



Submission by UnitingCare Australia to the
Productivity Commission Study into the
Contribution of the Not for Profit Sector

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Table of contents

1. Executive Summary.....	3
2. Introduction.....	5
3. Scope of the Study.....	5
4. Measuring the contribution of the not for profit sector.....	9
5. Enhancing the efficiency and effectiveness of the not for profit sector.....	10
5.1 Sustainability.....	10
5.2 Workforce.....	13
5.3 Business Model.....	14
5.4 Financial Sustainability.....	15
5.5 Regulatory and Administrative Reform.....	17
6. Service delivery.....	23
7. Conclusion.....	24

1. Executive Summary

There are range of key themes and recommendations contained in this submission which we consider important in the overall scope of this study. One of the key challenges for the Productivity Commission (Commission) will be to place an appropriate value on a sector which is large and extremely diverse. We recommend that any assessment acknowledge both the direct and indirect contributions of the sector.

In the Commission's Issues paper comments were sought on recommendations from previous reviews and Inquiries relating to the Sector. UnitingCare recommends that the government introduce the definition of Charity as outlined in the Inquiry into the Definition of Charities and Related Organisations which reported its findings to the Federal Treasurer in June 2001 as a first step to simplifying many of the issues which impact on the operations of the not for profit (NFP) organisations in the social services sector. In relation to the most recent review, the Senate Inquiry into disclosure regimes for charities and not for profit organisations, we would ask that the government carefully articulate the role of a new regulator for the NFP sector especially in terms of its review and complaints mandate.

Any assessment of the contribution of the NFP sector to Australian society must not be represented solely in terms of a financial bottom line. While we acknowledge the need for a more systematic way to capture and analyse data to enable measurement of the impact of the services provided by NFP organisations, this requires a significant investment of resources. Simply placing the burden of increased data capture on NFP organisations will stretch an already over burdened NFP infrastructure and shift more resources away from service delivery to meet the additional reporting requirements. Any recommendation to improve and/or increase data collection and reporting requirements on NFP organisations should also include a recommendation that appropriate government support be provided to the NFP sector to meet these increased requirements.

There are a series of issues which directly impact upon the sustainability, capacity, efficiency and effectiveness of NFP social services, including business models; workforce issues; financial models; and regulation, compliance and administrative processes. Each of these requires attention in their own right but none can be addressed effectively in isolation from the other. The issues impacting on the sustainability of the social services sector will be in a large part resolved by changing the relationship between government and the sector. A new and better relationship between governments and NFP organisations should be built on the recognition that they co-contribute to social and economic wellbeing.

In order for services sustainability to be realised the government and social services must work together to develop and implement appropriate responses to deprivation, exclusion and service needs. Inputs from the NFP sector need to be treated as contributions to be respected and reforms need to occur *with* social services rather than *to* them. There are a range of administrative and regulatory issues which the government and sector could work on together under this new model of relationship, particularly addressing the inefficiencies of the systems and processes related to procurement, funding, regulation, tax treatment and administration.

Significant effort will also be required in the area of regulatory reform. In essence they relate to:

- The appropriateness of the regulatory mechanism to ensure the quality, safety and effectiveness of the activity it regulates, and to achieve a change in outcome when problems are identified;
- The cumulative impact of newly introduced regulation; and

- The lack of an appropriate assessment by departments of the impact of the regulation on the costs of service provision.

We see merit in extending the scope of the Office of Best Practice Regulation to include a quality assurance and compliance so that the principles laid out in the Handbook are met by all departments. Further we propose:

- That RIS processes be improved to ensure that the information contained in them explicitly considers the implementation costs on providers (or those being regulated);
- That the Regulation Impact Statements be located on a central website administered by the Office of Best Practice Regulation as a means to help monitor the cumulative impacts of new Administrative and Regulatory processes;
- Sanctioning of government agencies who fail to comply with best practice in implementation of RIS; and
- That newly developed administrative processes and quasi-regulation be subject to Regulation Impact Statements process prior to being introduced.

There is still a distinct imbalance in relationship between social service providers and government in favour of the government. This imbalance impacts on the capacity for innovation and, as we argue in this submission that it requires disproportionate resources to service the contractual relationship. Through this process not only are government agencies outsourcing the cost of administration to the NFP organisations but also the risk. This type of relationship will only serve to further reduce the capacity of NFP organisations to contribute to improving the lives of vulnerable and disadvantaged Australians.

The NFP is part of the fabric of Australian society and it should be accorded equal standing in its contribution to the prosperity and civic life of Australia as the Government and Business sectors.

We hope that this submission assists the Commission to develop a clearer understanding of the contributions made by the sector and the impediments which impact on the capacity of the NFP sector to sustain and grow these contributions, particularly those organisations involved in the delivery of social services.

2. Introduction

UnitingCare Australia is an agency of the National Assembly of the Uniting Church in Australia (UCA). UnitingCare Australia focuses on representing the views of agencies in the UnitingCare network to the Government, and advocating for those policies and practices that enhance the dignity of people, especially those who are most disadvantaged and vulnerable.

The agency represents the UCA's network of UnitingCare social services operating across some 1500 sites nationwide. The UnitingCare network is one of the largest providers of social services in Australia providing services to over 2 million Australians each year, and employing 35,000 staff and 24,000 volunteers nationally. UnitingCare provides services to children, young people and families, people dealing with deprivation and hardship, people with disabilities, Indigenous and older Australians living in urban, rural and remote communities.

Social services provided by UnitingCare agencies are a practical expression of the social justice concerns of the Uniting Church in Australia. UnitingCare agencies work to ensure each person has access to the means and opportunity to live with dignity and hope; and belongs, is valued by, and can contribute to their community. Services delivered by these agencies employ a holistic approach to supporting individuals and communities to access the resources, supports and opportunities needed to live a decent life, the building blocks of which are being able to access appropriate food, clothing and healthcare; safe and secure housing; meaningful work, education, rest and enjoyment; and the opportunity to participate in and contribute to communities. UnitingCare agencies, through their community linkages are also able to provide people of goodwill – either as individuals or as organisations – a vehicle to make their own contribution to improving the wellbeing of people and communities that are disadvantaged and vulnerable.

UnitingCare Australia welcomes the opportunity to contribute to this very important study into the contribution of the not-for-profit (NFP) sector.

3. Scope of the Study

A review of the contribution of the NFP sector by the Productivity Commission (Commission) is both timely and critical.

The NFP sector is huge and diverse. It includes NGOs, charities, unions, cooperatives, clubs, associations, churches, temples mosques etc. The measurement of the contribution of these organisations needs to include the direct contributions made, including:

- Resources produced (both goods and services);
- Funds raised;
- Resources leveraged(financial, human and physical);
- People employed;
- Promoting health and contributing to improved productivity by addressing the barriers faced by disadvantaged and vulnerable people to participating in economic and social life;
- Building intellectual capital (eg developing and testing new approaches to social organisation and provision of services and supports, research); and
- Resources consumed (both goods and services).

