



National Roundtable of Nonprofit
Organisations

**National Roundtable of Nonprofit Organisations Submission to the
Productivity Commission Study:**

Review of the Contribution of the Nonprofit Sector

National Roundtable of Nonprofit Organisations
708 Elizabeth Street, Melbourne, Victoria, 3000
PO Box 299 Carlton South, Victoria, 3053
Phone +61 3 9349 3699
Fax +61 3 9349 3655

Email: info@nonprofitRoundtable.org.au
Web: www.nonprofitRoundtable.org.au

Together for the common good

1 June 2009

Mr Robert Fitzgerald AM
Commissioner
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
Email: nfp@pc.gov.au

Dear Mr Fitzgerald

The National Roundtable of Nonprofit Organisations (Roundtable) welcomes the opportunity to comment on the Productivity Commission's commissioned study into the contribution of nonprofit organisations.

In a variety of different ways Australian governments, businesses, communities and individual citizens make significant financial and other investments in nonprofit organisations which, in turn, play many different and often significant roles in the lives of all Australians.

The Roundtable commends the Commission's forward-looking approach to this study, and hopes and expects it will yield useful information and insights which will inform and enhance the sector's future development and directions over the medium to longer term.

The mission of Roundtable is to lead by being an effective voice on common and shared issues affecting the contribution, performance and viability of nonprofit organisations in Australia. The Roundtable is an independent, non-political organisation dedicated to enhancing the extraordinary work and effort undertaken by nonprofit organisations in Australia. Conceived in 2004 and formally constituted in 2006, the Roundtable is the first attempt in Australia by the nonprofit sector in all its diversity to come together as one body. The Board, responsible for the overall governance of Roundtable, includes Chair: Mr David Thompson AM, CEO, Jobs Australia Ltd and three other directors - Dr Sue Anne Wallace, Managing Director, Global Philanthropic, Ms Elizabeth Cham, Philanthropy Fellow, University of Melbourne and Mr Paul O'Callaghan, CEO, Reconciliation Australia.

The Advisory Council engages with the broad sector and provides advice to the Board. It is chaired by Elizabeth Cham and current members are from the following nonprofit organisations:

| | |
|---|---|
| Aged & Community Services Australia | National Council of Churches in Australia |
| Philanthropy Australia | Music Council of Australia |
| National Disability Services | The Refugee Council Australia |
| Independent Schools Council of Australia | Clubs NSW |
| Independent Schools Council of Australia | Job Australia |
| Federation of Ethnic Communities Council of Australia | Global Philanthropic |
| Reconciliation Australia | ACOSS |

The Roundtable will be pleased to provide additional information which might assist the Productivity Commission in its conduct of the study.

Yours sincerely

David Thompson AM, Chair

Focus of the Study

The Roundtable commends the Productivity Commission on its adoption of a broad view of the sector for the purposes of assessing its contribution. However, there are concerns that the narrow focus of consideration of policy and capacity issues raised in the terms of reference, with a particular focus on government funded nonprofits, might exclude a large number of organisations that rely on public donations and are not directly related to public or government service delivery such as international development and arts organisations. It will be important to ensure that the relevant policy and capacity issues for these organisations are addressed in the Commission's consideration of ways of enhancing the efficiency and effectiveness of the sector.

These comments are supported by:

- Australian Council for International Development (ACFID) the peak organisation for NGOs working in the field of international aid and development – which has stated that 81% of the total funds raised by NGOs in 2007 were donated by the Australian public.
- The Music Council of Australia (MCA), the Queensland National Resource Management Group Collective and National Disability Services (NDS) expressed concern that performing arts organisations, natural resource management and disability services organisations they represent might be excluded.
- Preliminary data from the FIA/PwC/CSI survey on the impact of the economic downturn on fundraising (to which 263 nonprofit organisations responded) which indicates that
 - 34% are dependant on fundraising income
 - 44% are dependant on government income
 - 9% are dependant on business income
 - 2% are dependant on investment income
 - 11% receive funding from a variety of sources (government, public donations, business activity or investment)¹

Professor Mark Lyons has undertaken a major and definitive study on the sector stating:

The size and scope of Australia's nonprofit sector is often not appreciated. A nonprofit organisation is a private organisation formed to provide a service (for members or others), to advance a cause or for religious worship. What distinguishes them from the more common private for-profit organisations is their self-imposed prohibition on the distribution of profit to members or supporters; surpluses are reinvested in the organisation. In Australia nonprofit organisations are particularly important in the provision of education, social assistance and health care, including hospital care and health research. Registered clubs are nonprofit organisations as are most sporting and arts organisations. So too are business and professional associations, unions and political parties. Religious worship is organised through nonprofit organisations.²

Lyons has further observed:

Although the picture varies industry to industry and organisation to organisation, around 55% of nonprofit operating revenue comes from the sale of goods and services. Government grants and

¹ The survey data will be released in July 2009. For information, see www.fia.org.au

² Mark Lyons, Andrea North-Samardzic and Angus Young, Capital Access of Nonprofit Organisations, Agenda, Volume 14, Number 2, 2007, pages 99-110. Available at: <http://epress.anu.edu.au/agenda/014/02/14-2-A-2.pdf>

*contracts contribute around 30% and donations, foundation grants and return on investments contribute the rest.*³

The approach of this study⁴

The Roundtable commends the Commission's forward-looking approach to this study, and hopes and expects it will yield useful information and insights which will inform and enhance the sector's future development and directions over the medium to longer term.

There remains, however, very significant unfinished business from a number of previous reviews which need not be replicated but which still warrant attention and action by government.

The nonprofit sector has committed significant resources to responding to various reviews from the 1995 Inquiry into Charitable Organisation in Australia to, most recently, the current review into Australia's future taxation system organisations.

