulatory mechanisms are concerned with compliance, ensuring that NFP organisations work within the law and meet certain standards of conduct or care, but they are limited in their scope and it is difficult to extend this without increasing the burden of regulation. For example, regulators increasingly see themselves as taking a leading role in disseminating ‘best practice’ advice. The problem with this is not only that it is confusing for NFP organisations, but there is also ‘a very real risk that the guidance and best practice advice will become de facto regulation.

An example of this may be the proposed mandatory guidelines that the Federal Government is seeking to put in place for Prescribed Private Funds. As the Guidelines are being presented as mandatory, then it may be better to describe them as being “Ministerial Rules”. Then NFP organisations on the DGR Registers are required by law to abide by “Ministerial Rules”. So they start as guidelines/best practice and eventually become de facto regulation.

NFPs “need a simple, flexible framework, uncluttered by the protections afforded to equity investors in companies’ legislation, with a regulator that is focused on facilitation”⁹

Traditional structures are too complex, too inflexible and too focussed on equity investment to provide the necessary framework for NFP organisations. Current legislation seems to impose an

⁹ Murray, Andrew, A Proposal For Simplifying The Legal Form And Regulation Of Small For-Profit And Not-For-Profit Entities, April 2008, p2

accountability, reporting and company model tailored more for the for-profit sector, which is not always suitable for NFPs. Examples of this would be in the areas of –

- [1] Compliance costs
- [2] Complexity within the Acts
- [3] Inappropriateness of some rules

“The cost element is particularly important, given that many not-for-profit organisations ...are small and frequently run by volunteers with limited resources’¹⁰

In summary, “reform of non-profit regulation should be an element of the Government’s overall economic and social program. Unnecessary and inappropriate regulation acts as a constraint on non-profit organisations. Its rationalisation, and in some cases, its removal, will assist the formation of new non-profit organisations and help existing non-profits better to pursue their mission”.¹¹

The recent Senate Standing Committee on Economic Inquiry dealt with the need for a simplified regulatory environment in which NFP organisations can operate. This included the setting up of a separate national regulator for the NFP sector. We would encourage the Productivity Commission to give serious consideration to the recommendations found within that report.

Reporting Requirements

We recognise that there is a need for an organisation to give an account of its activities and achievements in relation to its mission and values to a wider audience, and to show how particular projects have contributed to this, in order to maintain public support for its cause.

We also recognise that the sector needs to provide more comparative information, for example in relation to methods for apportioning costs and expenditure. It is right that members of the public, particularly donors, should be able to use this information to make comparisons – and choices – between NFP organisations. However whilst this might be useful information, it will only be meaningful if placed in context, that is in relation to an organisation’s individual circumstances and its longer term goals as well as its activities in any one year.

This is an area where transparency is more important than comparability: it is more important that an outside reader has a clear understanding of an organisation’s expenditure, and how it uses this

¹⁰ Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 18

¹¹ National Roundtable Of Non-Profit Associations, *Non-Profit Regulation Reform Program*, 2004, p3

to achieve its goals, than trying to compare that of different organisations with different missions. And there is a need for a wider public debate about, and understanding of the necessary and legitimate costs of fundraising and administration, not a competition to see which organisations have the lowest costs.

There are clearly tensions between self-regulatory approaches and those that are reporting-led. As the experience of the public sector has shown, an undue emphasis on external reporting can be counter-productive. Evidence to the Public Administration Committee in the UK (PAC) in 2003 found that while it can be a means of holding organisations to account, it can also distort priorities, as organisations direct their attention to meeting reporting requirements rather than meeting needs¹².

Different types of information are required for different purposes: information needed internally, to support learning and improve performance, is very different to that needed to enable the public to assess how well services are performing. For example, activities such as benchmarking are useful tools provided that they are used to enable an organisation to learn about itself and not to judge success or failure. An organisation should be primarily concerned with its own progress, rather than where it stands in relation to others. The aim should be to raise standards of reporting, rather than seek to achieve standardisation.

It should be noted that a system based on comparison inevitably leads to a perception of winners and losers. And just as inevitably media attention (and therefore the public's) focuses on the losers, even if the so-called losers are in fact delivering a good service. Comparisons will be made, and increasingly so as more information about the activities of NFP organisations come into the public domain. But that is all the more reason to be open and transparent, to enable the public to put this information into context and set the terms of debate.