Equally important is measurement of the indirect contributions of NFP organisations including:

- Facilitating engagement of people in the lives of others in their local community, across Australia and the world;
- Developing the social fabric that provides reassurance to everyone that in times of need they have access to services and supports that will address these needs;
- Enabling people of like interests and needs to work collectively;
- Providing mechanisms for governments to partner with communities to co-contribute to improving economic and social prosperity; and
- Building social and physical infrastructure that enables individuals and communities to participate in the political dialogue – enabling all people to participate in shaping both the circumstances in which they live now and the future social and economic developments that impact on them.

The social services sector, a subset of the broader NFP sector, makes both direct and indirect contributions. Being able to have influence over the social and economic factors that impact on your life, and make a contribution to the wellbeing of others, are essential preconditions for wellbeing, regardless of the individual circumstances in which a person lives. The role of NFP social services is to partner with individuals, families, communities and with governments to enable these contributions to be made and to deliver the services and supports people seek. UnitingCare Australia, and many other NFP organisations, focuses primarily on the interests, needs and aspirations of disadvantaged and vulnerable people and communities. This focus provides a mechanism for governments and others in the community to hear the voices of and to partner with the disadvantaged and vulnerable. This is an essential and irreplaceable contribution to the social capital of Australia.

A discussion of measures of the contribution of social services to improved prosperity, health and wellbeing is provided below in section 4.

NFP service provider organisations are facing significant challenges which, if not addressed, will impact on their capacity to make these contributions, which in turn will negatively impact on Australia's most vulnerable and disadvantaged. The focus of this submission will be on identifying and promoting issues which impact directly on the capacity of NFP social services to sustain and build their direct and indirect contributions to the economic and social life of Australia. Improving the sustainability of social service provision will strengthen the partnership with communities and with governments, will help deliver better services and supports and will strengthen the social fabric that supports us all.

Relevance of previous findings or recommendations to the current operations of the NFP sector

A critical question raised in the Commission's Issues Paper¹ is the relevance of previous findings or recommendations to the current operations of the NFP sector. As stated in the submission by UnitingCare Australia to the Tax Review² there continues to be significant complexity in determining whether an organisation is deemed to be a charity and the relevant concessions that should apply to that organisation. We believe that the government should introduce the definition of Charity as outlined in the Inquiry into the Definition of

¹ Contribution of the Not for Profit Sector, Productivity Commission Issues Paper, April 2009, p 15

² UnitingCare Australia, Submission to the Tax Review, May 2009, p 8

Charities and Related Organisations which reported its findings to the Federal Treasurer in June 2001.

The recent Senate Inquiry into disclosure regimes for charities and not for profit organisations raised some very interesting issues for consideration, however many of the recommendations will require further fleshing out before it is clear whether they will contribute significantly to improving the efficiency, effectiveness and productivity of NFP organisations. There are some recommendations which are of potential concern to UnitingCare Australia. Of these, Recommendation 7 relating to common legal structures warrants special consideration given the variety of legal structures used across the UnitingCare network of agencies, and across the NFP social service sector more widely. The critical issue here is to determine whether the significant costs associated with changing legal structures would deliver a commensurate level of benefit in terms of simplified administration, improved transparency, better accountability and improved productivity.

While it may be useful for new and emerging NFP organisations to have a simplified legal structure, a common legal structure will of itself do very little to support the capacity of an organisation to deliver effective and efficient services. Further, we have significant reservations about the priority that should be accorded to this initiative given the potential administrative burden and financial cost that would be placed on each of our agencies to transition to a standard legal structure. We contend that there are many more urgent issues which should be given priority ahead of a uniform legal structure and suggest that effort in simplifying charity taxation law would provide greater value to newly formed NFP organisations. This will be addressed in more detail later in the submission.

The other issue which should be carefully considered is the proposed role of the regulator to investigate complaints relating to the operations of NFP organisations. Many of the services performed by UnitingCare agencies are governed by legislative or contractual requirements where specific review and complaints procedures already exist. It is essential that the role of the regulator be clearly defined in terms of its review and complaints mechanism, particularly in regards to what complaints it will consider and what, if any, referral powers it will have in terms of the activities undertaken by NFP organisations.

Recommendations

1. The government should introduce the definition of Charity as outlined in the Inquiry into the Definition of Charities and Related Organisations which reported its findings to the Federal Treasurer in June 2001
2. The role of a NFP new regulator needs be clearly defined in terms of its review and complaints mechanism, particularly in regards to what complaints it will consider and what, if any, referral powers it will have in terms of the activities undertaken by NFP organisations

3.1 Assessment Framework

There is a general acceptance amongst academics and social commentators that Australian society has three sectors; Government, Business and Community/Voluntary or NFP. Each of these sectors have a distinctive “essence” which is reflected in the roles they carry out and the rules/values that shape the way they operate and interact in the community. However over the past decade or so the once clear trichotomy has become more confused

as NFP agencies partner with government in the provision of traditional government services and as for-profit organisations have increasingly entered into social service provision³.

The contracting relationship between government and NFP organisations has grown significantly over the past decade, particularly in relation to social services. This new relationship has required NFP organisations to develop more corporate like structures as well as operating systems and procedures. While there is evidence to show that many NFP agencies have and continue to move toward a more business/corporate modality it is not universal across the sector.

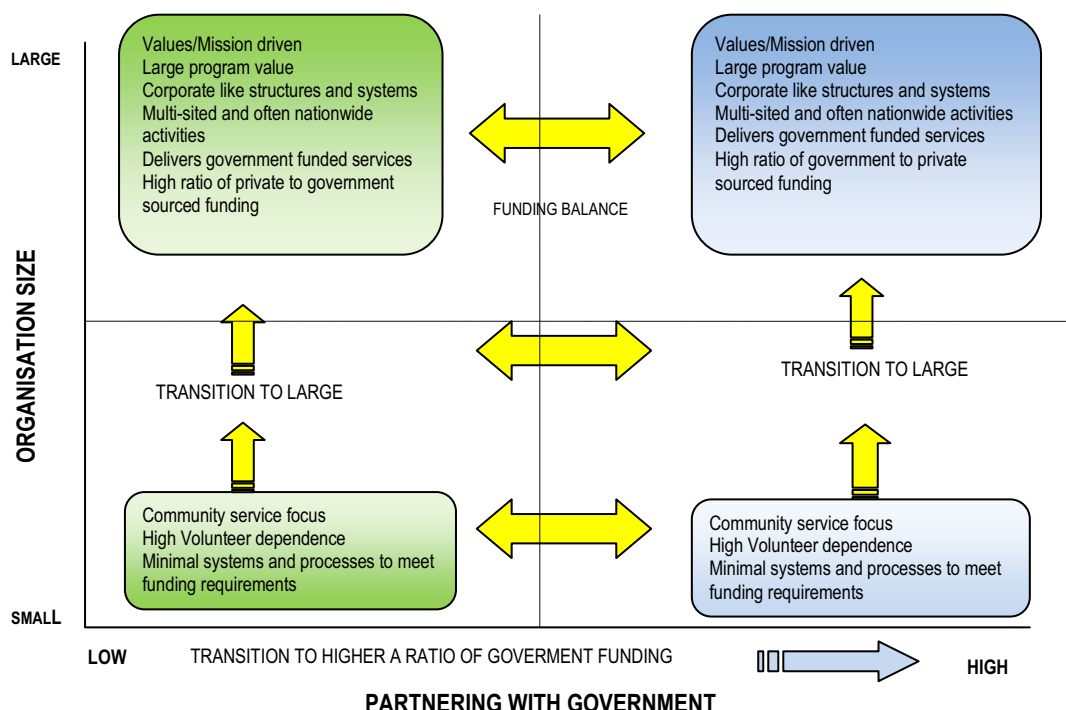
There are many factors which drive NFP organisations toward “corporatism” however it would be wrong to assume these drivers have an equal impact on all NFP organisations. The factors which drive NFP organisations toward corporatisation include the need or desire to provide increased services and the funding required to resource that increase. As with the for-profit sector, NFP organisations wishing to increase the breadth or depth of their services will undergo organisational change in order to provide them with more appropriate management structures, systems and processes.

