

## **Comments from Changemakers Australia (CmA)**

Contribution of the Not-for-Profit Sector.

These comments are made by Changemakers Australia to the Productivity Commission in response to the Draft Research Report dated October 2009 and entitled "Contribution of the Not-for-Profit Sector".

Dated 23 November 2009

### **Changemakers Australia (Changemakers)**

Changemakers is an incorporated national organisation which aims to support the growth of social change philanthropy in Australia.

Changemakers appreciates the opportunity provided by the Commission to make further comments in response to some of the recommendations of the Commission's draft research report dated October 2009 entitled "Contribution of the Not-for-Profit Sector".

*5.4 The Australian Government should provide funding for the establishment of a Centre for Community Service Effectiveness to promote 'best practice' approaches to evaluation, with an initial focus on evaluation of government funded community services. Over time, funding could also be sought from state/territory governments, business and from within the sector. Among its roles, the Centre should provide:*

- *a publicly available portal containing evaluations and related information provided by not-for-profit organisations and government agencies*
- *guidance for undertaking impact evaluations*
- *'meta' analyses of evaluation results.*

Changemakers supports this recommendation. It is the view of Changemakers that many NFPs play an important role in contributing to public policy reform. They do so through the development of practices and policies which bring about social change that is of benefit to disadvantaged sectors of the community. Changemakers is conscious, however, that the evaluation of the social change outcomes of projects can be difficult and can, as a result, present a disincentive to philanthropic funding of such projects. Changemakers is currently undertaking a major project to produce a tool to enable NFPs to evaluate social change activities. It is supportive of the establishment of a Centre for Community Service Effectiveness to promote best practice evaluation.

Such a Centre must avoid having a conflict of interest by being an organ of government that is involved in not only evaluating effectiveness and providing assistance to organisations to undertake impact evaluations but also in providing their funding. The Centre needs to be separated from any agency with funding functions. One way in which to achieve this would be to establish a Centre within a body having existing expertise such as a university.

*6.1 The Australian Government should adopt a statutory definition of charitable purposes in accordance with the recommendations of the 2001 Inquiry into the definition of charities and other organisations.*

Changemakers considers the implementation of this recommendation, subject to some minimal but important clarification, to be of the utmost importance.

The proposal concerning the meaning of “charitable purposes” in the June 2001 Report of the Inquiry into the Definition of Charities and Related Organisations (the CDI) defined “advancement” as including: “...protection, maintenance, support, research, improvement or enhancement.”

Changemakers submits that it is necessary to put beyond any doubt that advocacy for public policy reform is included in the meaning of “advancement”. Changemakers submits that the CDI definition should be varied to include the words in bold to read as follows:

“Advancement” is taken to include **prevention and promotion**, maintenance, **policy development and advocacy – including that aimed at changing a law or public policy**, support, research, improvement or enhancement.”

It is submitted that the additional wording is consistent with the CDI’s position that: “Non party-political purposes or activities such as advocating on behalf of their causes or needs, contributing to the development or implementation of public policy, entering into the public debate, or seeking to change a particular law or public policy, should be assessed against the same principles as other purposes and activities.”

Changemakers agrees that charities must not be party political in that they have purposes that promote a political party or a candidate for political office.

*6.4 The Australian Government should establish a one-stop shop for Commonwealth regulation by consolidating various regulatory functions into a new national Registrar for Community and Charitable Purpose Organisations with the following key functions to promote confidence in the not-for-profit sector:*

- *register and regulate Commonwealth incorporated associations, companies limited by guarantee and Indigenous corporations*
- *register and endorse not-for-profits for commonwealth tax concession status*
- *registration of cross-jurisdictional fundraising by not-for-profit organisations*
- *a single reporting portal for public record corporate and financial information, proportionate to the size and scope of functions of not-for-profit organisations*
- *provision of appropriate governance education*
- *complaints handling.*

*The Commission seeks comments on:*

- *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*

- *the appropriate reporting thresholds and requirements under the Registrar's proposed functions.*
- *whether the Office of the Registrar for Indigenous corporations should be transferred to the new regulatory organisation.*

Changemakers supports a more harmonised and therefore more efficient single process of regulation of NFPs. There would be a significant benefit in having one organisation responsible for the functions listed in the draft recommendation. Ideally that body should have a degree of independence and report to Parliament.

Changemakers supports the establishment of the national Registrar as a separate agency as opposed to being a function of ASIC. In either case there would be a need for additional funding and therefore there is no cost benefit in preferring one or other option. However, in creating a new area within ASIC there would be a risk that it would be and be seen to be a less valuable part of that organisation. The significant size of the NFP sector and the value of its contribution warrant a specialised focus. The nature of the contribution by the sector is quite different from that of the commercial organisations that are currently the primary business of ASIC. For these reasons a specialised regulatory agency is preferred.

Changemakers notes that there are charitable trusts and foundations (which are not PAFs) and which have DGR status and income exemptions but which are not required to be registered or to provide audited accounts. Changemakers is of the view that it should be made clear that the proposed Regulator should also be responsible for regulating these bodies in the same way as other NFPs.

*7.1 Australian governments should recognise the tax concession status endorsement of not-for-profits at the Commonwealth level, and explore the scope for a single national application process for organisations for tax status endorsement, or mutual recognition of endorsement, across all jurisdictions.*

*The Commission seeks comments on whether the range of not-for-profits requiring formal endorsement for Commonwealth tax concessions (as distinct from self assessment) should be expanded.*

The current process for endorsement for tax concession status is clearly inefficient and unnecessarily costly to the community. Changemakers supports a more streamlined and consistent system. This could be achieved by having a single national application process for tax status endorsement. We do not support having mutual recognition of endorsement as an alternative to a single national process. It should be a supplement so that, for example, a State endorsement for, say, land tax purposes would be determined by recognition of the national endorsement.

