

NSW Government Actions
Supporting and developing the not-for-profit sector in NSW
A paper for the Productivity Commission

1. Introduction

The NSW Government welcomes the Productivity Commission inquiry into the contribution of the not for profit (NFP) sector. The NFP sector plays an essential role in the planning, management and delivery of services in NSW, and is a significant contributor to building a fair, sustainable and more inclusive society. The NSW Government also acknowledges and values the sector's contribution to the economy and community development.

The NFP sector in NSW is large and complex. There is significant diversity in the scale of operations, range of services, geographical spread, organisational philosophies, dependence on government funding, and sophistication of business models. The NSW Government provides over \$1.5 billion in funding annually to just under 2,350 human services non-government organisations to deliver ongoing community-based services across NSW. Many more NFPs in other sectors – including arts, sport and environment – also receive funding from NSW Government agencies. NSW agencies are working to implement substantial reforms to improve the allocation of funds and reduce the administrative burden related to receiving government funding.

Supporting and developing the NFP sector is a key priority for the NSW Government. Substantial consultative and advisory mechanisms are in place, which support the extensive range of initiatives currently underway to assist the sector, and provide a forum for NFPs to engage with agencies about relevant issues and exert influence over policy decisions. Current initiatives focus on government funded NFPs, particularly in the human services sector, and are being progressed through individual agency reforms and policies for specific target groups, and whole-of-government strategies including:

- *Working Together for New South Wales Agreement*
- *Keep them Safe: A shared approach to child wellbeing*
- *Stronger Together: A new direction for disability services in NSW*
- *Towards 2030: Planning for our changing population*

The NSW Government is committed to building and maintaining partnerships with the NFP sector to provide better services to the community. The focus of this commitment is on ensuring that funding is targeted to achieve the best results for the community that it is intended to support, and to deliver current and future services in a more sustainable and effective way.

2. NSW Government support for the NFP sector

This section outlines the breadth of support for the NFP sector, put in place by a number of agencies in NSW. This support includes funding for services and other activities, but also policy initiatives and in kind support.

Policy initiatives to support the NFP sector

This section discusses recent policy initiatives to support the NFP sector, including:

- *Working Together for New South Wales Agreement*
- *Keep them Safe: A shared approach to child wellbeing*
- *Stronger Together: A new direction for disability services in NSW*
- *Towards 2030: Planning for our changing population*
- the performance audit by the NSW Audit Office of grants administration in NSW.

Working Together for New South Wales Agreement (WTA)

Launched in 2005, the WTA was developed jointly by the non-government sector and the NSW Government. It provides a framework to help ensure the quality of human services delivery in NSW by providing a set of shared goals, values, and principles that guide working relationships between the two sectors. The implementation of the WTA has been overseen through an annual meeting of human services and central agency CEOs and representatives of the Forum of Non-Government Agencies (FONGA). A copy of the WTA is at Appendix C.

A stocktake of achievements under the WTA, *NGO Support Stocktake*, has just been released and demonstrates that there is an extensive body of work and investment already in place to develop and support funded services in the NFP sector. The stocktake outlines NSW Government activity in four key areas:

- **Building and maintaining the relationship** – this includes consulting mechanisms between agencies, Ministers and their key NFP stakeholders; tools that support networking across government and NFP services, such as *HSNet* and the *community builders* website; and joint planning initiatives, such as the Regional Coordination program.
- **Improving service quality and community outcomes** – these are initiatives to improve performance and accountability, including DADHC's *Integrated Monitoring Framework* and DoCS' *Performance Monitoring Network*.
- **Streamlining funding and regulatory processes** – these are initiatives to reduce the regulatory burden on NFPs and streamline funding arrangements, including the *Associations Incorporations Act 2009* recently passed by NSW Parliament.
- **Supporting organisational and workforce capacity building** – these are initiatives to support and improve NFP capacity and management, such as NGO training, leadership and management programs; and a research project into the profile of the NFP workforce.

A copy of the stocktake is at Appendix D.

Keep them Safe – A shared approach to child wellbeing

In March 2009, the NSW Government released its five year plan to improve the safety and wellbeing of children and young people in response to the Special Commission of Inquiry into Child Protection Services, conducted by the Hon James Wood in 2008. The response, *Keep them Safe*, includes a number of key commitments relating to the NFP sector, including increasing the responsibility of NFPs for supporting children and families; building the capacity of the sector, particularly Aboriginal NFPs; and developing the community services workforce.