While some NFP organisations will choose to adopt the practices and procedures of the for-profit sector it should not be viewed as a necessary or universally appropriate outcome for all NFP organisations. As such we would recommend that the Commission consider using a framework that recognises both the scale and size of the NFP organisation as well their purpose (sector or activity they undertake e.g. education, sport, social services, community activity) to assess both the contribution of NFP organisations as well as the issues which impede their effectiveness and efficiency.

Many organisations in the NFP sector commence as small community-focussed entities which expand and develop organically to meet changing needs and aspirations of members and service users. Diagram 1 articulates some common features of organisations across two key axes, size and the level of government partnership (which reflects the service and funding relationship between governments and NFP agencies).

³ Peter Saunders, Supping with Devil, The Centre for Independent Studies (CIS Policy Forum 16), p 1

Diagram 1 – Organisational Evolution



The contribution of NFP organisations to Australian society and the issues which affect their efficiency, effectiveness and sustainability will be different depending on the quadrant and the activities being undertaken. The Commission will need to take these differences into account when determining how best to measure the contribution of the sector as a whole. The challenge for the Commission will be to ensure that the contribution of all organisations, regardless as to whether they are large or small, with either a high or low level of government partnership, are adequately recognised.

Recommendation

3. The Commission consider using a framework (Diagram 1) that recognises both the scale and size of the NFP organisation as well their purpose (sector or activity they undertake e.g. education, sport, social services, community activity) to assess both the contribution of NFP organisations as well as the issues which impede their efficiency, effectiveness and sustainability.

4. Measuring the contribution of the not for profit sector

Any assessment of the contribution of the NFP sector to Australian society must not be represented solely in terms of a financial bottom line. While many UnitingCare agencies operate within business like structures and systems, their purpose is of mission and not profit. Income and surpluses are invested in social programs aimed at improving the lives of disadvantaged and vulnerable Australians, rather than distributed to shareholders as income. Accordingly, the Commission needs to assess the contributions of the NFP sector against social indicators such as social inclusion, developing social capital and facilitating

social reform around justice and equity. The true value of the sector may only ever be known if it fails to continue – therefore it may be prudent for the Commission to assess the true value of the sector by asking – what would Australian society be like without the NFP sector?

Determining the contribution of the sector beyond inputs and outputs will be a challenge for the Commission. While we acknowledge the need for a more systematic way to capture and analyse data to enable measurement of the impact of the services provided by NFP organisations, this requires a significant investment of resources. Simply placing the burden of increased data capture on NFP organisations will stretch an already over burdened NFP infrastructure and shift more resources away from service delivery to meet the additional reporting requirements.

Should there be recommendations to improve and/or increase data collection and reporting requirements on NFP organisations we ask that the Commission also recommend that appropriate government support be provided to the NFP sector to meet these increased requirements. It will also be important that any data collection and reporting requirements be consistent with or acceptable to government agencies so as to avoid duplication of effort. Where such information is provided to government agencies it will be important that those agencies be required to analyse and feedback that information in a timely manner.

Recommendation

4. Should there be recommendations to improve and/or increase data collection and reporting requirements on NFP organisations we ask that the Commission also recommend that appropriate government support be provided to the NFP sector to meet these increased requirements.

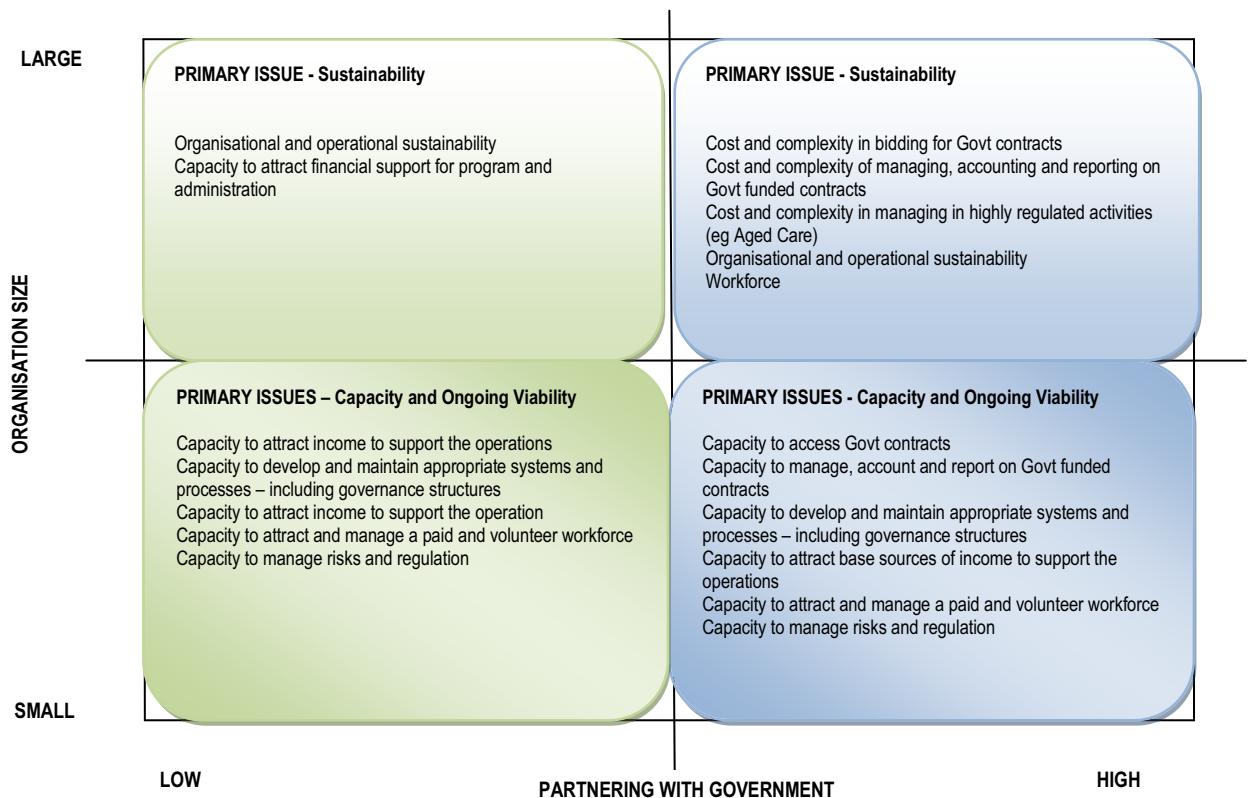
5. Enhancing the efficiency and effectiveness of the not for profit sector

5.1 Sustainability

Inherent in the objective of enhancing the efficiency and effectiveness of the NFP sector is the identification of those issues which impede the efficiency and effectiveness of NFP organisations. It is important that the Commission recognise that the impediments to greater efficiency and effectiveness are not uniform and will depend greatly on where an organisation is in terms of their evolution (*Diagram 1*) and the sector and regulatory framework within which it operates.