We would recommend that the Productivity Commission look at moving towards more standardised and consistent forms of service and program contracting across different government agencies and programs – which would enable NFP organisations to streamline and standardise their own administrative and reporting frameworks, not only to improve efficiency but also to improve compliance. More standardised and consistent contracting would also facilitate more effective and efficient provision of management, governance and service delivery support on a cross funding agency or whole of government basis.

¹² Public Administration Committee, 2003, Fifth Report, *On target? Government by Measurement*, House of Commons

3. *Not for profit organisations are invited to comment on their experiences with attracting both paid and volunteer workers with the appropriate level of skills. Comments are also invited on the extent to which regulations surrounding the use of paid and volunteer labour adversely affect the capabilities of not for profit organisations to undertake their activities. Where adverse effects occur, how might these be overcome?*

Volunteer Labour

It was interesting to note the reply of Ms James to Senator Furner's questions in the Senate Inquiry's public hearing in Rockhampton on 18 July 2008 – "I think it is important for our organisation to go out there and just let them know that...most of us work as volunteers and that we do most of the work outside our office hours. We work on the weekend."¹³

Volunteers are an integral part of the work and service of NFP organisations. This enables these very organisations to not only provide quality of services within the community but also help reduce overall costs, ensuring more funds are available for the actual work of the organisation.

However, importantly, the expectations, needs and views in regard to volunteering today and into the future are different to previous generations. For example, baby boomers may not volunteer as their forebears did. That's not to say they will not volunteer but that they will volunteer differently. Baby boomers are generally more likely to be looking for fulfilling roles related to their skills or interests when they volunteer their labour. They want flexibility and more project volunteering rather than a commitment with no end in sight. They want less regulation and few impediments to volunteer, less red-tape and bureaucracy. They also want better volunteer management and better jobs, more challenges in their volunteering rather than simple service delivery or stuffing envelopes.

Volunteering is not only about social welfare and disadvantaged communities; it's about the environment, sport, literature, spiritual needs, politics, the arts and heritage. To paraphrase Bobby Kennedy, it's about the things that make life worthwhile. It's about being a parent helper, or coaching sports, or planting trees, or guiding people through a museum, or editing a community newsletter for example. But volunteers could do so much more if they weren't held back by governments.¹⁴

¹³ Transcript – Senate Committee Public Hearing in Rockhampton, Friday, 18 July 2008, p 12

¹⁴ Melanie Oppenheimer, *Unpaid work counts, so measure it*, Article on Sydney Morning Herald website of 9 September 2008 See website - <http://www.smh.com.au/news/opinion/unpaid-work-counts-so-measure-it/2008/09/08/1220857452133.html>

Volunteering policy, at both federal and state level, is confusingly spread over multiple departments. In Britain, there is a single Office for the Third Sector, and here, a federal minister for volunteering with her or his own office or department would be more useful than a compact. Compacts are formal but non-binding agreements between governments and NFP organisations, but have had limited success overseas.

Volunteering needs to become not only visible, but valued. Volunteer awards, smart uniforms and ticker-tape parades are not enough. As with paid labour, volunteering needs to be defined and included in official economic data such as the gross domestic product to accurately measure and reflect the importance of unpaid labour.

Regulations regarding volunteers are many and varied. These include workcover/workers compensation, child protection, risk management/insurance, taxation, due diligence, and much more. Some of this is necessary. But it needs to be simplified more to enable NFP organisations to continue to have volunteers helping provide their many and varied services across our community. Unless that is done, then maybe organisations will be forced to move more from using unpaid labour (volunteers) and have to fund paid staff. This adds more to the stresses of funding resources for many NFP organisations.

4. *Comments are invited on the extent to which institutional arrangements and regulations restrict the financing options available to not for profit organisations. If significant restrictions exist, what options are there to overcome them?*

The Role of Funders

“The administrative burden placed by funders on community non-profit organizations is so heavy and so unrelenting, and places so many constraints on their ability to operate that it is a wonder they can deliver any services effectively.”¹⁵

In looking at the existing ways by which NFP organisations may be held to account it is important to consider the role of funders and particularly the role of government. Increasingly funding to NFP organisations is linked to achieving particular outputs or outcomes and may be subject to assurances about an organisation’s efficiency and effectiveness, for example whether it has appropriate employment policies or an approved quality assurance system in place.