From this significant commitment, few recommendations have been adopted and little change has been seen in the regulation of nonprofit sector. Queensland University of Technology's Australian Centre of Philanthropy and Nonprofit Studies (ACPNS) estimates nonprofit organisations have contributed:

- 12,920 pages of public submissions
- 56 days of hearings, 45 site visits
- 1,344 pages of official reports⁵

resulting in:

- seven (7) pages of legislation about the definition of charity.⁶

This is neither effective nor efficient as a means for governments to seek advice and to effect change in the regulatory environment. Nor is it an effective or efficient way for nonprofit organisations to continue to use their resources in the belief that the government will finally listen and do something.

The problems are well rehearsed and were most recently documented again by the Senate Economics Committee:

- conflicting and complex state and federal regulation
- absence of national frameworks
- haphazard growth in regulation
- lack of coordination across state borders

³ Lyons, Mark with assistance from Andrea North-Samardzic and Angus Young. 2007. *Mobilising Capital for Mobilising Capital for Australia's Nonprofits: Where is it needed and where can it come from?* Commissioned by National Roundtable Of Nonprofit Organisations Limited (Australia) Available at http://www.nonprofitRoundtable.org.au/Content/NavigationMenu2/FinancialSustainability/documents3/ROUNDTABLEFinancial_Capital.pdf

⁴ The New Zealand Office of the Community and the Voluntary Sector is currently conducting a similar study to measure the value of the sector. This can be found at <http://tinyurl.com/NZ-Non-Profit-Sector>

⁵ Industry Commission, *Charitable Organisations in Australia*, Report No 45, AGPS, Canberra, 1995; Inquiry into the Definition of Charities and Related Organisations, available at <http://www.cdi.gov.au>; Board of Taxation, Consultation on the Definition of a Charity – A report to the Treasurer, December 2003 available at <http://www.taxboard.gov.au>; Senate Economics Committee Report, December 2008 available at http://www.aph.gov.au/senate/committee/economics_ctte/charities_08/index.htm

⁶ *Extension of Charitable Purpose Act 2004 (Cth)*.

Recommendations from the recent Senate Economics Committee Inquiry (December 2008)⁷, are similar to championed by the Roundtable since its formation in 2007 as the key regulatory reform priorities for the sector, remain (June 2009) to be addressed by government and include:

- a single independent national regulator for nonprofit organisations
- a single, mandatory, specialist legal structure for nonprofit organisations
- taxation reform to reduce confusion and cost of compliance and the ambiguity of exemptions which mean the regulatory burden falls unevenly upon the sector
- adoption of a standard system of accounting for nonprofit organisations (National Standard Chart of Accounts)
- a national fundraising act which acknowledges the sector's initiatives in self-regulation through mandatory codes of conduct⁸
- red tape reduction in the regulatory burden⁹.

Measuring the contribution of the not for profit sector

The nature of the contribution of the not for profit sector

In comparing the three sectors – government, business and nonprofit - an important difference is the mission focus of nonprofit organisations, which return their surpluses to their stakeholders.¹⁰

As noted in the Discussion Paper, *“the defining characteristics of not for profit organisations enable them to make contributions which are distinct from those of the business and government sectors. Indeed, this ability to make contributions in a distinct, and sometimes unique, way provides a rationale for the sector’s existence.”*

The independence and diversity of the nonprofit sector is its unique contribution to civic society. To ensure this is protected it is critical that relevant nonprofits can advocate for their beneficiaries, often the most marginalised in our society, without fear of interference or distortion by government. While nonprofit organisations should avoid overt political activity or proselytising, an ATO ruling in 2005 enables charities to undertake advocacy activities that are in aid of charitable purposes¹¹ as does the Charity Commission (England and Wales) when these activities could be said to be an ancillary means for the achievement of the bodies’ greater charitable objectives¹². The Roundtable contends that further reform is needed to bolster and reinforce the advocacy and campaigning roles of nonprofit organisations and to enable charities to undertake advocacy as a major, significant and legitimate activity in its own right.

⁷ The Senate Standing Committee on Economics, *Disclosure regimes for charities and not-for-profit organisations*, December 2008. Pp 1-4. Available at: http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/b01.htm

⁸ The ACFID Code of Conduct. Available at: <http://www.acfid.asn.au/code-of-conduct>

FIA’s Principles and Standards of Fundraising Practice. Available at www.fia.org.au

⁹ Review of NFP Regulation, Estimate of potential administrative cost savings 27 September 2007

“The total potential savings to the not for profit sector based on the assumptions presented in this section. Total savings by Victorian organisations are estimated to be close \$24.5 million per annum.

The top five areas where there are large potential savings include:

- *streamlining reporting and quality requirements of service agreements (\$12 million);*
- *streamlining governance and model rules (\$5.5 million);*
- *removing the Annual Statement reporting requirements for Incorporated Associations (\$2.5 million);*
- *simplifying registration and extending the period of registration for fundraising (\$1.3 million); and*
- *improving the consistency in grant applications and reporting (\$1.2 million).”*

Available

at:

http://www.ssa.vic.gov.au/CA2571410025903D/WebObj/NFP_Research_AllenConsult/File/NFP_Research_AllenConsult.pdf

¹⁰ The Senate Standing Committee on Economics, *Disclosure regimes for charities and not-for-profit organisations*, December 2008. http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/c02.htm

¹¹ Australian Taxation Office, 2005, Taxation Ruling TR 2005/21

¹² The Charity Commission for England and Wales, *Speaking Out - Guidance on Campaigning and Political Activity by Charities*, CC9, Available at: <http://www.charity-commission.gov.uk/publications/cc9.asp>

The Roundtable agrees that the sector contributes to economic, social and civic outcomes through service delivery, advocacy, connecting the community and enhancing the community endowment. While the services delivery modality generally attracts much attention, the other modalities of the sector are significant and important. Connecting the community and enhancing the community endowment are more intangible and difficult to measure and advocacy by sector organisations is not always understood, appreciated or accepted by governments.