Specific actions include:

- developing a five year plan for building the capacity of NFPs to take greater responsibility for delivering family and community services, with a focus on measures to strengthen the capacity of Aboriginal NGOs;
- developing a five year plan for child and family service workforce development;
- enhancing the role of the NFP sector in the delivery of out-of-home care via growth funding for the *Brighter Futures* early intervention program;
- providing additional funding to NFPs for a number of services, including Regional Intake and Referral Services to improve access to services for children and young people; and
- reviewing Government funding to NFPs, starting with Community Services funded programs.

Stronger Together: A new direction for disability services in NSW

Stronger Together significantly expands the delivery of services to people with a disability, their families and carers by delivering an additional \$1.3 billion in funding over the five years of the strategy. Under *Stronger Together*, major initiatives to strengthen NFPs include a \$3 million project to assist NGOs meet future expanding workforce demands and a \$1.3 million learning and

development strategy to support the development of governance knowledge and board management skills. The NSW Government will also work with key NFPs to develop a five-year plan for the recruitment and development of the disability sector workforce.

Towards 2030: Planning for our changing population

Towards 2030 is the NSW Government's strategy for managing the challenges posed by the ageing of the population and other demographic changes. The strategy sets out a number of strategic outcomes under which are listed a range of actions (119 in total) to be led by individual agencies. The strategy includes the commitment to promote capacity building within the NFP sector to facilitate greater participation of older people as volunteers.

A progress report is expected to be released shortly.

Auditor General's Report: Performance Audit of Grants Administration

Part one of the Auditor General's performance audit of grants administration in NSW was released in May 2009. The audit examined how grants are defined, where grants went, and what recipients think of the grant system. The report recommended that agencies:

- regularly evaluate their grants programs and publish the results, including what programs achieved, why funding was distributed the way it was and how they could be more effective;
- use consistent, standard terminology with grant recipients;
- publish a rolling calendar of funding expected to be available over the next twelve months; and
- increase the use of technology to streamline applications and reporting.

In a response to the Auditor General's report, the NSW Department of Premier and Cabinet acknowledged that there are opportunities for agencies to improve transparency about what their funding programs achieved and indicated that it may be appropriate to update the *Good Practice Guide for Grants Administration* (discussed further in section three, below), released in 2006, to include a greater focus on a risk management approach to grants administration.

Funding to NFPs

NSW funding arrangements are determined in a number of ways. Some are contestable and awarded on the basis of merit. Others are not contestable and are negotiated between the agency and recipient. Increasingly, funding is provided for specified purposes aimed at delivering outcomes that support government programs and policies.

The three biggest funding agencies in NSW are the Department of Ageing, Disability and Home Care (DADHC), the Department of Community Services (DoCS) and NSW Health. As shown in table 1, in 2007-08 over \$1.5 billion was distributed to just under 2,350 providers across the three agencies, ranging from \$70 million for NSW Health (for centrally-allocated funds only) to almost \$0.913 billion for DADHC.

Table 1: Combined funding to NFPs: DADHC, DoCS & NSW Health, 2007-08

Funding TO NFPs	Total \$m	Providers
DADHC	913.556	846
DoCS	491.419	1598
NSW Health	70.263	176
TOTAL	1,475.238	2380*

* Some NGOs receive funding from multiple agencies.

NFPs that receive funding in NSW range from small community groups, often delivering a single service and overseen by a locally-based volunteer board, to multi-dimensional providers with sophisticated management structures and professional boards. The NSW NFP sector is particularly fragmented and characterised by a proliferation of small, single service NGOs:

- over 35% of recurrently funded NFPs receive less than \$100,000 per annum, accounting for less than 3% of total funding
- only approximately 12% of NFPs receive more than \$1 million per annum, yet these providers account for just over 72% of total funding, as reflected in the table below:

**Table 2: Combined funding to NFPs: DADHC, DOCS & NSW Health, 2007-08:
Distribution of Funding**

	Funding Investment \$m	NGOs
Below \$100,000	45.6	893
Between \$100,000-\$1m	384.1	1,215
Over \$1m	1,118.7	272
	1,548.4	2380

- 87% of NFPs receive funding from just one of these 3 agencies, with the remaining 13% receiving funds from more than one NSW Government agency
- setting aside the multi-faceted services provided by church-based NFPs, the largest providers are generally specialists that support a particular target group and generally receive funding from both State and Commonwealth sources.

Detailed information on funding programs delivered by NSW agencies will be provided in the NSW response to the Commission's survey.

In kind support

In kind support, such as tax exemptions and concessional charges, have the same budgetary and welfare effects as direct funding, but are less visible because their cost is in revenue forgone rather than dollars spent.