Diagram 2 outlines some of the issues inherent in managing organisations of different sizes and with differing levels of government partnership. Many UnitingCare agencies fall within the high level of government partnership (blue zone) which brings with it a range of issues specific to that level of relationship. Accordingly, much of this section will focus specifically on the issues and possible solutions to improve the efficiency and effectiveness these of organisations.

Diagram 2 – Issues Segmentation



In a recent paper to the Australian Government Community Response Taskforce, UnitingCare Australia outlined a series of issues which directly impact upon the sustainability, capacity, efficiency and effectiveness of social services, these included:

- business models;
- workforce issues;
- financial models; and
- regulation, compliance and administrative processes.

Each of these requires attention in their own right but none can be addressed effectively in isolation from the other. Tackling any one issue without due regard to the others will potentially undermine social service sustainability overall. Table 1 below identifies some of the key elements of the four interrelated issues which impact upon social services sustainability.

Table 1 – Key Issues Impacting on Sustainability

Issue	Key elements
<i>Business models</i>	<p>Funding models do not adequately compensate/support those organisations that support people with highest and most complex needs, or who operate in areas of locational disadvantage. For-profit providers often “cherry pick” clients who are most able to contribute to the costs of care or have lowest level of support needs, reducing the capacity of non-profit agencies to operate in those spaces and therefore be able to direct surpluses generated to people with high or complex need, or locations in which a surplus cannot be generated eg rural and remote Australia.</p> <p>Funding arrangements and accreditation requirements distort risk assessment and management. Staff and management are the best placed to identify and manage risk, but feel constrained not to take commonsense approaches due to accreditation disincentives.</p> <p>This risk aversion impacts negatively on models of care, costs of service delivery and quality of care.</p> <p>Government focuses on management of small day to day risk but outsources financial risk at the organisational level. This represents an inversion of an effective funding and service system.</p> <p>Economic downturn – for profit providers have failed (eg child-care providers), and there is an increased need for community support services on the ground as people experience increased hardship. These services must be flexible and portable, requiring commensurate funder flexibility.</p>
<i>Workforce issues</i>	<p>Workforce – low wage industry, unable to compete for staff against other industries, especially in areas impacted by commodities boom. Staff facing increasing financial hardship in context of low wages and increasing costs of living, so difficult to retain staff, especially professionally trained staff and managers.</p> <p>While remuneration is one critical issue in workforce attraction and retention, the demands of government regulatory, compliance and administrative requirements are another. Care staff work in non-profit social services at lower salary points than other sectors and are required to spend one third to one half of their time on administration</p> <p>Volunteers –rising cost of training, maintaining and supporting volunteers, and a radically changing and in many places reducing pool of volunteers as a result of changing family and community structures.</p>

<p><i>Financial models</i></p>	<p>Government funding models are function/silo based rather than person/community focussed; difficult for providers to negotiate the funding maze and citizens to negotiate the service maze.</p> <p>Inadequate funding. Lack of access to capital funding. Recurrent funding does not keep up with changes in the costs of inputs – wages, electricity, petrol, hotel supplies (in residential care facilities) or the significant changes in complexity of client/household need.</p> <p>Indexation has not reflected the cost increases of the specific “basket of goods” that social service providers purchase to deliver services - wages, electricity, petrol, hotel supplies (in residential care facilities).</p> <p>Fundraising – the increasing costs of fundraising, and diminishing rates of return for effort in an economic downturn.</p>
<p><i>Regulation, compliance and administrative processes</i></p>	<p>Regulatory burden is not commensurate with benefits to citizens or accountability to government. Accreditation systems do not promote continuous improvement, and in fact divert staff from delivery of care and supervision.</p> <p>Inadequate focus on quality of life outcomes (eg nurturing and support, meaningful choices, connection and belonging) in accreditation and regulatory systems.</p> <p>Continuous focus on governance and process compliance signal a lack of agreed outcome performance indicators – too much interest in demonstrating process rather than delivery of quality of life outcomes.</p>

5.2 Workforce

Workforce issues have been identified as important in the service sustainability agenda. Problems with workforce attraction and retention in the UnitingCare network are most acute in the areas of aged care and child protection, but is a pressing issue across all service areas. Some larger agencies are in the process of developing more strategic approaches to the issue of staff attraction and retention by investing heavily in “people-focussed” management activities. However, smaller agencies, especially those reliant on a significant volunteer workforce, have limited capacity to develop and implement strategies that enhance their ability to attract and retain staff and therefore are extremely susceptible to labour market variations as well as the changing volunteer base.

The continuing devaluing of the FBT concession, together with increasing competition from the government sector through comparatively better salary and conditions, has put further pressure on organisations trying to meet workforce needs. In a recent submission to the Henry Tax Review⁴, UnitingCare Australia flagged the need for government to consider measures such as indexation of the FBT concession as a means of assisting NFP organisations to attract and retain staff, especially staff with well developed human services and management skills.

While remuneration is one critical issue in workforce attraction and retention, the demands of government regulatory, compliance and administrative requirements are another. Care staff work in NFP social services at lower salary points than other sectors because they want to provide care to people. When care staff are required to spend one third to one half of their time on administration, often in hostile compliance or accreditation environments, there are

