

24 November 2009

The Chairman  
Productivity Commission  
Not-for-Profit Sector  
GPO Box 1428  
Canberra City ACT 2601

Dear Sir

**Research Study into the Contribution of the Not-for-Profit Sector  
Submission of comments on Draft Report**

**1. Introduction**

We welcome the opportunity to make comments on the Productivity Commission's above named draft report.

We refer you to our submission in 2008 to the Senate Inquiry into the Disclosure Regimes for Charities and Not-for-profit Organisations. (copy attached) (Senate Inquiry) This provides you with background to our position and our interest in the outcome of the research study.

We detail below our comments in relation to certain recommendations and questions raised in the Draft. We have only commented on those aspects of the draft report which we believe our comments can assist in finalising the report. We have not considered any constitutional or tiered governmental aspects as we are not in a position to appropriately comment. Our comments are based on our experience in dealing with our diverse client base.

**2. Smarter regulation of the not-for-profit sector**

**Draft Recommendation 6.1**

***Whether there is a need for a new legal form for small unincorporated associations similar to the Australian Business Number registration, providing limited legal rights.***

We note the Commission's reasoning behind the need for a new legal form to assist unincorporated associations and in particular support the need for limited legal rights and the separation of the entity from those involved in its management.

We regularly see many well intentioned members of the public unintentionally exposing themselves to various legal obligations and risks without being aware of the consequences, with the main focus of their association being for the benefit of the community.

We support the legal recognition of these organisations.

If this is to occur through registration of some form similar to the Australian Business registration we would encourage this to occur in conjunction with the existing Australian Business Register as there is public confidence in this mechanism already and many not-for-profits are already part of this system.

There is an opportunity to review the type of organisations available for not-for-profits which are currently incorporated associations or for which the current company limited by guarantee structure is too onerous and compliance focused.

The Commission's recommendation for a national incorporated association is a welcomed idea. As this would be at a national level, we would recommend that instead of a national incorporated association, that a special purpose not-for-profit company structure be established and administered through amendments to the existing Corporations Act, with similar differential reporting requirements such as those currently available to small non reporting proprietary limited companies.

A system similar to the current replaceable rules adopted by proprietary limited companies would enable a robust platform and reduce the level of compliance costs without having an additional level of legislation being developed. We refer to our comments on Recommendation 6.4 as to why we would consider the Corporations Act would be the appropriate legislation.

Where, however, current structures are operating effectively there should be no compulsion to move to any revised structure.

***Whether state/territory based incorporation of associations should be limited to be restricted to not-for-profits with income less than \$150,000 per annum.***

Given our comments above, we are of the opinion that should there be an adoption of our comments there would be limited value for the continuance of incorporated associations at a state/territorial level.

**Draft Recommendation 6.2**

We strongly support the adoption of a standard chart of accounts for not-for-profits as this will enable greater comparability, certainty and transparency between not-for-profits regardless of their legal structure.

This will enhance the transition to a not-for-profit accounting standard and the chart prepared by the Queensland University of Technology Centre of Philanthropy and Nonprofit studies, School of Accountancy is an appropriate basis.

Of course there is a need for structured flexibility within this chart to ensure that adoption of accounting standards can be adhered to and internal reporting requirements can be met, and enable suitability of the chart for the diverse range of activities of not-for-profit organisations.

**Draft Recommendation 6.4**

***Whether the proposed National Registrar be a separate agency under the Financial Management and Accountability Act 1997, or whether it should be an additional function and separate division of the Australian Securities and Investments Commission.***

Our view is that the National Registrar should be an additional function and separate division of ASIC. This view has been formed on the basis of:

- a) ASIC currently registers and regulates a number of not-for-profit entities
- b) ASIC currently deals with the fundraising aspects of for profit entities

- c) Is currently the national portal for the collection of corporate and financial public record information for entities under the Corporations Act.
- d) Deals with the adoption of accounting and auditing standards and is the regulator for Company Auditors who predominately undertake the audits of not-for-profit organisations
- e) Has an infrastructure which is suited to this type of Registrar role.

We consider that whilst there is a mirroring of the fundamental functions and skills sets required by the National Registrar and ASIC, the National Registrar would need to be a clearly distinct division. This position is founded in the current diversity of the sector both from a perspective of existing legislation but also from the level of reporting and transparency currently in existence. The Registrar would need to have more of a supportive role than the current ASIC position given that it would be dealing with a different range of stakeholders and the fundamental different objectives of not-for-profit organisations. We refer to our comments on Recommendation 10.4 for an outline what such support may comprise.