The NSW Budget Papers estimated these tax exemptions represented a cost to NSW of \$325 million in 2007-08. The cost primarily related to exemptions for payroll tax and land tax, however, it should be noted that no estimates were included for individual concessions of less than \$1 million.

3. Grants administration

Following a review of grants programs, the Department of Premier and Cabinet released the *Good Practice Guide to Grants Administration* in 2006, to encourage agencies to engage in consistent and good practice grants administration. The Guide encourages agencies to manage grants with more transparency, less red tape and greater evaluation and coordination. The Guide provides a set of principles and framework for agencies to:

- plan and design a grants program
- promote a grants program
- receive and process grants applications
- offer grants and enter into a funding agreement
- monitor and acquit grants
- evaluate a grants program.

The majority of the budget provided to the NFP sector in NSW is used to fund services on a recurrent basis, rather than a traditional granting arrangement. Agencies must ensure sufficient accountability on the part of funded bodies to ensure the delivery of effective services that are value for money. NSW recognises that reporting and administrative requirements can be onerous, particularly for small NFPs and those who receive funding from multiple agencies. NSW agencies are continuing to develop improved methods for allocating grants and measuring delivery outcomes. The reforms share a number of common characteristics:

- a shift to performance-based contracting and purchasing as opposed to the distribution of grants-like funding;
- an increased emphasis on accountability for client results/outcome measures;
- streamlining contract administration arrangements through, for example, three year funding cycles, simplified reporting requirements and new IT interfaces between agencies and NGOs;
- strengthened monitoring systems, including quality assurance mechanisms; and
- increased emphasis on capacity building of NGOs, including training and workforce development.

The ability of NSW to adjust some aspects of funding administration is limited in some areas by the requirements imposed under Commonwealth/State agreements.

Specific reforms being carried out by NSW agencies is at Appendix A.

4. Workforce development, organisational capacity building and information sharing

An area of increasing focus in NSW is workforce development, organisational capacity building and improving information sharing across the sector. The NGO Stocktake (discussed above) will be used as an information sharing tool to improve awareness across agencies and NFPs of the body of work underway in these areas. Significant reforms will also be carried out under *Keep them Safe*. Specific actions to be implemented under *Keep them Safe* and other initiatives being carried out by agencies are outlined in Appendix B.

Volunteering

Volunteers comprise a significant proportion of the NFP workforce, with an estimated 408,000 volunteers in NSW helping people in need through charities and other organisations working in the community welfare and health sectors.¹

NFPs may face regulatory, administrative and cost burdens associated with the recruitment of volunteers, including:

- ongoing training;
 - background checks, such as working with children checks; and
 - exposure to liabilities, for example occupational health and safety, insurance, screening.
- NSW is currently developing a Volunteering Strategy based on five key areas identified by voluntary organisations and government agencies working with volunteers as being critical to the sustainability of the voluntary sector:
- making it easier to volunteer;
 - attracting, training and retaining volunteers;
 - diversifying the volunteer workforce;
 - promoting the value of volunteering; and
 - supporting regional volunteering.

¹ National Volunteering Issues Survey 2008, Volunteering Australia

Central to all five areas is the provision of quality information by government agencies to the NFP sector on regulatory requirements, funding and service delivery partnership opportunities and government priorities and activities.

However, it is important to note that not all NFPs work with volunteers, particularly in the delivery of key services. It is likely that workforce issues will vary between organisations that utilise volunteers and organisations that do not.

5. Regulatory reform

Regulation of Associations and Co-operatives

In addition to forming as a company limited by guarantee under the *Corporations Act 2001* or the *Aboriginal and Torres Strait Islander Act 2001*, NFPs in NSW can also incorporate under the *Associations Incorporation Act 2009* (due to commence later in 2009 to replace the 1984 Act) and the *Co-operatives Act 1992*. There are currently more than 35,500 associations and 701 cooperatives registered in NSW.

The decision to incorporate is a matter for each organisation, and it would not be possible or appropriate to require all types of community or social groups to incorporate. Many groups are small, informal and transient; they have no funding requirements and no need to achieve a formal legal status.

In the case of both associations and cooperatives, legislative reviews have recognised that the existing legislative frameworks did not permit sufficient flexibility and accountability in terms of the diversity in the objectives and the scale of organisations' operations. This diversity requires different levels of financial and management accountability.