⁴ UnitingCare Submission to the Australian Treasury’s Tax Review, May 2009 p10

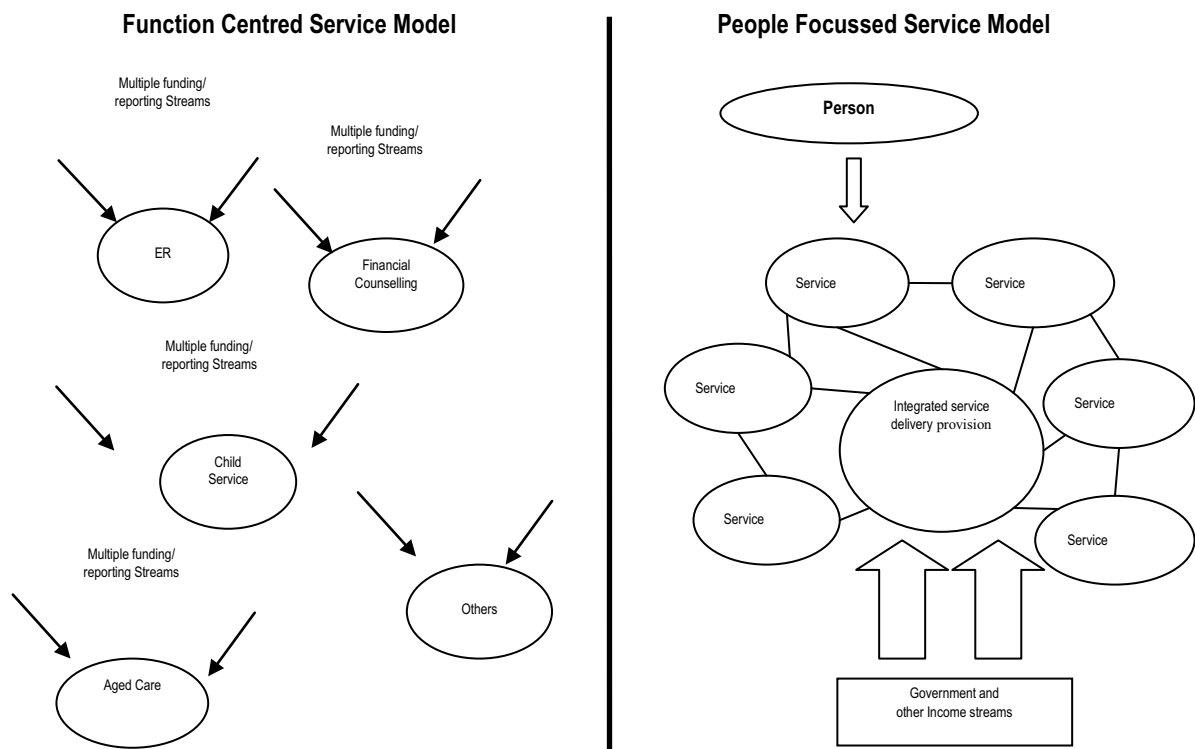
significant negative impacts on their motivation, productivity and willingness to continue to work in the sector. This is especially the case in delivery of high care residential aged care.

5.3 Business model

The business model used by NFP organisations as compared the for-profit service providers will continue to place pressure on scarce resources. The values of our organisations are such that we will continue to provide services in areas where profit driven providers do not, and indeed provide services that are neither sustainable nor economically viable without cross subsidisation from other activities or direct fundraising.

Another fundamental issue that must be tackled if service sustainability is to be effectively addressed relates to the function-based model used by governments to fund services. Diagram 3 shows two service models, one based on function and the other people, or client-based. Service sustainability and the demands of a social inclusion approach will require government and service providers to work together to develop people and community focussed service frameworks in order to implement an integrated approach to poverty alleviation and social inclusion. Ideally, funders and services on the ground would sort out all the 'back of house' operational detail and the person at the point of engagement with the social services system would experience seamless wrap around service delivery with minimal need to navigate a complex and disconnected service system.

Diagram 3: Contrasting service models



A people-focussed service model enables a more holistic assessment of and response to the critical issues that limit the capacity of disadvantaged and marginalised Australians to

participate fully in social and economic life, and to live a decent life. Marginalised Australians increasingly experience multiple and complex disadvantage. A single function-based approach has limited success in addressing a person's holistic needs, and potentially discourages people from engaging in the service system at all unless they are in extreme crisis.

People experiencing multiple disadvantages such as long term unemployment, homelessness, limited formal education or chronic illness/disability struggle to get the services they need to address these issues, and so remain trapped in a cycle of disadvantage unless service providers have the capacity and flexibility to provide people-centred services that can address multiple disadvantages simultaneously. A person who has been unemployed long term may well need life skills development, family crisis support, housing assistance, mental health support, job readiness training, placement and then flexible and meaningful post placement support both in a job and in the broader community. Meeting these needs requires significant marshalling of a diverse range of service expertise and competencies.

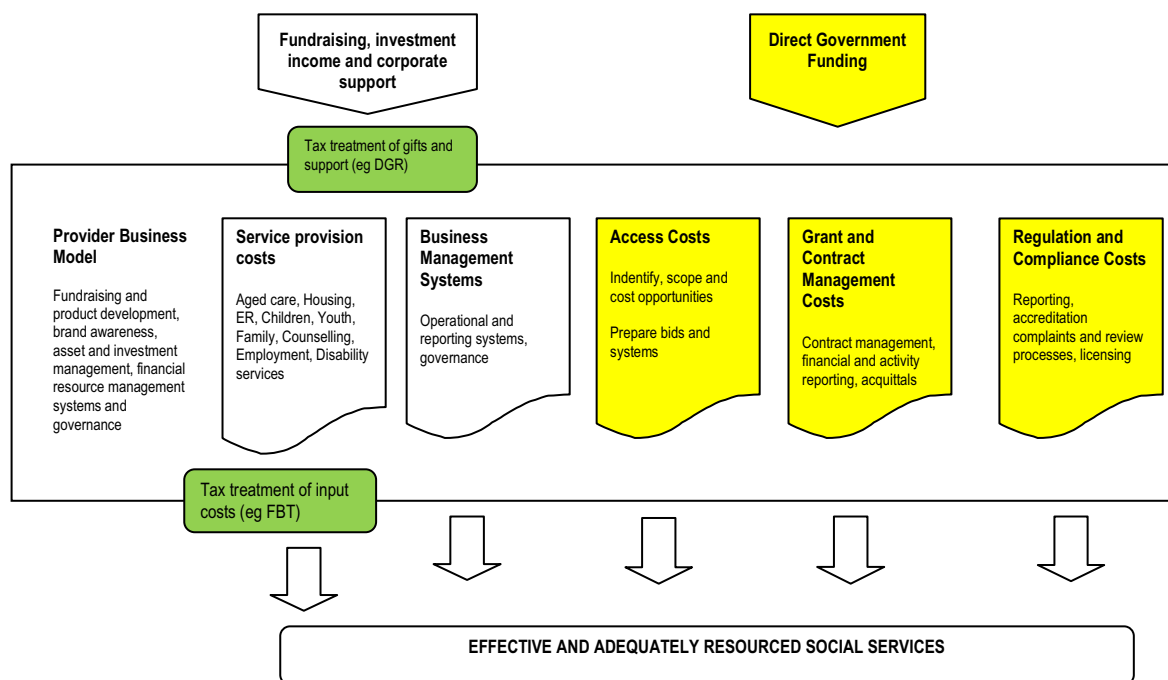
In the small number of agencies able to facilitate access to this range of services and supports, agencies incur significant back-of-house costs in terms of pooling funding, reporting separately on funding sources, seeking resources from outside existing funding sources to deliver required interventions and building partnerships and service relationships. These costs are rarely recognised in a service funding agreement.

Those organisations with a high level of partnership with government, especially larger ones that provide multiple services, would have more scope to deliver more innovative, wraparound services if the funding model used by governments was based on people rather than function. Overcoming this current function-based mode of operation will be challenging for governments and their current administrative arrangements. However, if these issues can be addressed NFP service providers will be able to increase their productivity - efficiency, effectiveness and capacity – and contribute even more to the prosperity, health and wellbeing of people and communities.