Our concern with a separate agency would be the duplication of resources; the initial cost of establishing the entity and the time it may take for the agency to be in a position to promote confidence in the sector.

***The appropriate reporting thresholds and requirements under the Registrar's proposed functions.***

We are of the view that there is merit in duplicating the existing reporting entity concept and we refer specifically to our comments in our submission to the Senate Inquiry regarding this area.

It is important to note that there are some organisations within the sector that whilst large in terms of revenue etc, are essentially private organisations and provide services within their limited community without external government or non government funding. On the other hand, there are organisations which are fully funded by Government or public funds and therefore could be perceived to have an obligation to report fully their financial circumstances.

Therefore the reporting entity concept would enable these organisations to be dealt with on the basis of their public interest as opposed to simply their revenue levels.

**3. Realising funding opportunities for the sector**

**Draft Recommendation 7.1**

We agree that the endorsement of tax concession status should be the responsibility of the Australian government and that a single application process should be in place to facilitate this.

**Draft Recommendation 7.2**

Draft recommendation 7.2 recommends the widening of the scope of gift deductibility to include all charitable institutions and charitable funds.

Before commenting on this recommendation, we wish to comment on the types of entities which are classified as charities.

In Australia there is no statutory definition of charity. A dictionary definition of charity is giving voluntarily to those in need; alms-giving; an institution or organisation for helping those in need; a kindness, benevolence; tolerance in judging others; love of one's fellow human beings'.

In more popular usage charity is sometimes thought of in more narrow terms as the relief of poverty or distress.

In the United Kingdom the Charities Act 2006 sets out the requirements for organisations to be recognised as a charity. An organisation must have a charitable purpose (some 13 purposes are listed as qualifying) and they must also provide a public benefit.

We are of the view that any definition of a charity adopted within the Australian context needs to include a requirement that the entity operates for the public interest.

We recommend that the term Charity be statutorily defined in light of the above to provide a clear basis on which to enable the other recommendations to be implemented.

On this basis, we would then support the recommendation to extend the scope of gift deductibility to all charitable institutions and charitable funds.

***Whether the range of not-for-profits requiring formal endorsement for Commonwealth tax concessions (as distinct from self assessment) should be expanded.***

The formal endorsement process in place for charities to enable them to access Commonwealth tax concessions has resulted in some part from a lack of a statutory definition of a charity. Had such a definition existed there may have been no need for a formal endorsement process.

We do not believe that the endorsement process needs to be extended to other forms of not-for-profit entities as, in most cases, their objectives can be more readily be identified and confirmed. Additionally, such a requirement would add further administrative and set-up costs to the process.

#### **Draft Recommendation 7.4**

***Whether there is a need for a new legal form of incorporation for not-for-profits allowing equity investment similar to the UK Community Interest Companies.***

We would recommend that the government consider the opportunity to establish a similar equity investment model such as that which currently exists in the UK. We note that whilst this legal form was created in 2006 there are approximately 3,500 of these entities registered to date. The ideas of Social Enterprise and Social Corporate Responsibility are becoming prevalent with the Australian environment. Currently the existing legal structures provide limited scope to assist particularly in the form of social enterprise.

Traditionally, Australia whilst generous at an individual level has not seen the level of philanthropy in the UK or the US. The private ancillary funds are supportive of this type of philanthropy however, this is relatively limited given the level of compliance and seed funding required to be viable.

A new legal form that brings the link between equity, for profit and not-for-profits will provide the not-for-profit sector with greater flexibility as well as the opportunity to work more closely with a wider range of potential supporters.

#### **4. Sustaining the not-for-profit workforce**

##### **Draft Recommendation 10.4**

***Australian government should provide support to develop and promote training for not-for-profit management and boards in governance and related areas. They should explore the options for improving access to and quality of such training in those areas with peak bodies and appropriate training providers.***

We strongly support this recommendation. We see a significant level of diversity in the governance and management of not-for-profit which is not necessarily as a result of performance or size. Those who are attracted to these roles tend to have a passion for the mission and/or specific skills such as medical training and do not necessarily have wider governance experience.