Provided that such demands are appropriate and proportionate, they are not unreasonable: In a more competitive funding environment it is in an organisation’s own interest to be able to demonstrate what it does and how well it does it, as well as its financial probity. And it is entirely appropriate that NFP organisations should be able to account for funds received, whether in the form of a grant or contract, and show that the money has been used for the purposes for which it was given and used efficiently and effectively.

However, as noted above this should not add to the burden of regulation by increasing the complexity of third sector accountability, as organisations juggle what may be quite different monitoring and reporting requirements and timescales: funders, like regulators, need to be aware of the implications of their individual requirements.

There is a widespread belief in the sector that much of the information required by and submitted to funders and regulators is neither necessary or indeed utilised or useful in the management and development of NFP organisations and that funders and regulators provide little and insufficient feedback on information and data which is supplied to them.¹⁶

¹⁵ Eakin, Lynn. *We Can’t Afford to do Business This Way: A Study of the Administrative Burden Resulting from Funder Accountability and Compliance Practices*. Toronto: Wellesley Institute, 2007

¹⁶ National Roundtable of Nonprofit Organisations, *Submission to Review of Not-For-Profit Regulation in Victoria*, May 2007 page 3

“Community-based groups define themselves in terms of the values to which they subscribe. Values underpin...the ambitions that are articulated in organisational vision, mission, purpose and goals. Values are their reason for being. In the relentless pursuit of the resources that can make the mission manifest, however, there is a danger that collaboration with those providing the funds can progressively transform social intent.”¹⁷

Capital Funding

Capital has always proved problematic for NFP organisations both in maintaining a sufficient supply as well as redirecting surplus capital. The inherent nature of being non-surplus distributing organisations means that capital is difficult or impossible to attract from the commercial capital markets and the law guards the redirection of NFP capital from its original use.

Professor Mark Lyons states: “...Australia’s non-profit sector, or important parts of it, faces difficulties in accessing the capital they need to grow, to refurbish ageing facilities or simply to begin operating. These difficulties are said to be a consequence of the drying up of government capital grants and the reluctance of banks to lend to nonprofits... It is sometimes suggested that, in the context of increasing competition with for-profit enterprises, these difficulties constitute a crisis which, if not resolved, will lead to a decline in levels of participation by non-profit organisations in many industries or fields of activity.”¹⁸

Australia’s NFP sector is a vital part of our society; yet significant parts of it face pressing capital needs. More importantly, the capacity of the sector to renew itself and to generate innovative new programs and institutional solutions to social and environmental problems, as it has done before, is inhibited by failures in existing capital markets. Some action is called for in the public interest.

Many NFP organisations find that they face a need for capital at certain stages of their lifecycle. Many need capital to start up – to pay wages before regular sources of recurrent income (eg from the sale of services) are received, to buy equipment or to build specialised facilities. Other longer established NFP organisations need capital to acquire extra facilities, to replace old equipment, to adopt new technologies, to develop new programs or revenue generating initiatives. Finally, many long established organisations need capital simply to completely refurbish ageing facilities. The capital required at these three different stages will be referred to as *start-up capital*, *development*

¹⁷ Peter Shergold, *Postscript*, page 2 – see website http://epress.anu.edu.au/anzsog/collab_gov/pdf/ch18.pdf

¹⁸ Lyons; National Roundtable Of Non-Profit Organisations; *Mobilising Capital for Australia’s Nonprofits: Where is it needed and where can it come from?* 2008 page 2

capital and *redevelopment capital*. The purpose for which capital is sought as well as the age of an organisation will each impact on its ability to access capital.

Traditionally, NFP organisations have found the capital they need from among a variety of sources. These include:

- setting aside annual surpluses over many years to build a capital fund;
- seeking bequests and then putting them into a capital fund;
- obtaining a capital grant from a foundation or a business;
- borrowing from a bank or other approved financial institution and servicing the loan from recurrent revenue.

Many NFP organisations find it difficult, even impossible to access some of these sources of capital. In fact many nonprofits are unable to access loan finance from banks or other financial institutions because they do not own fixed assets that could be used as security for a loan. As well, loan assessors in most financial institutions find NFP balance sheets hard to understand and their business plans challenging because they are not framed along conventional lines.

The difficulties faced by many NFP organisations in accessing capital slow the development of the sector as a whole. It distorts the ability of many NFP organisations to compete with for-profit organisations and inhibits the potential of the sector to be a major source of social innovation.