The Commission's study should provide useful information and data about the ways in which the sector's contributions are in fact distinct and sometimes unique and will serve to inform consideration of the sector's place, identity and future and our relationships with the government and business sectors. The Australian community and government and business invests considerable financial and other resources in the sector. Further and better understanding of what the sector achieves and more information on the sector's inputs and outputs and importantly, more insight than is presently available into the outcomes and impacts achieved by the sector will be invaluable. This would suggest the Commission should invest as many resources as practicable on the more difficult and complex tasks of measuring and describing outcomes and impacts.

Identifying and clarifying the distinct and different aspects of the sector will also serve to inform future consideration of the sector's role in government-funded public service delivery and the extent to which the sector should seek to adopt or adapt the management practices and approaches of the business sector. There is a tendency for each of the other sectors to seek to remake the nonprofit sector in their own image and better identification and elucidation of what makes the sector unique and different and what makes the sector effective will be of great benefit.

Peak bodies have an important role to play in providing advice to government and contributing to policy development because of their broad representation of the sector. In the same way that nonprofits must maintain their independence to advocate for their cause and stakeholders, it is important that the sector independently determines the shape of its peak bodies and its representatives.

While the Roundtable welcomes developments concerning the removal of so-called "gagging" clauses in federal government contracts with nonprofit organisations, there remains a great deal to be done to reinforce, resource and celebrate the advocacy function of many nonprofit organisations.

A conceptual framework for measuring the contribution of the sector

The conceptual framework for measuring the contribution of the sector developed by the Commission is important and a useful way of framing the complex and diverse activities and contributions of the sector. Such framework will necessitate the application of a range of differing methodologies for evaluating the sector and the use of case studies, in particular, will serve to illuminate the multi-faceted and multi-dimensional outcomes and impacts achieved by many organisations.

In the absence of a more formal framework, nonprofits and other organisations have developed tools to measure their contributions, organisational effectiveness and accountability, for example:

- ACPNS Standard Chart of Accounts¹³
- Institute of Chartered Accountants of Australia (annual reporting)¹⁴
- ACFID Organisational Effectiveness Tool¹⁵
- ACFID Code of Conduct¹⁶

¹³ Australian Centre for Philanthropy and Nonprofit Studies, Chart of Accounts. Available at: <http://www.bus.qut.edu.au/research/cpns/whatweresear/chartofaccou.jsp>

¹⁴ The Institute of Chartered Accountants in Australia (ICAA)'s *Enhancing Not-for-Profit Annual and Financial Reporting* March 2009 Available at: www.charteredaccountants.com.au/files/documents/Not_for_profit_guidance.pdf

¹⁵ ACFID, *NGO Effectiveness Framework* (http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_ngo-development-effectiveness/ngo-effectiveness-framework_jun04.pdf).

- FIA Principles and Standards of Fundraising Practice¹⁷

Some methods such as the Social Return on Investment (SROI) methodology have been suggested as means by which to measure the contributions of the sector. The Roundtable acknowledges the SROI methodology is a useful tool for measuring some aspects of the contribution of social enterprises but other more relevant methodologies are needed for the complex measurement of the contribution of the broader nonprofit sector.

The Roundtable is a strong advocate of the need for nonprofit organisations to be required to report to the public and other stakeholders on the extent to which they achieve their mission and purpose – as opposed to the current requirements which only mandate reporting in various detail on their financial affairs and performance. The work undertaken by the Commission on the conceptual framework for measuring the contribution of the sector and the development of methodologies to better measure and assess inputs, outputs, outcomes and impacts will be of benefit to sector organisations in undertaking their own internal assessments.

A significant study of giving to the philanthropic sector was undertaken in 2005 and published as *Giving Australia*.¹⁸ Unfortunately this research has not been continued and the Roundtable understands the ABS has not maintained or built the dataset which formed the basis for *Giving Australia*'s analysis.

Uses of information on the contribution of the sector

Apart from the generous and useful work of a small number of academics who specialise in the nonprofit sector in Australia, and somewhat limited work undertaken by the Australian Bureau of Statistics, by some government agencies and by sector organisations themselves, there appears to be little systematic collection and analysis of information about the nonprofit sector as a discrete and important sector. This means there is likely to be considerable scope for better and more use of information on the contribution of the sector – which could then be used to inform policy which supports or removes impediments to the contribution of the sector and by the sector itself to improve and enhance its own efficiency and effectiveness.

Data collection through fundraising and other regulation in each state and territory department and through government funding reporting does not appear to be used or collated to inform sector policy development or monitor policy effectiveness. Moreover because data is collected by regulators at state government level, it has limited value because of the lack or variation in standardised definitions and information collected from state to state.