5.4 Financial Sustainability

Diagram 4 shows the interrelationship between government funding and private funding as well as the regulatory, compliance and administrative relationships social services must navigate to access government funding.

Diagram 4 – Financial Sustainability



Funding adequacy is seen by most service providers as the key issue to be addressed. However, as Diagram 4 shows, funding adequacy is a precondition for sustainable, effective business models and systems. However adequate funding is not sufficient – services need to operate in an environment in which access to funding (both government and private) is simple, transparent and accountable, taxation treatment is fair and simple, regulatory and administrative requirements are commensurate to the level of risk associated with the activity undertaken and compliance regimes are effective.

5.4.1 Taxation Reform

The financial sustainability of social services is linked explicitly to funding access which is in part supported, and on occasions impeded, by the taxation system. In a recent submission⁵ to the Tax Review UnitingCare Australia stated that in the absence of increased direct government funding to community service organisations, most social service providers rely on complex arrangements in the current tax system - Income Tax exemption, FBT, GST as well as Deductible Gift Recipient status - to supplement the cost of service provision. The submission also acknowledged that while tax expenditures were neither the most transparent nor efficient mechanism to support social services they are a critical concession without which there would certainly be a significant reduction in the provision of vital community services to vulnerable and disadvantaged Australians.

5.4.2 Simplification of the Tax System

Much has already been said and written about the need to simplify the taxation system. For many larger UnitingCare agencies taxation processes have been entrenched into finance systems and managed as part of the normal financial and accounting processes. However, there continues to be significant complexity in determining whether an organisation is

⁵UnitingCare Submission to the Australian Treasury’s Tax Review, May 2009 p6

deemed to be a charity and the relevant concessions that should apply to that organisation. We believe this can be addressed in part by the government introducing the definition of Charity as outlined in the Inquiry into the Definition of Charities and Related Organisations.

The current complexity which exists in relation to the tax concessions available to charities should also be addressed. There are any number of examples where the application of the current system provides inconsistent outcomes which disadvantage NFP organisations. We recommend that an organisation that meets the prescribed requirements of a Charity as defined by the Inquiry into Definition of Charities and Related Organisations should be entitled to PBI benefits and automatically receive Deductible Gift Receipt (DGR) status. Eliminating the various combinations of concessions will mean the above definition becomes the key driver for determining the tax status of an organisation. In this situation a universal concession will apply, eliminating the current inconsistencies which are seen throughout the social services sector.

As stated in section 5.4.1 of this submission, while tax expenditures are not the most transparent, efficient or effective way to support social services, they currently provide an essential mechanism through which the government can partner with NFP social services providers to ensure their immediate viability and build the long term sustainability of services provided to disadvantaged and vulnerable Australians. In the absence of a commitment to provide more adequate, sustainable direct funding, and significant increases in income support payments to enable people to access the resources needed for a decent life, tax expenditures need to remain and be strengthened.

5.4.3 Philanthropy and Incentives

According to the Government's 2008 Tax Expenditures Statement⁶ tax expenditures on Deductions for Gifts to approved donees is expected to cost \$800 million in 2008/09, \$770 million in 2009/10 and \$890 million in 2010/11.

Recent academic research on the correlation between giving and taxation suggests that taxation is more likely to impact on the level of giving rather than on the decision to give. This is supported anecdotally by the number of local community activities which rely on donations that have no tax deductibility attached to them. There are numerous international examples where advancements on the tax deductibility regime have been trialled. The Gift Aid Act in the UK is one example of a government's attempt to increase the value of the philanthropic contribution made by the private sector and general population. It is essential that the government ensure that there are sufficient and simple systems that will continue to encourage the private sector to provide philanthropic support to the NFP sector.

5.5 Regulatory and Administrative Reform

The Government has stated that it is committed to reducing the regulatory burden on Australian businesses, non-profit organisations and consumers. This is welcome news. According to Government⁷ this agenda is "consistent with larger commitments to address impediments to Australia's long-term productivity growth. The Government has signalled the importance of deregulation by giving it Cabinet-level status and two Ministers (The Minister for Finance and Deregulation, the Hon Lindsay Tanner MP and the Minister Assisting, the Hon Dr Craig Emerson MP)."

⁶ Tax Expenditures Statements 2008, p89

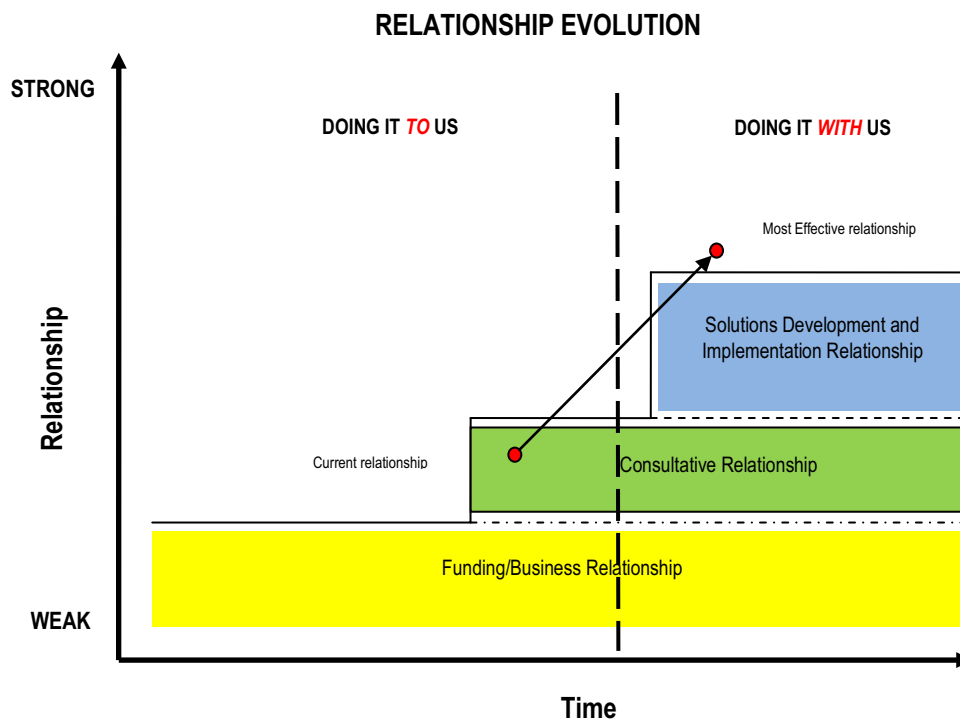
⁷ <http://www.finance.gov.au/deregulation/index.html>

Clearly the impetus for regulatory and administrative reform in the NFP sector is linked to productivity. While this is an important objective it does not adequately reflect the potential this agenda has in shaping the effectiveness of service delivery. In order to realise the full potential of this agenda we believe that there needs to be a new vision for the relationship between government and service providers - one that delivers agreed and sustainable outcomes that improves the lives of disadvantaged, vulnerable and marginalised Australians. In this vision the responsibility for the development, implementation and evaluation of services is shared between government and social services.