The specialised needs of NFP organisations for capital are given clearer recognition in countries similar to Australia, such as the United States and the United Kingdom. Basically these involve the use of tax assisted, government backed borrowing and specialist financial institutions that make grants, loans and provide appropriate business expertise via training and/or mentoring.

We believe that it would be positive for the Federal Government to explore some of these options, as a way to help NFP organisations to gain access to the necessary capital funding needed to continue to improve and grow their service to our community.

Competitive Neutrality

Often outside influences seem to pressure NFP organisations to engage in income-generating activities and previous reviews have indicated that these more generally come from:

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- A climate of fiscal restraint and increasing cost pressures;
 - Demand for services exceeding the level which can be met by current levels of government funding;
 - Increasing competition for philanthropic funds;
 - Governments expecting non-government organisations to find alternative sources of funding to subsidise their service provision;
 - Governments becoming increasingly reliant on non-government service providers; and
 - A growing trend towards social entrepreneurship.¹⁹

NFP organisations have had to find more creative ways to support their work. So as more organisations try to do more with fewer resources, business activities, more often than not that are synergistic to their charitable purpose, have become increasingly important as a source of funding.

The Report of the 2001 Charities Inquiry recognised that:

- For-profit business organisations can raise money in capital markets by issuing shares and by entering loan agreements. Not-for-profits are not able to raise money in the capital markets through equity or debt.
- Not-for-profits must rely on government grants, donations, or funds generated by their commercial activities. So the Inquiry did ***not*** accept the notion that charities have an unfair advantage over for-profit organizations.
- The “unfair competition” argument was weak because charities do not have income in the sense used in the taxation laws: charities do not have profits to distribute to shareholders or members. The funds of not-for-profits are devoted to the provision of services.
- Since charities cannot raise equity or debt in capital markets, generating a surplus from commercial activities was one of the only ways to get reserves to undertake capital works or long-term commitments.
- Tax exemption did not give unfair advantage to not-for-profits, given their limited scope for fund-raising.
- Competitive neutrality should not be a factor in defining a charity: It would be inappropriate for the definition of a charity to change because other sectors of society engage in activities previously undertaken only by charities...if they (charities) retain their characteristics of being not-for-profit and with a dominant purpose that is charitable, altruistic and for the public benefit.

¹⁹ Charities Definition Inquiry 2001, Report of the Inquiry, Canberra, page 223

- Commercial activities are acceptable when not conducted for the profit or gain of any particular person or group of persons. If the dominant purpose of the organisation is charitable, then any other purposes must further the dominant purpose, or be in aid of it, or be ancillary or incidental to the charitable purpose.
- Charities are compelled to find innovative ways to raise funds: Conducting commercial enterprises as a fundraising operation can be an important, at times essential, element in enabling a charity to achieve its charitable purpose. Governments have sought to foster partnerships between the community and for-profit sectors.²⁰

In the recent High Court decision of the Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited, the ruling given by the court provides an opportunity for subsidiaries of charities to conduct commercial activities without losing their charitable status.²¹

We believe that this ruling is important and helps clarify circumstances in which not-for-profit organisations that raise funds through business or commercial activities and all their activities will continue to be considered as charitable.

We would encourage the Productivity Commission to continue to see the long-term benefit this issue is to both the NFP organisations themselves and also into their services within the community. We ask the Productivity Commission to endorse this as a valuable component of the funding of the services of NFP organisations, so as these organisations are able to ensure they have adequate funding to continue to sustain and improve the valuable service to our community that they provide.

²⁰ Charities Definition Inquiry 2001, Report of the Inquiry, Canberra, pages 219-231

²¹ See the website of the High Court of Australia – www.hcourt.gov.au and the media release of 3 December 2008 at http://www.hcourt.gov.au/media/Commissioner_of_Taxation_v_Word_Investments.pdf

5. *Comments are invited on the incentives (such as community attitudes and views of donors) on not for profit organisations to operate efficiently and effectively and to take innovative approaches. To what extent do these incentives differ as a result of the funding arrangements faced by an organisation? Are the incentives currently faced by not for profit organisations sufficient to ensure they operate in an efficient and effective manner and, if not, what changes are needed to increase those incentives? Are there constraints on innovation, and if so what can be done to remove them?*

Effectiveness

An organisation's performance and impact is critical to its legitimacy: The fact that it works in practice makes it a more legitimate enterprise. An organisation that can show it provides value-for-money and that it has made a difference will strengthen its position in relation to its stakeholders and indeed to the public more generally. This means devising ways of measuring outputs, outcomes and impacts, as well as showing the lessons that have been learned and how this will inform future work. However NFP organisations need the skills, confidence and resources to enable them to assess and improve their performance, it requires investment in the organisation itself, thereby increasing administration costs.