Regarding policy reform, ACPNS notes that legislative reviews have resulted only in “piecemeal reforms to incorporated association, fundraising and charitable gaming legislation [being pursued] in various states and territories as well as incremental development of taxation compliance measures for exempt and deductible entities. One glimmer of successful reform has been the introduction of a number of taxation incentives directed at encouraging philanthropic giving, such as Prescribed Private Funds.”¹⁹

The Australian Bureau of Statistics framework for measuring social capital has limited application to evaluation of programs, outcomes and contributions of the nonprofit sector. The framework measures the

¹⁶ The ACFID Code of Conduct. Available at: <http://www.acfid.asn.au/code-of-conduct>

¹⁷ FIA's Principles and Standards of Fundraising Practice. Available at www.fia.org.au

¹⁸ Giving Australia 2005, The 'Giving Australia' project was an initiative of the former Prime Minister's Community Business Partnership, coordinated by the Australian Council of Social Service (ACOSS) in collaboration with the Centre for Australian Community Organisations and Management (CACOM) at the University of Technology, Sydney, the Centre of Philanthropy and Nonprofit Studies (CPNS) at the Queensland University of Technology, Roy Morgan Research (RMR), McNair Ingenuity Research and the Fundraising Institute Australia (FIA). Available at:

http://www.fia.org.au/Content/NavigationMenu/EventFlyers/GIVING_AUSTRALIA_SUMMARY-2005.pdf

¹⁹ <https://wiki.qut.edu.au/download/attachments/89014018/M.McGregor+Modernising+Charity+Law.pdf?version=1>

effect of the work of the nonprofit sector but these effects cannot be directly attributable to particular organisations.

Annual reports and best practice standards are another important tool to demonstrate and measure the value of the sector.²⁰ Here industry self-regulation is ahead of government regulation as demonstrated by:

- Fundraising Institute Australia (FIA) Principles and Standards of Fundraising Practice; and
- Australian Council for International Development (ACFID) Code of Conduct,

where annual reports:

- 1) provide accountability and transparency in the use of donated funds; and
- 2) communicate the impact of nonprofit work to donors and the wider public.

Access to Human Resources

The nonprofit sector's access to human resources is a key and critical issue. An extraordinary number of Australians volunteer their time in nonprofit organisations to assist in their activities and in the management and governance of organisations²¹.

Regarding volunteers, Volunteering Australia has pointed out that in its submission to the Productivity Commission that support from government is essential to stimulate the contribution of volunteering and volunteers. They claim it is necessary to:

- provide greater recognition to the contribution of volunteers
- invest more in volunteering
- provide protection for all volunteers at organisational and regulatory levels
- consider the ramifications to volunteers and volunteering in the formulation of new public policy (such as police checks etc.)²²

In terms of the paid work force in the nonprofit sector, the Commission makes reference (at page 19 of the Discussion Paper) to the additional value that derives from the altruistic motives of workers, including being paid at less than market rates. This should no longer be seen as a "taken for granted" feature of the nonprofit community services sector, where there has been a steady decline in the relative value of wages since the early 1990s - to the point where this view of the sector might now be seen as somewhat nostalgic wishful thinking.

There is a lack of comprehensive quantitative data regarding causes of problems in recruitment and retention of paid staff in the community services sector. A number of surveys conducted by sector organisations such as ACOSS and Jobs Australia have consistently identified sector recruitment and retention of staff as major and ongoing problems. The cumulative effects of bargaining outcomes in competing sectors (eg the public sector) have resulted in widening pay gaps with the community sector. Government agencies routinely fund only entry-level positions even in situations where award classification structures recognise the higher work value of higher level skills and experience. Frequently, short term funding agreements undermine job security and hamper the ability of sector employers to

²⁰ Viz Charity Commission UK. Available at: www.charity-commission.gov.uk/

²¹ National Roundtable of Nonprofit Organisations, *The Nonprofit Sector in*, 3rd Edition 2009

http://www.nonprofitroundtable.org.au/AM/Template.cfm?Section=About_the_NFP_Sector&Template=/CM/ContentDisplay.cfm&ContentID=7265

²² Volunteering Australia and Australian Volunteers International 2001, *A national agenda on volunteering: beyond the internal year of volunteers*, Volunteering Australia, Melbourne. Available at:

http://www.volunteeringaustralia.org/html/s02_article/article_view.asp?id=373&nav_cat_id=197&nav_top_id=68

provide career paths and to recruit and retain staff. This contributes to high staff turnover, increases transaction costs, exacerbates loss of knowledge and skills and undermines staff commitment and performance.

Widespread anecdotal evidence from community services sector employers suggests that difficulties in recruitment and retention of paid staff represent a very serious current rather than future problem for the sector. The dimensions of this problem and its causes need to be better researched and understood so that strategies and policies to ameliorate its negative impacts can be brought to play. This major current problem will be further exacerbated by the effects of the ageing of the population which will substantially increase demand for care services and reduce the supply of paid and voluntary labour at the same time. How the sector will respond to this major challenge is not clear at this time.

For Public Benevolent Institutions and other Fringe Benefits Tax (FBT) rebatable employers in the sector, uncompetitive wages are partly offset by access to exempt salary sacrifice. Many of these employers are more likely to be largely government funded or funded by direct public donations and lack the ability to self-fund higher wages or to raise additional funds. In the absence of substantial additional financial support from government, retention of salary sacrifice is essential if needed levels of service are to be maintained.

Access to Financial Resources

The Roundtable has published a research paper on this issue: *Mobilising Capital for Australia's Nonprofits: Where is it needed and where can it come from?*

"Research undertaken for this paper finds evidence that for some important groups of nonprofit organisations accessing capital is indeed difficult, even impossible. As a result, some face closure or sale to for-profit enterprises; others are unable to grow and new nonprofits with potentially important social innovations do not progress beyond a plan. There is also evidence that the problem is magnified by a lack of financial skills and of confidence on the part of smaller nonprofits.

The fields where nonprofits are most exposed to this problem are social assistance (previously known as community services), school education, health, community development and housing.

In countries such as the United States and the United Kingdom, governments recognise the need for specialist financial intermediaries and instruments and stimulate investor support for these through the tax system. Similar intermediaries exist in Australia but without support are too small to have an impact.

