

NATIONAL SECRETARIAT

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**Trustee
Corporations
Association
of Australia**

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Contribution of the Not for Profit Sector
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Sir / Madam

The Trustee Corporations Association (TCA) is the peak representative body for the trustee corporations industry in Australia.

It represents 17 organisations, comprising all 8 regional Public Trustees and the great majority of the 10 private statutory trustee corporations.

We are pleased to provide comments in relation to the Commission's inquiry into the Contribution of the Not for Profit Sector.

Our comments are confined to the charitable area of the NFP sector.

Background

Statutory trustee corporations, which are subject to strict governance and accountability obligations under common and statute law, have a long history of involvement in and promotion of the philanthropic sector.

They bring considerable professional expertise and resources to the trustee role, which involves a range of functions including managing investments, assessing grant applications and making distributions to beneficiaries.

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Western Australia

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Victoria

Tasmanian Perpetual
Trustees

Trust

Trustee corporations carry heavy fiduciary responsibilities and, when investing funds, must exercise the care, diligence and skill of a prudent person engaged in the business of managing other people's financial affairs.

TCA members currently act as trustee or co-trustee for over 2,000 charitable trusts and foundations with aggregate assets worth about \$4 billion.

Many of the charitable trusts and foundations that they manage are what are known as 'accumulation' Deductible Gift Recipients (DGRs), vehicles which have been established to provide private monies for charitable purposes and which generally do not engage in public fundraising.

Accumulation DGRs do not provide goods and services themselves. Rather, they make cash distributions to charitable organisations (known as 'doing' DGRs), which in turn deliver particular goods and services to beneficiaries.

TCA members also manage a number of charitable trusts that make direct grants to individuals – for example, in the form of scholarships.

During 2006/07, TCA members made charitable distributions worth over \$280m from those trusts or direct from deceased estates that members administered.

Comments

Measuring contribution

The charitable grants made by TCA members go to a wide range of causes, including medical research, the environment, education and the arts.

Our members, as trustees, have varying degrees of discretion in the allocation of philanthropic funds, depending on the guidelines of each particular trust or foundation.

Some charitable trusts have quite broad guidelines in relation to grant-making, while others target relatively narrow areas.

The demand for charitable money is always greater than the supply, and in exercising their available discretion our members draw on their specialised resources and long experience in order to allocate funds in a way that is expected to create the greatest community benefit.

However, it is difficult to actually measure with any precision the benefit to the community of these charitable endeavours.

When TCA members make distributions to charities, they do not simply look at the extent to which a recipient organisation's funds are spent on its target beneficiaries rather than consumed by overheads.

Many charities and activities deliver valuable social benefits without necessarily having philanthropic dollars reach the people who enjoy those recipients – action research and evaluative activities undertaken by charitable foundations are examples of this type of value creation.

In an effort to gauge the benefits of charitable grants, our members generally receive ‘acquittal’ forms from grant recipients after they have completed a project. This feedback provides useful of the activity undertaken, the amount spent, key achievements, knowledge gained, etc that can be taken into account when considering future grants.

Regulatory impediments

Government regulatory policy, including taxation rules, can have a significant detrimental impact on the efficiency and effectiveness of the NFP sector.

The ATO’s own submission to the recent Senate Economics Committee inquiry into *Disclosure Regimes for Charities and Not for Profit Organisations* conceded that:

“... the range of taxation concessions, recognition of a wide variety of legal forms, interplay between State, Territory and Commonwealth legislation, limited disclosure of information and different expectations of what information is disclosed dependent upon a particular taxation concession granted; make the nonprofit sector challenging to administer and challenging for the public to understand.”

In the charitable area, inconsistent cross-jurisdictional regulatory requirements add unnecessarily to costs and reduce the funds available to target recipients.

As noted by the Senate Economics Committee report, greater efficiency in the NFP sector would be achieved by initiatives such as:

- moving to a national approach to regulation by replacing the various pieces of inconsistent regional legislation (eg: in respect of fundraising) with one piece of Commonwealth legislation, and a single national regulator.
- developing a specific financial reporting regime for NFPs.

The unnecessary complexity of the current regulations in the charitable sector is demonstrated by one TCA member’s situation.

The member manages a Community Foundation, which operates two funds, the Gift Fund and the Open Fund.

The Gift Fund is tax exempt and can issue tax deductible receipts to donors, but can distribute funds only to charitable DGRs.

The Open Fund is also tax exempt but does not have tax deductible status. However, it can distribute to a wider range of community causes provided those distributions are made for ‘charitable’ purposes.

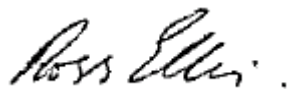
Nonetheless, numerous worthy causes, for example junior sport, suffer because of this restriction, especially in small towns which are not well serviced by councils or other arms of government.

We believe that Open Funds should be entitled to benefit any 'doing' community group that is a tax exempt NFP.

Another TCA member cites an example of regulatory impediment in relation to the frustrations of seeking 'tax concession charity' status for trusts established as a result of native title agreements. The purpose of those trusts is charitable, but because the beneficiaries in each case are confined to one family grouping the trusts do not meet the public benefit test.

The member's experience suggests that, in order to provide better support for those communities, indigenous trusts need to be treated as a special category of DGR.

Yours faithfully

A handwritten signature in cursive script that reads "Ross Ellis".

Ross Ellis
Executive Director