This means that there is a need to define what value-for-money means for NFP organisations. As Kendall has argued, in comparison to other sectors the potential outcomes of voluntary sector activity are less clearly defined, hard to measure and highly complex and it is often difficult to attach monetary value to the 'products' generated by NFP organisations, reflecting the 'added value' they are said to provide.²²

It is therefore not helpful to focus on cost-effectiveness (efficiency) without also taking account of performance-effectiveness and the potential added value of the voluntary sector. There is a need to demonstrate the ways in which administration costs contribute to organisational effectiveness: for example, the need for sound financial systems; good record-keeping; appropriate support and supervision to staff working in the field; as well as effective quality assurance procedures. The key issue is not how low can these costs go, but that they can be shown to enable the organisation to better meet the needs of its beneficiaries and its cause, that such costs are legitimate and justifiable. The same is true of fundraising. Again there is a need to shift the debate from what (and why) does this cost to whether it achieves value-for-money, both in the short and long term.

²² Kendall, 2003, *The Voluntary Sector*, Routledge

There is also a growing recognition that NFP organisations ‘add value’ to our society in general and also into the workplace, for example in areas where they may be competing for contracts against commercial or public sector providers. The added value that NFP organisations provide comes from their experience ‘on the ground’; it is as much about the way that they work as the results they achieve.

Some of the key features of NFP organisations, which, at their best, can add value are:

- Specialist knowledge, experience and/or skills;
- Particular ways of involving people in service delivery;
- Independence from existing and past structures or models of service;
- Access to the wider community without institutional baggage; and
- Freedom and flexibility from institutional pressures.²³

Funding Arrangements

There is a need for caution as to the role of governments in funding services provided by NFP organisations. A recent (2005) survey of the views of a number of 15 major UK-based grant-making foundations, commissioned by one of the largest among them, reported:

“.....foundation leaders expressed concerns about the traditional delivery mechanism for foundation grants, namely the voluntary sector. They suggested that the delivery of public services had come to dominate the agenda, and many foundation leaders feared that the key ‘civil society’ role that voluntary action plays was being neglected. Foundation leaders were worried that the independence of the sector was compromised, and the role of voluntary action in building communities and in advocating for policy change was being lost. Some suggested that the situation was set to get worse. The (forthcoming) introduction (by the government) of ‘Area Based Agreements’ and the ‘Safer Stronger Communities Fund’ would effectively end public sector grant aid for the voluntary and community sectors. Service level agreements would force voluntary and community organisations to work in ways determined by local authorities and local strategic partnerships”²⁴

NFP values are often expressed as much in the means as in the ends. Finding someone a job, counselling a dysfunctional family, providing assistance to a homeless person or supporting an

²³ HM Treasury [UK], 2002, *The Role of the Voluntary and Community Sector in Service Delivery: A cross-cutting Review*

²⁴ In *Social Justice, Poverty Reduction and Inclusive Communities: The Role of Independent Charitable Trusts and Foundations, A report to the Barrow CadburyTrust, Centris, Newcastle, July 2005*

Indigenous enterprise can be tendered out by government to an experienced community organisation committed to the task. Unfortunately, the manner in which the service is to be provided can be transformed in ways that weaken the spirit—the very heart—of the community organisation. In part, this is because government contract payments are usually based on outcomes that give no acknowledgment to the processes of engagement that many not-for-profit businesses hold dear. The need to achieve outcomes, and the rigours of an imposed compliance regime, can, with time, undermine the sense of community purpose that inspires commitment.²⁵

In New Zealand the Steering Group delivered a report to the Minister of Social Policy on the community sector. A key issue raised in that report was that of access to government funding and the associated accountability processes. The report noted that these processes “continue to be described by some organisations as both time-consuming and unnecessarily complex. Many in the community sector remain concerned about the way these processes detract from organisations’ key purpose – service delivery”.²⁶

“Social enterprises will always struggle by virtue of the fact that their values-driven ambitions have an infinite capacity to outstrip the resources available. A NFP organisation, committed to community benefit, will find it difficult to harness voluntary labour, raise donations, collect fees or earn interest payments on investments that are sufficient to meet its expanding goals.”²⁷

Innovation

We encourage the Productivity Commission to develop a system that encourages NFP organisations to place innovation at the centre of their strategy because innovation—the development of improved products, services, and processes, the creation of new markets, and the use of new products—is critical to productivity advance. Productivity advance is, in turn, the essential streamlining the processes of organisations as they seek to provide services into the community.