5.5.1 Government relationship with social services

The Rudd government has taken some positive steps to improve its engagement with social services. Of these commitments, the Community Response Taskforce is providing needed impetus to genuinely address social service sustainability. The following diagram (Diagram 5) represents the relationship model between the government and social services. The diagram demonstrates a progression in the relationship from a contractual purchaser-provider model through to a partnership model.

Diagram 5: Relationship evolution



In order for services sustainability to be realised the relationship between the government and social service providers needs to be one which is at the Solutions Development and Implementation level. This is where government and social services work together to develop and implement appropriate responses to deprivation, exclusion and service need. Inputs from the NFP sector are treated as contributions to be respected. Reform in this model occurs **with** social services rather than **to** them. This type of relationship is not without its challenges but one that needs to be explored if we want to achieve service sustainability, particularly in these current difficult financial times. However, it is important that governments take this current opportunity to critically examine the administrative processes that intersect with the NFP sector and shape them in such a way as to preserve the necessary accountability and transparency but to reduce the administrative and cost burden on those in the NFP sector required to use them.

5.5.2 Administrative Reform

There are a range of issues in this space that can be tackled directly and immediately. Both service providers and government agencies are aware of the inefficiencies that plague the interface between government systems and social services. Below is a list of examples of the problems that service providers experience on the ground. The list is not exhaustive but is indicative of some fundamental administrative process failures. While addressing these symptomatic problems on their own would not deliver the productivity outcomes necessary to ensure the long-term sustainability of social services, it would make a significant difference in parts of the service system and build a foundation for more fundamental reform to reduce inefficient and ineffective practices.

Examples of current problems and practical responses

- The demand on providers in preparing tenders for government business continues to increase. These costs are significant in terms of time and the cost of the skills needed to prepare tenders and proposals. Agencies with portfolios of \$25 to \$50 million hold 100-150 contracts across portfolios and levels of government, and develop around 30 new proposals each year. Minimising the duplication of information being sought and standardising the financial and programmatic reporting requirements would be a significant step in the right direction.
- Remove the requirement to maintain separate bank accounts for each funding agreement. Many agencies hold 50 to 100 agreements, many of which have differential compliance and reporting requirements. The administration required to comply with reporting and compliance across so many agreements is burdensome financially and in terms of human resources.
- Increase the asset approval amount from \$5000 to \$20 000 or 10% of the program value, whichever is the higher.
- Standardise audit requirements. Currently some government agencies require project specific auditing to be done regardless of the funding level for that activity. Others have been willing to accept organisational end of year audits as sufficient to meet requirements.
- Streamline acquittal processes. Develop a uniform acquittal procedure, including agreed definitions and standardised information requirements. Develop a uniform acquittal report format. These vary from funder to funder including within the same department. We think it would be useful to develop a best practice standard acquittal template for the industry to use.
- Deliver 'life of project funding flexibility' by freeing up carry over restrictions – good example of practice over purpose. The opportunity is to focus on what was achieved rather than what was spent.
- Ensure that contract timelines are more effectively adhered to by government agencies. Delays between start date and contracts being issued, as well as money being slow to come requires agencies to make commitments to staff and suppliers using their own funds. A minimum period be given to wind up projects – we suggest six months.
- Adequately fund program reporting – more is being asked but little if any data is returned to social services. Data sets are best developed with service providers and others, and aggregated data must be available to providers to assist in understanding and responding to demand.

- Where government subsidy remains unspent at the end of a financial year, deliver flexibility to automatically roll forward any unspent subsidy amounts to future financial years as long as it is within the life of the current funding agreement - without having to seek specific approval each year. Develop a standard "unspent subsidy roll-forward within the life of the contract" clause for all funding agreements. This would assist where it takes time to establish a new program and/or recruit/retain staff in any particular financial year - as long as the objectives of the program were being met. It might be that activity establishing new clients is less in the earlier years than the latter.

These suggested changes have been presented to the government's Community Response Taskforce and we hope to see some action on these in the very near future.

5.5.3 Regulatory Reform

Administrative Reform is the low hanging fruit of the Regulatory and Administrative Reform agenda. The administrative processes identified above cut across most, if not all, NFP organisations that partner with government on the delivery of social services. Reform in this area is relatively simple and can deliver quick wins for both the NFP sector and government. Regulatory reform however is a higher order issue and brings with it a range of complexities which require careful consideration. Regulations will also impact NFP organisations differently depending on the activities being undertaken and the level of federal, state and local government involvement in that activity.

The purpose of this section is not to argue that regulation is unnecessary but rather that there needs to be a more disciplined approach by governments in introducing regulation and quasi regulation as well as a more considered evaluation of the impact of regulation on service providers. While regulations from all levels of government impact on many of UnitingCare's services the focus in this submission is on the federal system.

According to the Government's Best Practice Regulation Handbook⁸ "An efficient regulatory system is essential to a well functioning society and economy and depends on having effective processes and institutions for making and administering regulation in all its forms." The Handbook provides a framework for the development of regulation and importantly the consultation process that should be undertaken by the relevant Department. The intent⁹ of the Handbook is to "enhance the regulatory framework to improve the analysis applied to regulatory proposals and hence the quality of regulation". The Handbook provides a useful framework for the development Commonwealth regulation and highlights some key elements of the process including the Regulation Impact Statement (RIS) and consultation process.

There are a number of concerns being expressed across UnitingCare agencies in relation to regulation, particularly from those agencies which are involved in aged care. In essence they relate to:

- The appropriateness of the regulatory mechanism to ensure the quality, safety and effectiveness of the activity it regulates, and to achieve a change in outcome when problems are identified;
- The cumulative impact of newly introduced regulation; and
- The lack of an appropriate assessment by departments of the impact of the regulation on the costs of service provision.

⁸ Australian Government 2007, *Best Practice Regulation Handbook*, Canberra piii

⁹ Australian Government 2007, *Best Practice Regulation Handbook*, Canberra piii

There appears to be some inherent assumption that compliance with regulation will deliver agreed outcomes. Accordingly, many departments with a compliance monitoring mandate will focus on ensuring that the processes identified in the regulation are strictly adhered to even if the result of that compliance is contrary to the intention of the regulation itself. In a recent Four Corners Report "*End of the Line*"¹⁰ ABC journalist Wendy Carlisle reported on the investigation and complaints mechanism of the aged care system which is a critical element of the regulatory compliance regime in the aged care sector. The report highlighted a number of instances where the department had declared that a provider had met the compliance processes even where the health of the resident concerned had traumatically declined. In an interview with Ms Carlisle the Minister for Ageing, the Hon Justine Elliot stated that "Well my main role is for the safety and health and welfare of our older Australians in our nursing homes, that's why I'm committed to making sure we have a very strong system of regulation and compliance right across our nation."

Indeed all providers would agree that the dignity, safety, health and welfare of older people in residential care is of paramount importance. The evidence from the recent Four Corners program, and from service provider feedback, is that regulation and the strict monitoring of compliance against systems and processes is not sufficient to ensure quality outcomes. Regulation is a critical part to consumer protection but it's only one of the tools necessary to ensure quality outcomes. Genuine partnerships between the NFP sector and those departments developing and implementing regulation (as outlined in Diagram 5) will go a long way in strengthening the quality outcomes which regulation on its own cannot achieve.