*7.2 Subject to considerations of affordability, the Australian Government should widen the scope for gift deductibility to include all charitable institutions and charitable funds as endorsed by the proposed national Registrar.*

*Gift deductibility should continue to be available to other eligible categories which fall outside this scope, such as cultural and environmental organisations endorsed by the proposed national Registrar and entities that are specifically named in the Income Tax Assessment Act 1997 or its Regulations.*

*The Commission seeks comments on whether the range of not-for-profits requiring formal endorsement for Commonwealth tax concessions (as distinct from self assessment) should be expanded.*

Changemakers supports the widening of the scope for gift deductibility. An NFP, the activities of which have a dominant purpose that is charitable, altruistic and for the public benefit, should be eligible for gift deductibility status even though its activities consist of advocating for public policy reform and do not consist of providing direct relief.

The current scope is unnecessarily narrow. This is because:

- A) the definition of “charity” does not clearly include preventative activities and those promoting human rights and it does not make it clear beyond doubt that advocacy for public policy reform is included in the meaning of “advancement”.
- B) It is a requirement for recognition as a PBI that the NFP provide “direct” assistance to persons in need.

These unnecessary restrictions mean that, for example, an organisation that is engaged in providing support for the homeless can only be sure of attracting income by way of direct donations or from philanthropic intermediaries such as PPFs or community foundations if it restricts its activities to actually providing shelter. Although it is best placed to identify and gather evidence on the factors that contribute to homelessness, it cannot do so and cannot advocate for changes in public policy that would reduce homelessness and the suffering that it causes, without threatening its existing funding or because it cannot access donations for such activities.

To restrict in this way activities that have a dominant purpose that is charitable, altruistic and for the public benefit is counter-productive to achieving the goal of relieving poverty and benefitting the community.

In addition, Changemakers supports the widening of the scope for gift deductibility to NFPs with a dominant purpose that is charitable, altruistic and for the public benefit and, although not providing direct relief of poverty, provide assistance to other NFPs which are engaged in charitable activities. This would include, for example, an NFP which provides support as a peak body or which engages skilled volunteers to provide services such as business planning or IT support to NFPs that themselves are providing direct relief.

*9.1 Australian governments should explore options to expand existing programs encourage and support social innovation. Options include expanding the Cooperative Research Centres program, and encouraging agencies funding social services to create Social Innovation Funds to support research collaborations into innovative solutions to social problems. These initiatives should be tailored to attract research*

*organisation not-for-profit business consortiums and collaborations formed for the purpose of addressing social problems in Australia.*

Changemakers supports this recommendation and submits that there is a further aspect to the explanation of what is constraining innovation by NFPs. The Commission's report states that "Social innovation refers to new strategies, concepts, ideas and organisations that meet social needs of all kinds..." The development of new strategies and ideas must be accompanied by action to ensure their implementation. However, developing ideas and taking action to promote them may be considered to be outside the scope of charitable activity and may preclude eligibility for DGR status. As the draft report notes on 9.7 there is a growing risk aversion to trying new approaches partly because of concerns about regulation "notably fundraising regulation and whether the activity is permissible."

If, for example, an NFP were to be established to pursue a reduction in the incidence of and negative impact of foetal alcohol syndrome it may, after conducting research, conclude that there are failings in the way that current programs are conducted and are constrained by law and government policy. Despite the potential benefits of innovation, despite their altruistic and community benefit nature, such an NFP is unlikely to attract charitable status nor be eligible as a DGR because it would be seen as advocating for changes to the current approaches (that is, engaging in advocacy for public policy reform). Therefore it would not be able to attract funding from private donors or philanthropic intermediaries.

Thus innovation by an NFP may only be possible if it takes the form of trials of direct relief and if it does not advocate ideas that involve public policy reform. This potential restraint on innovation is all the more dire when such advocacy seeks to address the underlying causes of social ills, such as poverty, inequality, abuse of human rights and environmental degradation.

*13.2 The Australian Government should establish an Office for Not-For-Profit Sector Engagement within the Prime Minister's portfolio, for an initial term of five years. The Office would support the Australian Government in its efforts to:*

- *implement sector regulatory and other reform and the implementation of the Government's proposed compact with the not-for-profit sector*
- *promote the development and implementation of the proposed Information Development Plan*
- *initially fund and oversee the establishment of the proposed Centre for Community Service Effectiveness*
- *implement the proposed contracting reforms in government-funded services*
- *act as a catalyst for the promotion and funding by government agencies of social innovation programs*
- *facilitate stronger community and business collaboration.*

*The Office should, through the relevant Minister, report publicly on an annual basis on its achievements.*

Changemakers is concerned that the channels for dialogue between the NFP sector and governments are too diverse and lack transparency. The consequence is a lack of clarity

about how best to raise concerns and to pursue solutions. It is possible that one consequence of this has been the significant number of major reports which have not resulted in actions other than at the margins. Changemakers therefore supports the idea of a single body to implement reforms. While it is recognised that having an office within the Prime Minister's portfolio affords it an elevated status, it is submitted that the importance of the NFP Sector is such that there should be a specific Minister responsible for the sector (in the same way that the UK has a Minister for the Third Sector).

The most important outcome is for there to be substantive reform and not just another report with recommendations that are not acted upon. The value of an Office within the Department of PM&C is therefore the influence that it would have in ensuring action on proposed reforms.

Changemakers supports the establishment of the proposed Office. It does so to achieve the outcomes of substantive changes such as the establishment of the Registrar, the modernisation of the definition of charities and the widening of the scope for gift deductibility.