Innovation increases productivity both by improving efficiency (reducing cost) and raising services. The ability of NFP organisations to develop new products and ways to deliver services to clients and customer will become the key to a continuing strong Third Sector within Australia.

²⁵ Peter Shergold, *Postscript*, page 2 – see website http://epress.anu.edu.au/anzsog/collab_gov/pdf/ch18.pdf

²⁶ *He Waka Kotia: Joining Together on a Shared Journey*, Ministry of Social Policy, Wellington, August 2002

²⁷ Peter Shergold, *Postscript*, page 2 – see website http://epress.anu.edu.au/anzsog/collab_gov/pdf/ch18.pdf

Growing sectors innovate in different ways, with a great deal of variety in methods, approaches, and results. NFP organisations are more open to innovative ways to provide services. Organisations usually start by leveraging their understanding of particular customer needs to identify a potential new product or service; endeavouring to do this by utilising their own existing capabilities; this is much the cheapest and safest route.

The defining characteristic of innovation as an economic activity is that its outcomes are much more uncertain, hence more risky, than those of routine activity. Nevertheless, NFP organisations try to invest in a wide range of innovation-related assets - human skills, new capital equipment, design capabilities, strategic marketing, and more.

Innovation therefore requires access to finance that both permits and encourages such investment, and that can manage the risks involved. Development of vibrant financial funding for this to happen across the sector should thus be viewed not merely as desirable to support the innovation activities of NFP organisations, but as an end in itself—a means to capture value from innovation taking place to improve and streamline the sector's services to our community.

6. *Comments are invited on whether the governance and accountability regulations faced by not for profit organisations are appropriate and whether they provide sufficient flexibility to account for the diversity of scale and form of not for profit organisations. Where such regulations are deemed inappropriate or impose an unnecessary burden, how might they be improved? For example, are there significant regulatory burdens associated with not for profit organisations operating across jurisdictions? How might these be addressed?*

Accountability

During our research it was noted that there have been a number of occasions where concerns were expressed about the way in which the NFP sector operates in Australia. These include:

- A lack of transparency about the way in which public or donated funds are spent; and
- A lack of accountability, despite the fact that the not-for-profit sector is a major provider of services to the public.

Karen Spindler believes that good reporting underpin transparency and accountability. But reporting is also costly and “can be a drain on the not-for-profit sector’s limited resources. The trade off between the need for transparency and accountability on one hand, and the costs associated with reporting on the other hand, is therefore acute in the not-for-profit context”.²⁸

Both of these areas were raised by the CHOICE article back in March 2008 though the evidence provided by them to justify their statements were quite scant to say the least. While not denying that there is always room for continued improvement in accountability and transparency, broad general statements don’t add to a discussion in themselves. The article does not represent the true picture of how the great majority of NFP organisations actually work. It is also questionable as to whether it represents the true picture of the heart of what the average man in the street actually thinks about how NFP organisations function.

²⁸ Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 21

'Individual donations are important not just as a source of income but also as an indication of the level of trust that the general public have in charities. Giving offers a way in which people can engage with the sector as well as make a positive contribution to causes they care about.'²⁹

Formal regulatory mechanisms can help to build confidence in the sector, but are limited both in terms of the extent to which it is appropriate to hold independent organisations to account and as a means of building trust between an organisation and its stakeholders. Also formal mechanisms do not address broader issues about the legitimacy of the NFP organisations, their right to campaign and to ask for public trust and support.

An organisation's legitimacy is only partly derived from its compliance with legal or regulatory requirements, it also has a moral basis, that is its mission and values and how it achieves these.³⁰ This requires a broader understanding of accountability, one that places a greater emphasis on trust and transparency, rather than conformity and comparability.

According to the Concise Oxford English Dictionary, to be accountable is to be required or expected to justify actions or decisions and to give a satisfactory record or explanation. Such an account may include both a description of an event or experience and a record of financial expenditure and receipts. It also implies a relationship: that there is one party that is owed an explanation or justification and one that has a duty to give it.

