



20 November 2009

Mr Gary Banks  
Chairman  
Productivity Commission  
Locked Bag 2  
Collins Street East  
Melbourne Vic 8003

Dear Mr Banks

### Draft Research Report – Contribution of the Not-for-Profit Sector

The Advisory Council for Children with Impaired Hearing (Taralye) respectfully provides this submission in response to the Productivity Commission's draft report into the contribution of the not-for-profit sector, published in October 2009.

Taralye is a not-for-profit organisation located in Blackburn, Victoria supporting young hearing impaired children and their families. Taralye advocates for early diagnosis of hearing loss, prompt fitting of hearing aids and/or cochlear implants and high quality early childhood intervention services. We submit that the wide range of families dependent on Taralye enables us to provide the Commission with a comprehensive view of the proposed reform options set out in the draft report.

Our considered opinion is that the majority of the recommendations are worthy of community support. The majority of recommendations put forward by the Commission in its draft would, if accepted as final recommendations and legislated by Federal Government, make significant advances in addressing weaknesses that have been noted in the existing framework for the regulation of not-for-profits in Australia. Taralye notes that there have been several government inquiries over the previous twelve years, all of which have recommended a co-ordinated national approach to not-for-profits. Taralye trusts that the government will now seize this opportunity to implement recommended changes for the benefit and clarity of all interested parties..

Taralye has not previously lodged a submission on Federal issues. Previous representations have been made to the Victorian Government Department of Human Services on issues relating to the screening of newborn infants.

If the Commission has any questions in respect of this submission, please do not hesitate to contact Taralye's Chief Executive Officer, Therese Kelly, Chief Financial Officer, Noel Cousins or the writer on 03) 9877 1300.

Yours sincerely

Kevin Gray  
Development Manager

## Appendix

### **Comments on Draft Productivity Commission Report**

#### *Recommendation 5.3*

***To minimise compliance costs and maximise the value of data collected, Australian governments should agree to implement a reform agenda for reporting and evaluation requirements for not-for-profit organisations involved in the delivery of government funded services. This should:***

- ***commit to basing reporting and evaluation requirements in service delivery contracts on a common measurement framework (appropriately adapted to the specific circumstances of service delivery)***
- ***require expenditure (input) measures to be based on the Standard Chart of Accounts***
- ***ensure that information generated through performance evaluations are returned to service providers to enable appropriate learning to take place and for organisations to benchmark their performance***
- ***embody, where practicable, the principle of 'report once, use often'.***

We submit that care must be exercised not to over-regulate small entities like ours. We invite the Commission's consideration of the thousands of organisations in the not-for-profit sector earning less than \$5 million annually for whom the spending on measurement is out of proportion to the spending on core activities. As a consequence, we eagerly support the principle of 'report once, use often' and the use of a Standard Chart of Accounts.

#### *Recommendation 6.1 Providing for appropriate legal forms*

***The Australian Government should establish a Commonwealth incorporated associations legal structure for not-for-profits. The new legal structure would assist not-for-profits, in particular those operating across state and territory boundaries, that do not wish to be companies limited by guarantee but wish to be incorporated at the Commonwealth level.***

***Australian governments should ensure that incorporation legislation is amended to allow not-for-profits to migrate from one form of legal entity to another and to migrate between jurisdictions.***

***State and territory governments should continue to reduce unnecessary compliance requirements for incorporated associations.***

*The Commission seeks comments on:*

- \* *whether there is a need for a new legal form for small unincorporated associations, similar to the Australian Business Name registration, providing limited legal rights*

We have noticed that many organisations have decided to form a Company Limited By Guarantee, under the Corporations Act, in order to operate across various states

regardless of the Corporations Act burdening them with extra compliance obligations, compared to associations legislation.

We submit that the Commonwealth associations legislation will assist not-for-profit organisations that do not wish to incur the additional compliance costs of becoming a company. However, without yielding control of associations to the Commonwealth, we respectfully suggest that there is a risk of making requirements more intricate and consequently difficult to interpret. We further suggest that small entities such as Taralye, should not be burdened by an additional layer of legislative requirements.

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

As discussed above, we would prefer that state legislation was yielded to or otherwise made the same as Commonwealth regulatory requirements.

Taralye is in favour of an indicative threshold for organisations to consider when they should move from associations legislation to corporate law. For this to be effective we suggest the threshold be linked to the bottom tier that is likely to be proposed for limited by guarantee companies in upcoming changes to the Corporations Act.

***\* how governments can free up the ability of organisations to migrate between legal forms and jurisdictions, while guarding against any undesirable consequences from forum shopping.***

We submit that State authorities be included in this procedure to deliver seamless regulations for not-for-profits. Migrating between types of incorporation from association to company limited by guarantee would be assisted by the States yielding the regulation of associations to the Commonwealth or agreeing to standardised associations' legislation. "Forum shopping" would thus become less attractive.

*Recommendation 6.2 Reducing unnecessary compliance burdens*

***To promote confidence in the not-for-profit sector and reduce regulatory burden, Australian governments, initially through the COAG Business Regulation and Competition Working Group, should:***

- ***agree to and implement harmonised fundraising regulation and mutual recognition across Australia***
- ***support the development of a fundraising register for cross jurisdictional fundraising organisations, to be administered by the proposed national Registrar***
- ***endorse the adoption by all governments of the Standard Chart of Accounts for reporting by not-for-profits in receipt of government grants or service contracts***
- ***ensure that the Standard Business Reporting initiative be expanded to include reporting requirements by not-for-profits.***

Taralye supports these proposals. We note that the application of XBRL, the software

underlying SBR, to the Standard Chart of Accounts will facilitate the reporting of grant obligations to a multiplicity of donor organisations.

We submit that Fundraising legislation should be regulated by uniform national law so that there is no need for not-for-profits which cross state boundaries to make multiple returns to respective state regulators.

#### *6.4 Consolidating Commonwealth regulation and improving transparency*

***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 organizations***
- ***a single reporting portal for public record corporate and financial information, proportionate to the size and scope of functions of not-for-profit organizations***
- ***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 (ASIC)***
- ***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.***

We endorse these proposals. Whether the regulator for not-for-profits is a separate division within the ASIC or a new entity does not appear to make any difference. We acknowledge advantages in being a division of ASIC for using of their existing database.

Concerning appropriate reporting thresholds, we support a top tier requiring compliance with accounting standards and audit of \$2 million revenue and a middle tier between \$500,000 and \$2 million of revenue requiring compliance with accounting standards and a review (rather than an audit), with a bottom tier of \$500,000 of revenue lodging only unaudited basic financial information. We further submit the view that reporting thresholds should be consistent between the Corporations Law and the associations legislation.

### **Realising funding opportunities for the sector**

#### *7.1 Simplifying processes for and improving effectiveness of tax endorsement*

**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.**

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.**

We submit that the Australian taxation system should reflect policy objectives set by Government in respect of the broader NFP sector and concessions extended to that sector. Whether public support by way of the tax system is warranted in the form of deductions for contributions to NFPs concessions to attract labour, such as fringe benefits tax concessions should be guided by broader government policy in the NFP area.