A major impact on service providers, particularly in aged care is the cumulative impact of successive regulation and quasi-regulation. In highly regulated services such as aged care the cumulative impact of regulation is significant. The impact of this is not only around the financial cost of developing new systems and processes but most significantly it takes carers away from their key role of providing care to completing administration tasks. The diversion of human and financial resources from care to administrative compliance is significant, in some cases half an employee's time in a residential care service could be spent on the administration necessary to demonstrate compliance with certain regulatory requirements.

There is little evidence to show that departments responsible for administering funding to social services are fulfilling their obligations under the Best Practice Regulation Handbook. Indeed it is difficult to locate a useful RIS and of the ones published the quality of the content is quite variable. Various regulations/legislation and administrative requirements appear to ignore or underestimate the financial implications relating to the implementation of new regulations and rarely consider the cumulative impact of regulation on social services. Regulation Impact Statements (RIS) were designed to be part of the regulation/legislative development process but have not been effectively utilised for social services. When asked (April 2009) the Office of Best Practice Regulation advised that they do not keep a central Register of RIS and that they are published at the time of tabling in the explanatory materials accompanying documentation to Parliament.

We see merit in extending the scope of the Office of Best Practice Regulation to include a quality assurance and compliance so that the principles laid out in the Handbook are met by all departments. Further we propose:

- That RIS processes be improved to ensure that the information contained in them explicitly considers the implementation costs on providers (or those being regulated);
- That the Regulation Impact Statements be located on a central website administered by the Office of Best Practice Regulation as a means to help monitor the cumulative impacts of new Administrative and Regulatory processes;

¹⁰ <http://www.abc.net.au/4corners/>

- Sanctioning of government agencies who fail to comply with best practice in implementation of RIS; and
- That newly developed administrative processes and quasi-regulation be subject to Regulation Impact Statements process prior to being introduced.

The regulatory and administrative reform agenda can deliver positive outcomes for both government and social services at a system level relatively quickly and therefore we recommend that it be the major initial focus of a service sustainability agenda.

While productivity should be the primary outcome from the regulatory and administrative reform agenda it nonetheless remains opportune to utilise this agenda to forge a new relationship with the social services; one that adopts the principles outlined early in this paper. This could be a significant focus for a compact.

For this agenda to be successful it will be essential that all key government agencies participate and share a common vision and purpose. We propose that Prime Minister and Cabinet and Finance and Deregulation be the lead agencies responsible for the Government's policy agenda and that FaHCSIA, DEEWR and DOHA (Aged Care group) participate as the primary agencies that interact with social services. A coordinated approach to the reform agenda is vital if we are to achieve sustainable system outcomes. The danger in allowing an uncoordinated approach to this agenda is that service providers will simply have multiple new and disconnected systems to manage as each APS agency or portfolio embarks on separate reform activities.

Australian social services face immediate and long-term challenges. Both sustainability — the capability to plan and deliver services into the future — and equity — the ability to provide high quality services to all Australians, regardless of means — are under threat.

The long term challenges include the changing face of the family and community, an ageing population, an ageing workforce, a more diverse population requiring more specialised and targeted services, the decline in informal care and the lack of secure and sustainable funding. Immediate challenges include the recent and rapid increase in multiple and complex need that services must respond to, workforce pressures, the burden of regulation and funding adequacy.

Sustainable regulation compliance and administrative process reform will require:

- political will and commitment;
- a shared vision of the goals of reform;
- a shared responsibility for development and implementation of solutions where government does it “with us” and not “to us”;
- all relevant government agencies involved and in step with the reform agenda; and
- a strategy to take the reform agenda forward.

Recommendation

An organisation that meets the prescribed requirements of a Charity as defined by the Inquiry into Definition of Charities and Related Organisations should be entitled to PBI benefits and automatically receive Deductible Gift Receipt (DGR) status

The government action the suggested changes to financial and contract management systems as outlined in section 5.5.2

The government action the suggested changes to financial and contract management systems as outlined in section 5.5.3

6. Service Delivery

The contracting out of social services has provided both challenges and opportunities to government and NFP organisations. For governments NFP organisations offer flexibility and a unique capacity to harness the goodwill of the local community to deliver services in a cost effective way. For many NFP organisations, entering into a service delivery contract with government offers a greater level of financial certainty as well as the opportunity to either harness “surpluses” to fund other activities or examine ways in which to link existing services to the government funded activities.

However, as the trend to outsource government services gathered momentum in the late 1990s and early 2000s, there was a noticeable shift in the relationship between the government and the sector. During that period many government agencies that were responsible for service delivery began to re-engineer the roles and responsibilities of their workforce toward contract management and policy development. As such the NFP were being provided with agreements which looked like commercial contracts, however without any real capacity to negotiate on the terms and conditions contained within them.

There is still a distinct imbalance in relationship between service providers and government in favour of the government. This imbalance impacts on the capacity for innovation and as has already been argued, requires disproportionate resourcing to service the contractual relationship. Through this process not only are government agencies outsourcing the cost of administration to the NFP organisations but also the risk. In a recent consultation process regarding future funding agreements one government agency presented the following the provision which is to be included in all future funding agreements:

22 Our right to terminate, or reduce the scope of, the Agreement

22.1 Even though you are not in default, we can terminate this Agreement, or reduce its scope, any time by giving you written notice.

- (a) If, under clause 22.1, we terminate this Agreement or reduce its scope, we are only liable to you for:
- (b) payments that were due to you before the date of termination or reduction; and
- (c) reasonable costs you incur as a direct result of the termination or reduction (but subject to clauses 22.3 and 22.4).

- 22.2 If we terminate or reduce the scope of this Agreement under clause 22.1, you must:
- (a) immediately stop carrying out your obligations under this Agreement (or, in the case of a reduction in scope, the obligations removed by the reduction); and
 - (b) immediately do everything you can to lessen all losses, costs and expenses that you may suffer from the termination or reduction; and
 - (c) repay the Funding or the relevant part of it as if we had given you a notice to repay under clause 11.2.
- 22.3 We need only pay you the reasonable costs in clause 22.1 (c) if you:
- (a) comply strictly with this clause 22; and
 - (b) provide written evidence to satisfy us of the amounts claimed.
- 22.4 We are not liable to pay you compensation for any loss of profits or benefits that you would have received had the termination or reduction not occurred.

In essence the clause allows the government to vary the agreement without cause or reason. Clause 22 shifts reputational and operational risks from the government to NFP organisation holding that agreement. Withdrawal of funding or curbing of activities will be viewed negatively by the clients and suppliers of the NFP organisation regardless of reason for the decision. The government will need to reassess the true benefit of these types of clauses in the context of its desire to build better relationships with the NFP sector.

7. Conclusion

The NFP is part of the fabric of Australian society and it should be accorded equal standing in its contribution to the prosperity and civic life of Australia as the Government and Business sectors. We hope that this submission assists the Commission to develop a clearer understanding of the contributions made by the sector and the impediments which impact on the capacity of the NFP sector to sustain and grow these contributions, particularly those organisations involved in the delivery of social services.