As Day and Klein suggest, accountability is far from being a neutral, technical process.³¹ Even at a very basic level of measuring performance against objectives and outputs against inputs, the process is not clear-cut: questions such as how objectives are defined (and by whom), or what is meant by 'performance' or 'impact' is critical. Similarly debates about fundraising and administration cost ratios demonstrate that accountability can be controversial. Therefore it is best understood as a value-laden process, which begs the questions: whose values count? Who has the power to determine what should be accounted for? Such questions are particularly pertinent for NFP organisations that are value-driven and have multiple accountabilities to a range of stakeholders.

Questions of power and values are as much about relationships as about process. This can be seen most clearly in Leat's model of accountability that encompasses the following activities:

²⁹ Wilding *et al*, 2004, *UK Voluntary Sector Almanac*, NCVO page 90

³⁰ Slim, 2002, *By What Authority? The legitimacy and accountability of non-governmental organisations* International Council on Human Rights Policy

³¹ Day & Klein, 1987, *Accountabilities: Five public services*, Tavistock Publications

- Being held to account – by stakeholders or on their behalf, via sanctions or other methods of redress which enforce the right to effect change.
- Giving an account – providing stakeholders with an explanation or information to report what has taken place and the outcomes of that activity.
- Taking account – of stakeholder’s needs and views and responding to these by examining and, if necessary, revising practices or enhancing performance.³²

Some commentators suggest that it is only the first of these that ensures effective accountability: the ability to ensure an organisation lives up to its commitments and to back this up with sanctions. Plummer, for example, has argued that ‘service deliverers and others are truly accountable only to those able to exercise sanctions over them’.³³ However, whilst this is important, by itself it implies a narrow, legalistic form of accountability that potentially privileges some stakeholders (those with the power to hold to account) over others and certain activities (avoiding sanctions) over others.

As independent organisations, NFP organisations are primarily accountable for their own mission and values and overall try to be clear in communicating these to stakeholders and to the wider public. This highlights the importance of accountability measures that enable NFP organisations to give an account of themselves in their own terms and according to their own ethos. There is a danger that too great an emphasis on holding organisations to account will undermine their autonomy and purpose.

It is equally important that NFP organisations take account of the views of their stakeholders, and particularly those of their supporters and beneficiaries. NFP organisations have multiple stakeholders to whom they should be accountable - including beneficiaries; funders; external regulators; staff; volunteers; and the wider public. Each group has different and potentially conflicting interests and different information needs.

All NFP organisations must ensure that their actions further their mission, as the Deakin Commission argued, they: ‘...must be absolutely clear about what they are trying to achieve and that this directly serves their purposes. This provides a standard against which all pressures, demands and opportunities can be judged’³⁴

³² Leat, 1986, *Voluntary Organisations and Accountability*, NCVO

³³ Plummer, 1996, *How Are Charities Accountable?* Demos pg.26

³⁴ Commission on the Future of the Voluntary Sector, (Deakin Commission), 1996, *Meeting the Challenge of Change, voluntary action into the 21st Century*, NCVO

Conclusion

The NFP sector is a diverse and imaginative part of the Australian social fabric. It makes a major contribution, not only to activities regarded as economic, but also to maintaining and strengthening a healthy and vibrant society. The innovation within the sector allows it to respond to changing demands within our society and be seen to lead the way into new areas of need within our community.

It is important that the sector is not strangled by excessive red-tape and government bureaucracy. Rather it needs the recognition, support and encouragement from both the Government sector as well as the Private sector.

We hope this submission has provided a succinct insight into some of the impediments and necessary changes that could benefit the NFP sector as a whole, rather than any small particular section of the sector. The importance of the sectors viability and continuation is paramount to maintaining and growing on Australia's long time community commitment to companionship and support to others.

NFP organisations 'add value' to our society in general and also into the workplace. The added value that NFP organisations provide comes from their experience 'on the ground'; it is as much about the way that they work as the results they achieve. It needs to be encouraged to keep moving forward into new areas of service.

We trust that the Productivity Commission's study will initiate a positive change of public policy areas to ensure that all sections of the NFP sector are able to increase their services to the community. These changes will hopefully enable the many organisations within the sector to have the ability to receive greater donations from the general public, business and Government. It needs to be seen as being an integral part of our society and helped to access funding to grow and develop their valuable services to our society.