It is sometimes claimed that Australia's nonprofit sector, or important parts of it, face difficulties in accessing capital, that is the finance they need to invest in new assets or to renew existing assets. 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 nonprofit organisations in many industries or fields of activity. These claims are based on anecdote and while they provide convincing examples, it is not clear how large the problem is.²³

As noted by Professor Lyons and his colleagues, a small number of specialist financial intermediaries have been established in Australia to meet the needs of nonprofit organisations – such as the joint venture between the nonprofit sector and Bendigo Bank, Community Sector Enterprises Pty Ltd. These

²³ Lyons, Mark with assistance from Andrea North-Samardzic and Angus Young. 2007. *Mobilising Capital for Australia's Nonprofits: Where is it needed and where can it come from?* Commissioned by National Roundtable Of Nonprofit Organisations Limited (Australia) Available at http://www.nonprofitroundtable.org.au/Content/NavigationMenu2/FinancialSustainability/documents3/NRNOFinancial_Capital.pdf

intermediaries don't receive any government support and have only limited impact as a consequence. Some of the major banks are also developing services and products tailored to the particular needs of nonprofit organisations.

Other important issues concerning the sector's access to financial resources are the adequacy of government and other funding (such as philanthropy), the extent to which the sector is able to fully cost its services and the extent to which government and other funders are prepared to meet the costs above and beyond those involved in direct service delivery and which include administrative, infrastructure and other overhead costs. Adequate financing of these indirect costs is often absent but is fundamentally important for the effective governance, management and sustainability of nonprofit organisations.

Capacity to innovate and use resources to best effect

Initiatives in the area of improving skills and business development could include:

- creation of model agreements to facilitate the development of partnerships and collaborations between nonprofits and nonprofits with business
- adaptation of the government's successful Enterprise Connect service for the nonprofit sector to assist small and medium sized nonprofits become more innovative, efficient and competitive.

A key study on the success of nonprofit organisations working to address issues of unemployment and published by Jobs Australia should be considered in relation to their ability to leverage government and other funding and to maximise their contribution to Australian society and the economy.²⁴

A number of initiatives developed by business and the nonprofit sector which have been successful in enhancing accountable, transparent best practice include:

- PricewaterhouseCoopers Transparency Awards. For more information: <http://www.pwc.com/extweb/aboutus.nsf/docid/B7895E8C1C53CC94CA2573330005A220>
- Equity Trustees NFP CEO Awards. For more information: <http://www.eqt.com.au/ceoawards/default.asp>
- Fundraising Institute Australia's Fundraising Awards for Excellence in Fundraising. For more information: <http://www.fia.org.au/AM/Template.cfm?Section=Awards>
- Australian Business and the Arts Foundation's Awards For more information: www.abaf.org.au/awards
- Business and Higher Education Round Table Awards. For more information: <http://www.bhert.com/>

Regulatory environment

Any consideration of the regulatory environment for nonprofit organisations needs to place strong emphasis on the central importance of preserving and maintaining high levels of public trust in the nonprofit sector and in individual nonprofit organisations. This should be a key objective of the overarching regulatory framework for the sector and of discrete regulatory arrangements.

Many of the more complex issues concerning various aspects of current regulatory frameworks and arrangements for nonprofit organisations in Australia have been identified in major inquiries conducted by the former Industry Commission in 1995 and by the Charities Definition Inquiry in 2001 and in numerous other studies and reviews. Organisations in the sector have devoted significant resources to the

²⁴ 10 Forces at Work, How 10 Nonprofits Tackled Unemployment and more in their Communities. Jobs Australia 2008. Copies can be obtained from <http://www.ja.com.au/home/article.aspx?id=9431>

preparation of submissions to these inquiries and have consistently recognised and argued the case for reform but have largely not managed to convince successive governments to take necessary reform action.

The Roundtable published a major and initial statement on a National Nonprofit Regulation Reform Program²⁵ in May 2004. Regrettably, this statement, which addresses many key issues concerning regulatory reform for nonprofit organisations, remains current and relevant today because we have made little progress in securing the level and degree of reform which would bring the nonprofit regulatory environment in Australia to world's best practice. The nonprofit sector has remained under the radar of the significant effort undertaken over the past few years to reduce the burden of regulatory red tape for the business sector and has only managed to achieve minor and largely peripheral reform. In that context, however, the Roundtable notes and applauds the efforts of the Victorian government, through its 2007 Review of Nonprofit Regulation, to make some inroads into reducing red tape and improving the regulatory environment for nonprofit organisations in that State.

The Roundtable is strongly of the view that major reform will necessarily involve the Commonwealth and State and Territory governments, and many different agencies across the various jurisdictions. Our paper, *The Assessment of Charitable Status in Australia*²⁶, clearly illustrates that the task of reforming charity law requires examination of some 178 Commonwealth and State and Territory Acts and as many as 93 different government entities. In our submission²⁷ to last year's Commonwealth Treasury's consultations on Financial Reporting by Unlisted Public Companies, we observed there are significant inconsistencies in reporting and other requirements imposed in different States and Territories pursuant to their very different Associations Incorporations laws.

There are compelling arguments for reform of laws governing the incorporation of nonprofit organisations, the taxation of nonprofit organisations, the fundraising by nonprofit organisations, for reform of accounting and reporting requirements and for reform of the growing and increasingly burdensome degree of contractual red tape and regulation imposed through contracts between government agencies and nonprofit organisations.

The Roundtable argues in this context not always for less regulation, but rather, better regulation and concedes that this might mean more regulation in some contexts for some organisations. Others, and especially smaller member serving organisations, might require no external regulation. The utility and effectiveness of self regulation and the roles of Boards and Management Committees also require important consideration. The sector needs regulation which is proportionate to risks of non-compliance and which promotes and sustains the reputation of the sector and the high level of public trust which it must continue to enjoy.