Furthermore, it is quite often the case that the not-for-profit organisation does not have the resources to provide training and development in these areas.

A number of organisations have been able to secure these skills and training through board members and relationships with commercial organizations which are supportive of these organizations.

The Commonwealth Government has established a number of such support agencies for the for-profit sector such as AUSTRADE. We can see significant benefit in providing a similar one stop shop for resources, training and mentoring for the not-for-profit sector.

Should the Australian government provide support to develop and promote training the overall quality of the sector would improve and would assist the sector in meeting its objectives as well as providing an additional level of confidence in the sector by the public at large.

#### **5. Removing Impediments to better value government funded services**

##### **Draft Recommendation 12.5 & 12.6**

***Improving management and appropriate sharing of risk***

We support the recommendations made.

With the growing demand for funding, the need for contract management systems is ever more pressing.

Effective contract lifecycle management, intelligent service management and risk apportionment are critical.

We therefore support stringent controls surrounding service provider behaviour, better risk management over the life of a contract rather than just at the start, and introducing systems that provide an early warning of providers who are struggling.

Our recommendations are to:

- a) consider requiring service organisation and contractors to report on control procedures and risks management , contingency and business continuity planning within their organisations to the extent they impact key business processes; and
- b) to require those service organisations to confirm the operating effectiveness of these controls and plans throughout the service period.

In developing such systems, consideration needs to be given to the cost benefit of the creation of an effective system which does not overburden the not-for-profits or significantly impact their limited resources. A coordinated approach with changes to the current system should enable risk management to be incorporated seamlessly into any new structures.

**Draft Recommendation 12.7**

***Australian Governments should urgently review and streamline their tendering, contracting, reporting and acquittal requirements in the provision of services to reduce compliance costs. To reduce the current need to verify the provider's corporate or financial health on multiple occasions, even within the same agency, review should include consideration of:***

- ***Development of Master Agreements that are fit-for-purpose, at least at whole-of-agency level***
- ***Use of pre-qualifying panels of service providers***

The current processes often involve:

- a) the preparation of applications in the specific format as required by each funding body;
- b) the review, understanding, obtaining advice and execution of service agreements (often similar but not the same from the same agency);
- c) the reporting in a specific format as required by each funding body; and
- d) the acquittal in accordance with the specific requirements of the service agreement.

Whilst recognising that there will clearly be some differences due to the nature of the services required, there are many opportunities to streamline processes to provide efficiencies at both the agency and the provider level by:

- a) encouraging service providers to follow a standard chart of accounts which has been set up to provide uniform classification of receipts and payments, thereby facilitating standard from of health assessment, budgeting, monitoring and reporting processes;
- b) developing a standard form of agency agreement, where possible, thereby facilitating a better understanding of its requirements;
- c) developing a standard form of financial reporting, where possible, building on from the standard chart of accounts referred to above;
- d) where a service provider provides many (or a number of) services on behalf of one agency, the agreement and reporting requirements are prepared on a consolidated basis.

In developing such processes, consideration must always be given to recognising that many not-for-profit entities have robust, independent process for the delivery of services which may or may not include services on behalf of government. This independence must be respected in the formulation of any policies in this area.

The recommendation gives consideration of the use of pre-qualifying panels of service providers. Such accreditation would help vet service providers to provide an effective means of sourcing suitably qualified, insured and appropriate service providers.

A risk with such a process is that considerable resources may be utilised, at both the agency and provider level, to obtain such pre-qualification without any agreement being subsequently entered into.

An additional risk is that the service may be offered to a pre-qualified provider where another provider may subsequently be better placed to offer the service.

## **6. Building Stronger, more effective relationships for the future**

### **Draft Recommendation 13.2**

***The Australian Government should establish an Office for the Not-for-Profit Sector Engagement within the Prime Minister's portfolio.***

We support the idea of this office as part of the implementation of the commission's recommendations. We would like to see a clear interaction between this office with its primary focus of implementation and the National registrar with its primary focus of registration for greater advocacy and support for the sector as a whole.

The sector requires a significant level of advocacy and commitment particularly during any proposed change and we would like to see this office working closely with the not-for-profit organisations to achieve the desired outcomes.

We thank the Commission for the opportunity to comment on the draft report and welcome the opportunity to provide assistance if required.

*Yours sincerely*



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