Associations

Expected to commence in late 2009, the new *Associations Incorporation Act 2009*:

- establishes a two tier financial reporting system that will distinguish between large (Tier 1) and small (Tier 2) associations. This will provide more stringent requirements for larger associations, whilst smaller associations will continue to operate under a simple form of annual statement.
- requires an association's public officer, and at least 3 of its committee members, to be resident in Australia.
- establishes clear standards of conduct for the management committee and its office holders in the exercise of their functions, including the requirement for committee members to disclose their pecuniary interests in any matters to be discussed at a committee meeting.
- establishes offences for fraudulent behaviour and dishonest misuse of confidential information by a committee member.

Incorporated associations must report annually to the Office of Fair Trading (OFT). Some of these associations may also be required to report to the Office of Liquor, Gaming and Racing (OLGR), which is responsible for the licensing and regulation of charitable organisations in NSW. With the introduction of two tier reporting, OFT and OLGR are assessing the implications of the new *Associations Incorporations Act*, with a view to reducing the administrative burden on NFPs that report to both bodies.

Certain associations may also be required to report to their funding body. It is important to distinguish between the standards of financial reporting, governance and accountability that may be appropriate for the normal operations of a NFP, and those that might be necessary for organisations that receive government funding or raise money for charitable purposes, and need to

account for the expenditure of those funds and the delivery of services. The reporting requirements under the *Associations Incorporations Act 2009* are minor and financial reports to funding bodies and to OLGR would satisfy the requirements of the Act.

NFPs that intend to work across jurisdictions can do so if they register with the Australian Securities and Investments Commission (ASIC).

National regulatory reform for co-operatives

The Ministerial Council on Consumer Affairs is currently considering national legislation for the regulation of co-operatives. The objective of the proposed Co-operatives National Law will be to set out nationally agreed legislative provisions for the regulation of co-operatives. The National Law will include provisions dealing with fundraising through Co-operative Capital Units (CCUs) and the mutual recognition of co-operatives between jurisdictions.

Under the proposed new scheme, co-operatives registered in one State (i.e. the 'home State') will be permitted to carry on business in another State (the 'away State') after a simple and inexpensive notification is provided to the Registrar of the away State. The scheme will reduce the administrative burden currently placed on co-operatives wishing to carry on business interstate and allow away State Registrars sufficient power to control the activities of foreign co-operatives whilst they carry on business in their State.

Regulation of charitable fundraising

Charitable fundraising can be a significant source of income for many NFP organisations. Charitable fundraising organisations in NSW are impacted by a two-tiered regulatory system – either the national corporate law framework or the state-based incorporated associations framework, although it is not mandatory to be a legal entity to engage in charitable fundraising.

Organisations that fundraise for charitable purposes in NSW are also impacted by a parallel regulatory scheme established by the *Charitable Fundraising Act 1991*. Under this scheme, organisations that fundraise by an appeal to members of the public require a licence known as a Charitable Fundraising Authority. Currently, there are in excess of 5,000 organisations that have been issued with a Charitable Fundraising Authority in NSW. It is noted that some organisations are exempt from the requirement to hold a Charitable Fundraising Authority, including religious organisations, universities, local government-related organisations and those under the direction and control of a government minister.

Although the fundamental concepts in this scheme have changed little since 1991, a gradual move away from prescriptive rules has emerged in recent years. Some pre-existing regulatory controls and practices were relaxed or waived during this period, particularly with the remake of the *Charitable Fundraising Regulation* in 2008. This trend is intended to better align the regulatory environment to contemporary perspectives in best practice regulation, with an overall objective of reducing red tape. Religious organisations are not subject to the requirements of the regulatory scheme; however, all other organisations must comply, including maintaining proper records and having their accounts audited.

This regulation aims to promote public confidence in the integrity of the charity sector. Public confidence sustains the position of charities, enabling them to play a vital role in the community as they pursue a broad range of socially enriching charitable purposes.

Regulation of community gaming

Community gaming is a significant source of income for many not-for-profit organisations, including those holding a Charitable Fundraising Authority, and consists of such activities as raffles, housie/bingo, sweeps and art unions. Community gaming regulation was established by

the *Lotteries and Art Union Act 1901* in NSW and aims to ensuring that, on balance, the State and community as a whole benefit from lottery activities.

The following activities require a license to be issued, but it is noted that licences for NFP organisations are issued free of charge:

- art unions;
- charity housie (bingo);
- chocolate wheels;
- sports tipping competitions (where value of ticket sales exceed \$20,000);
- hundred club & similar progressive lotteries (where value of ticket sales exceed \$20,000);
- lucky envelopes; and
- sweeps and Calcuttas (where the value of ticket sales exceeds \$20,000).