Another critical and important aspect of effective regulatory reform for the nonprofit sector is the need to engage, communicate and consult with nonprofit organisations on each and every aspect of reform which might affect or interest them. (*"Nothing about us without us"*, as we say.) The Roundtable recognises that some of the reasons that very little has been achieved to date in better regulation for the nonprofit sector include the difficulties in communicating effectively with a large and disparate group of organisations, the lack of a common voice of the sector on issues on which we broadly agree and our failure, by and large, to effectively assert and prosecute our case for reform.

²⁵ National Roundtable of Nonprofit Organisations, *Nonprofit Regulatory Reform Statement 2004*

Available at: http://www.nonprofitroundtable.org.au/Content/NavigationMenu2/PolicyRegulatoryReform/documents2/Reg_Reform-Statement.pdf

²⁶ National Roundtable of Nonprofit Organisations (2007) *The Assessment of Charitable Status in Australia: Current Practice and Recommendations for Improvement*.

²⁷ National Roundtable of Nonprofit Organisation's submission: Financial Reporting by Unlisted Public Companies Available at <http://www.treasury.gov.au/documents/1316/PDF/NationalRoundtableofNonprofitOrganisations.pdf>

One of the key reasons for the formation of the Roundtable was to provide a forum for addressing issues in common across the broader nonprofit sector and regulatory reform is a very high priority for all of our members. The Roundtable also aims to provide a locus for communication and dialogue between government and business and nonprofit sectors. The Roundtable stands ready to use our networks to continue to promote the need for reform, to consult and communicate with the sector on reform issues and to play an active and a positive role in the design and implementation of reform measures.

Nonprofit organisations in Australia make a significant contribution to the Australian economy and to Australian society. They fulfil a role which is markedly different and distinct from the roles of the state and the market. An effective and well regulated nonprofit sector is a fundamental pre-requisite of a vibrant democracy and a truly socially inclusive Australia.

The lack of regulatory reform is impeding the ability of the sector to fulfil its potential and to make the best possible contribution it can make to Australian communities and to the nation as a whole. The sector needs better regulation and world's best practice regulation and needs it as soon as it can practicably be delivered.

One of the ways in which a government can encourage and sustain a strong nonprofit sector is to ensure that there are laws and regulatory arrangements that enable and are supportive of its work and role in Australian society²⁸.

However, as this question has been explored in depth in most inquiries conducted since 1995²⁹ and most recently in the report of the Senate Economics Committee, the substance of the argument for a single independent national regulator for nonprofit organisations will not be repeated here.

What is important is that the regulatory reform addresses the variety of issues currently impeding the sector and its future development in Australia. International examples of best practice regulation, such as the Charity Commission for England and Wales³⁰ (but with broader scope covering the whole of the nonprofit sector) could provide a useful model for effective national level regulation of nonprofit organisations in Australia.

Pre-requisites for success include:

- One body to determine and regulate charitable status
- Enabling legislation proportional to risk (light touch) that supports the activities of the sector
- Enabling regulatory environment (as outlined above) with minimum exemptions and categorisations such as DGR, PBI etc which unevenly distribute regulatory burden and taxation concessions
- Enabling self-regulatory frameworks (industry codes, as outlined above)

As ACFID has noted, such a regulatory body could take on the responsibility for determining charitable status, registering and supervising charities. Effectively this could also achieve the decoupling of charitable tax exemption from charitable status and free the tax-collecting agency (the ATO) from its obligation to interpret charitable purpose and the acceptability of a charity's advocacy activities.³¹

The environment has not altered since the Roundtable determined in 2007 that there were:

²⁸ Lyons M (2003) 'The Legal and Regulatory Environment of the Third Sector', Asian Journal of Public Administration, Vol 25, No. 1 June 2003. Available at: sunzi1.lib.hku.hk/hkjo/view/50/5000082.pdf

²⁹ See report of the Inquiry into the Definition of Charities and Related Organisations, June 2001. Available at: <http://www.cdi.gov.au/html/report.htm>

³⁰ The Charity Commission for England and Wales, Available at: <http://www.charity-commission.gov.uk>

³¹ See ACFID submission to Productivity Commission

“15 Commonwealth Acts and 163 State and Territory Acts under which entitlement to a benefit or some other legal outcome turns on the charitable purpose or status of an organisation” and “19 Commonwealth, State and Territory governmental entities are regularly involved in determining the charitable status of organisations, and a further 74 entities may be called on to make such determinations from time to time.”³²

The Roundtable recognises the government’s recognition of the need for nonprofit organisations to undertake advocacy, removing the gagging clauses from service delivery contracts. Its further work on a proposed compact for the sector should also ensure the independence of the sector in presenting its views even if heavily reliant on government funding. However the ATO remains the arbiter on the ‘grey’ area of charitable purpose.

Some of the problems have been outlined as follows:

- MacKillop Family Services (MFS) submitted a nine-page comprehensive list of compliance legislation and other compliance requirements which it must adhere to³³
- The Music Council of Australia is registered to fundraise in one state despite its being a national organisation. The Council’s Executive Director, states “it is a time consuming process [to register to fundraise in each state] and beyond the resources of MCA.”
- The Roundtable notes there is “little coordination among agencies within and among jurisdictions, and a high degree of inconsistency and duplication”³⁴ further increasing the regulatory burden of nonprofit organisations.
- different definitions of ‘public benefit’ and PBI by the ATO and AusAID, a framework that impacts in particular on INGOS³⁵
- ACFID has noted [advocacy] does not detract from [the] status [of] ‘charities’ but rather reinforces it³⁶
- FIA has drawn attention to the flaws in using costs of fundraising as a benchmark because of the lack of common definitions as to what constitutes fundraising itself and an absence of understanding as to the financial implications of different types of fundraising.³⁷

A number of government agencies are adopting “lead provider” relationships with larger organisations in the sector, which then contract some aspects of service delivery to smaller nonprofit organisations. Whether these arrangements are effective and whether they promote or reduce diversity of the sector depends on how they are structured and operated, the nature of agreements and understandings and the ways in which they are resourced. In some cases they will promote involvement of smaller nonprofits in activities and services which they would otherwise be unable to participate in and may enable larger organisations to better connect their services with local communities and citizens. In other and less desirable cases, they could result in more and different regulatory requirements for smaller organisations (imposed by the lead providers as well as government) and perhaps less than appropriate funding and engagement of smaller organisations in decision making and local control of service delivery.

In order to avoid some of these risks, governments might need to recognise that the additional administrative costs of engaging larger numbers of smaller providers might be offset by better connection with and engagement of local communities and the maintenance of a diverse array of smaller

³² National Roundtable of Nonprofit Organisations, The assessment of charitable status in Australia, Current practice and recommendations for improvement 2007

³³ MacKillop Family Services’ submission to the Senate inquiry into disclosure regimes for charities and nonprofit organizations. Available at: http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/submissions/sub43.pdf

³⁴ National Roundtable of Nonprofit Organisations, The assessment of charitable status in Australia, Current practice and recommendations for improvement 2007

³⁵ Confusion exists between ATO and AusAID definitions of ‘relief’ and ‘welfare’ and is further complicated by interpretation of S57 FBT Act1986

³⁶ ACFID’s Productivity Commission submission

³⁷ Fundraising Institute Australia, *Research on Key Issues in Fundraising*, September 2004

organisations with capacity to innovate, change and respond to widely different local and individual needs.

Trends in government funding and service delivery

Roundtable members have raised concerns that government funding is shifting from government grants to more restrictive contractual arrangements. There is an increasing trend for governments to outsource delivery of services to the nonprofit sector in some cases and, in others, to mixed markets which can include public, private and nonprofit sectors. In doing so, they may have less interest in or ability to fund the traditional activities of the sector or new services initiatives of nonprofit organisations. There is also a significant risk that government agencies come to see nonprofit organisations as cheap providers of government services without regard for their independence, their different and separate identity and their roles as advocates and innovators.

Frequently inadequate government funding for nonprofit delivery of government services shifts significant financial risk to nonprofit organisations, doesn't pay sufficient regard to their costs of financial capital and results in organisations being required to meet shortfalls in funding from their own resources – thereby diminishing their ability to offer services or innovations which governments are not prepared to fund.

The Roundtable is concerned that governments may view nonprofits as a 'cheaper option' for the delivery of services. In its submission, National Disability Services has stated:

"In 1995, the Industry Commission noted that the government could' expect significant cost savings by making greater use of the community sector in the provision of government services: The Commission found that, in general, non-government organisations are significantly more effective providers of services that equivalent government agencies. For disability services, this finding is reaffirmed in the annual Productivity Commission Report on Government Services.

*Not for profit disability organisations are far more efficient in expending public funding than government services. Governments wanting to reap efficiency gains would gain far more from transferring services to not for profit organisations than by further squeezing the sector for productivity gains."*³⁸

Many nonprofit organisations deal with the contractual regulatory nightmare of multiple government contracts (reference for example CSSA submission to Senate Economics Committee Inquiry) to provide an array of different programs and often complex services which they integrate into apparently seamless services which attempt to meet the changing and different needs of their clients and their communities. This ability to integrate and tailor combinations and sequences of complex service delivery is a key and unique feature of nonprofit service delivery which is impeded by the burden of contractual regulation imposed by government departments.

In its submission, ACOSS has provided detailed comments, supported by the Roundtable, on how government and nonprofit relationships could be enhanced through a compact and the importance of full cost recovery for the provision of services.

³⁸ See National Disability Services' submission to Productivity Commission review

Arrangements for government funded service delivery

The Roundtable hopes and expects that a number of its members with significant interest and involvement in government funded service delivery will provide detailed responses to this aspect of the Commission's study.

As noted above, there is a definite shift towards more "market-based" models where organisations compete for service contracts from government departments or, less often, for clients who receive funding from government in arrangements similar to vouchers. Competition between nonprofit organisations in tendering processes has had a marked and significant negative impact on the extent to which sector organisations share good and best practice and co-operate and collaborate with one another.

While much is made rhetorically of the so-called "partnership" relationship between government departments as purchasers and nonprofit organisations as providers, the nature of tendering and purchasing arrangements and contractual requirements often reflect relationships which are much more akin to master servant relationships. The Roundtable contends that the new public management approach to relationships between government and the nonprofit sector, which seeks to minimise public sector risk and to maximise public sector control is not conducive to effective "partnership" approaches and is in urgent need of reform.

The costs and complexity of competitive tendering as an effective means of procurement of government services also warrants reform. In addition to the huge and substantial costs of preparation of tenders, which will inevitably exclude smaller nonprofits from involvement, they distract provider organisations for lengthy periods from service provision and can yield results which involve significant and costly market disruption. In mature "markets" it should be possible to find alternative and cleverer approaches to procurement which maintain necessary competition, choice and focus on outcomes and keep transaction and other costs to a necessary minimum.

In some areas of government funded service delivery, and the Australian Job Network is a prime example, emphasis on outcomes and nonprofit (and for profit) flexibility about processes has iteratively shifted over the past 11 years since its establishment to extraordinary degrees of prescription and control over processes (which have come to be referred to as "nano-management") by the purchasing department. Associated with this shift is a significantly increased and costly contractual reporting and regulatory burden and an associated significant diversion of attention and resources away from service provision and towards contract administration and compliance. The Roundtable recognises and appreciates that the government has taken a number of positive steps to address these issues in its reform of the employment services system and in its mooted approach to regulatory reform and building relationships with the sector more generally.

The Whitlam Institute and the Public Interest Advocacy Centre in New South Wales is undertaking research into the nature of government contracts with nonprofits organisations - with financial assistance provided by the University of Western Sydney and Roundtable member, Jobs Australia. That research is almost completed and the relevant report is to be provided to the Commission.

Trends and Developments

There are a number of trends and developments becoming apparent:

- Staffing cuts, budget cuts, funding cuts, reduced services and increased demand for services are anticipated from nonprofit organisations due to the effects of the global economic downturn³⁹
- The increase in volunteering. Volunteers outnumber paid staff in nonprofit organisations by more than double according to the ABS review of the nonprofit sector⁴⁰
- Services becoming more individualised in the disabilities services sector⁴¹
- Increasing philanthropic funds distributed through PPFs⁴² and increased giving by the Australian community
- Workforce and other challenges posed by the ageing population and the increase in demand for services nonprofits provide⁴³
- Shift towards contractual agreements with nonprofit organisations and the government to provide services rather than the preferred partnership or grant model
- Further moves towards the development and implementation of a compact between Australian governments and some elements of the nonprofit sector
- Recent rapid growth in partnerships between business and nonprofits may decline as a consequence of the global financial crisis
- An initiative that could be replicated across the sector - the Partnership Agreement struck recently between ACFID and the federal government⁴⁴
- Increasing use of self regulatory models alongside legislation improve nonprofits regulation. See Australian Communications and Media Authority and FIA's work on the Do Not Call Register⁴⁵
- The impacts of climate change and the introduction of carbon reduction measures by government will challenge some parts of the nonprofit sector and, importantly, will provide opportunities for nonprofit organisations to engage with local communities and citizens to help them play their part in a lower carbon future. This may involve the creation of green enterprises and jobs by some nonprofits organisations. World Vision "hopes to secure millions of dollars in donations from the international carbon trade market... by delivering environmental development projects in Africa and Asia"⁴⁶, an initiative that has potential to be replicated in the aid and development sector.
- The Roundtable notes renewed interest in social enterprise. The Roundtable applauds efforts being made to map and document the many existing social enterprises now being undertaken by the QUT ACPNPS and Social Traders and points to a need for new ways of providing the financial capital and other support they need if they are to have a sustainable future.

³⁹ See FIA/PwC/CSI survey on *Impact on Financial Crisis on Fundraising* (report due July 2009). For more information see www.fia.org.au

⁴⁰ 8106.0 - Not-for-profit Organisations, Australia, 2006-07 Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Main+Features32006-07>

⁴¹ NDS's Productivity Commission submission

⁴² See Philanthropy Australia's Productivity Commission submission. Since the introduction of PPFs, 775 have been set up since 2001.

⁴³ National Roundtable of Nonprofit Organisations, *Nonprofit Regulation Reform*. 2004

⁴⁴ Australian Council for International Development, Partnership Agreement, March 2009, available at: http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_govt-ngo-relations/partnership%20agreement%202009.pdf

⁴⁵ See FIA's submission to the Productivity Commission.

⁴⁶ *The Weekend Australian*, May 16-17 2009, p2. World Vision has been reported as the first NGO to negotiate a deal with the World Bank for carbon-commission offsets for a reforestation project in Ethiopia.

Contributors

Kelly Bruce
Business Manager / Acting Executive Director
Australian Council for International Development
(ACFID)
kbruce@acfid.asn.au
02 6281 9213

Andrew Drysdale
Chief Executive Officer
Qld NRM Groups Collective
PO Box 4608 Toowoomba East 4350
andrewd@rgc.org.au
07 4699 5002
www.rgc.org.au

Paul Linossier
Chief Executive Officer
MacKillop Family Services
22 Pin Oak Crescent,
Flemington VIC 3031
03 9381.6999
www.mackillop.org.au

David Thompson AM
Chief Executive Officer
Jobs Australia
PO Box 299
Carlton South, Vic 3053
03 9349 3699
www.ja.com.au

Gina Anderson
Chief Executive Officer
Philanthropy Australia
Postal address:
Level 10, 530 Collins Street
Melbourne VIC 3000 AUSTRALIA
03 9620 0200
www.philanthropy.org.au

Clare Martin
Chief Executive Officer
Australian Council of Social Service
Locked Bag 4777
Strawberry Hills NSW 2012
<http://www.acoss.org.au/>

Chris McMillan
Chief Executive Officer
Fundraising Institute Australia
PO Box 642
Chatswood, NSW 2067
02 94116644
www.fia.org.au

Richard Letts
Executive Director
Music Council of Australia
mca@mca.org.au
02 9251 3816
www.mca.org.au

Cary Pedicini
Chief Executive Officer
Volunteering Australia
Suite 2, Level 3, 11 Queens Road
MELBOURNE VIC 3004
cary.pedicini@volunteeringaustralia.org
03 9820 4100
www.volunteeringaustralia.org

Dr Sue-Anne Wallace FAICD
Managing Director
Global Philanthropic
Suite 101, Level 1, 93 Pacific Hwy
North Sydney NSW 2060
02 9929 2089
sydney@globalphilanthropic.com

Dr Ken Baker
Chief Executive
National Disability Services
02 6283 3200
www.nds.org.au